Minutes of the

LEGISLATIVE COMMISSION

Nevada Legislative Counsel Bureau (LCB)

October 30, 2007

The fourth meeting in 2007 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Tuesday, October 30, 2007, commencing at 1:34 p.m., in Room 4100 of the Legislative Building, 401 S. Carson Street,
Carson City, Nevada with a simultaneous video conference to Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada.

COMMISSION MEMBERS PRESENT:

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

COMMISSION MEMBER ABSENT:

Senator Valerie Wiener

OTHER LEGISLATORS PRESENT:

Senator Joyce Woodhouse (in Las Vegas)
Assemblywoman Marilyn Kirkpatrick (in Las Vegas)
Assemblywoman Debbie Smith (in Carson City)

LCB STAFF PRESENT IN CARSON CITY:

Lorne J. Malkiewich, Director
Brenda J. Erdoes, Legislative Counsel
Gary Ghiggeri, Senate Fiscal Analyst
Mark W. Stevens, Assembly Fiscal Analyst
Paul V. Townsend, Legislative Auditor

Donald O. Williams, Research Director
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--Legislative Auditor: Approval of contract with consultant to conduct a performance audit of each agency which provides child welfare services (A.B. 629, sec. 5)--Paul V. Townsend, Legislative Auditor.

Mr. Townsend recalled that this item was presented at the last meeting of the commission on September 18, 2007. At that time, a decision was made to consider the other consultant who had submitted a proposal. Members were subsequently provided copies of a Request for Proposal (RFP) and the proposals received from the two consultants. The members reviewing the proposals have determined that a contract with the Nevada Institute for Children's Research and Policy (NICRP) be presented for approval. He provided a handout of a 12-page document entitled Agreement at the top of the page (copy attached as Exhibit C). As required by the bill contained in the meeting packet for this agenda item, the audit will focus on reviewing files of opened and closed cases concerning children who have been abused or neglected. The bill lists a number of specific items that the consultant will address. He noted that the NICRP is a nonprofit research center housed in the School of Public Health at the University of Nevada, Las Vegas (UNLV). The organization is dedicated to advancing awareness and understanding of children's issues in Nevada. Its mission is to conduct rigorous academic and community-based research that will guide public policy and program development in an effort to enhance the lives of Nevada's children. It was formed as a research center at UNLV in 1998 and became part of the School of Public Health in 2004. The NICRP has previously done work for the Legislature when they conducted a study pursuant to Assembly Bill 580 of the 2005 Legislative Session. That study included a review of the health, welfare, safety, civil and other rights of children in the custody of certain child welfare agencies. He believed the study provided very useful information to the Legislature.

Continuing, Mr. Townsend said that the contract provides that the audit will be conducted for the amount of $175,000. The contract is undergoing a final review by the Legislative Counsel and he requested the Legislative Commission approve the contract subject to any modifications the Legislative Counsel believes necessary.

ASSEMBLYWOMAN BUCKLEY MOVED APPROVAL OF THE PROPOSAL OUTLINED BY MR. TOWNSEND TO AWARD THE CONTRACT TO THE NEVADA INSTITUTE FOR CHILDREN'S RESEARCH AND POLICY. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED.

Item II--Progress Reports: Litigation currently in progress--Brenda J. Erdoes, Legislative Counsel.

Ms. Erdoes said that in addition to the two cases that are still pending which are O'Connor vs. Heller at the U.S. Supreme Court and Gypsum Resources–the Red Rock case–which is on "stay" in the state district court, her office is in the process of filing today with the Nevada Supreme Court an Amicus Brief on behalf of the Legislature and the Public Employees Benefits Program–the Metro case. In the brief, they are making arguments on behalf of the Legislature that collectively bargained insurance is subject to the provisions of Chapter 287 of the NRS, also that Metro and Clark County are required to pay the subsidies required by NRS 287.023 and that retirees who retire before July 1, 2003, from public employment are entitled to receive the subsidy in the same manner as those retired after that date. The case has been put on an expedited schedule and there is a response due from the other side mid-November and then oral arguments are on January 25, 2008.

Chair Townsend asked about the current status of the O'Connor vs. Heller and if a date has been set on when that will be heard. Ms. Erdoes responded, "No, unfortunately, the Supreme Court denied 'cert' and the appellant has a right to ask for a re-hearing of that decision. Because he's going pro bono the deadlines don't apply. If he had counsel, that deadline would have already run but we are just sort of hanging out there for now."

Item III--Legislative Commission Policy:

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

Mr. Malkiewich referred to material in the meeting packet containing a memorandum from Mary Shope, Coordinator of the Forum. He said that there was a problem with the statute in that it did not get updated during the reapportionment in 2001. The problem was "fixed" during the past legislative session to try and re-establish the appropriate stagger of appointments so that half the terms expire one year and half the next year. He said, "We have all the members being reappointed, so you will see on the second page of the memorandum a list of all the members. Most of them are reappointments." He noted that Senator Joyce Woodhouse's appointment was made last meeting and the only new appointee, Richard C. (Dick) Doyle, is from Senator Dennis Nolan and the others are being reappointed. He reiterated that as a result of the statute, the members need to be reappointed to set up the terms ending in 2008 and 2009.

SENATOR MCGINNESS MOVED TO ACCEPT THE APPOINTMENTS OR REAPPOINTMENTS OF THE MEMBERS OF THE NEVADA SILVER HAIRED LEGISLATIVE FORUM AS OUTLINED IN THE MEMORANDUM. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

B. Appointment or reappointment of members to Advisory Council on Mortgage Investments and Mortgage Lending (NRS 645B.860)--Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to a letter in the meeting packet from Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, Department of Business and Industry, with nominees for the Mortgage Advisory Council. He recalled at the last meeting of the Legislative Commission there was a question as to whether the current members were eligible for reappointment. In the new list that has been submitted, there are a number of names but they also include all of the current members of the advisory council. The Legislative Commission appoints five members from a list submitted by the Commissioner.

Chair Townsend said that the advisory council is a unique structure in that members serve at the pleasure of the Legislative Commission. He thought it would be important to continue the continuity given the fact that there is a new Mortgage Commissioner. He recommended that the current advisory council members be reappointed and then if any problems are seen, appropriate appointments could be made accordingly. He requested suggestions from any other members.

Ms. Buckley said that she would concur with the chair's recommendation.

ASSEMBLYWOMAN BUCKLEY MOVED TO REAPPOINT THE FIVE CURRENT ADVISORY COUNCIL MEMBERS: SEAN CORRIGAN, CLAY DUNCAN, DAVID GOLDWATER, JENNY LOPICCOLO AND TOM POWELL. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

C. Request for staff assistance for P-16 Advisory Council--Lorne J. Malkiewich, Director.

Mr. Malkiewich explained that this item was a potential request placed on the agenda in case the request was made but no proposal was received. Therefore, no action or discussion took place on this item.

D. Request to discontinue transmitting compilation of quarterly reports on disciplinary action (NRS 622.100)--Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to a copy of the statute contained in the meeting packet as amended during the past legislative session to require the disciplinary action reports to be submitted to the Legislature and the provision of subsection 2, paragraph c. which

indicates the Director is required to submit a compilation to the Legislative Commission quarterly unless otherwise directed by the commission. He recalled that in the past, discussion has taken place on getting a single format for the reports and the commission approved an Excel spreadsheet format for this purpose at a previous meeting. Since that time, the amendment to the statutes added a requirement that entities submit the number of licenses granted so that change needs to be made. He said that staff is ready to start using that form. He noted that under agenda Item IV. B. there are 24 quarterly reports submitted. He is requesting to discontinue transmitting the reports but if the commission would like to continue receiving them, staff can continue to transmit them. He is asking that if once the Excel spreadsheet in on the website, so that the reports coming in are in a format that are much easier to review and can be reviewed on line, if the commission still wants to be receiving the quarterly reports. He reiterated that it is just a request. If the members would like, staff will continue submitting the reports as informational items but if the members are comfortable not getting the reports attached in the meeting packet, he would ask they approve discontinuing this after the new system is in place.

Mr. Anderson said that this subject is always an issue with him. He thought a comfort level may be felt in the future but he would like to see how the spreadsheets are operating for a while before discontinuing the transmittals. He said that during the session there were people that came before the Assembly Judiciary Committee who felt that no one ever looked at their reports and there was a criticism that they spent a lot of time putting together the reports and then no one ever seemed to be viewing them. He said that he could reassure them that was not the case because of sitting on the commission he has seen the reports. He thought if the commission was to keep up the legislative oversight function, it is important that the commission fulfill this role for a time longer. He indicated that he could "see where LCB may wish to cut down on trees dying in the forest for us."

Chair Townsend said that Mr. Anderson makes an excellent point. With regard to the commission's oversight, not only does the commission have responsibilities but there are members on the commission who sit on committees that have jurisdiction over most of the licensing boards who actually have disciplinary action and would like to maintain knowledge of that because it is one of the things they pay close attention to during the session as well. The chair requested having at least "one more shot" at seeing what the spreadsheet looks like so that members are more comfortable before we "walk away from it." It could be brought up at the next meeting and see how it is working and then move from there.

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

Ms. Erdoes said that there are 43 regulations for approval under NRS 233B.067, minus the regulation from the Public Utilities Commission of Nevada (PUCN) identified as R070-07 which has been withdrawn by the agency who is going to keep working on it. There are two regulations under NRS 233B.0681 which is the early review provision,

that the members would have just received in the last day or two. Of the 43 regulations under NRS 233B.067, there are two on which people have asked to speak: R054-07 from the State Apprenticeship Council, on which the federal Department of Labor has asked that their letter be considered; and R013-07 from the State Personnel Commission, two gentlemen have asked to make a presentation. A handout of a revised list of regulations was provided to members and those in attendance (copy is attached as Exhibit D).

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

The following regulations were held for further discussion: R013-07 and R054-07.

Additionally, Senator Care asked that the following be held for further discussion: R141-06 from the State Environmental Commission, R005-07 from the Board of Medical Examiners, R010-07 from the Nevada Tax Commission pertaining to golf courses, R017-07 from the State Dairy Commission, R020-07 from the Manufactured Housing Division of the Department of Business and Industry, R056-07 from the State Environmental Commission, R062-07 from the PUCN and R076-07 from the PUCN.

Senator Hardy asked that R060-07 from the Department of Education and R061-07 from the State Board of Education and R054-07 (previously requested) be held for further discussion.

Mr. Carpenter asked that R099-07 from the State Board of Health be held for further discussion.

The chair indicated that he would identify the regulations that were requested to be held for further discussion and would then take a motion to approve the remaining regulations. Regulations held were: R141-06, R005-07, R010-07, R013-07, R017-07, R020-07, R054-07, R056-07, R060-07, R061-07, R062-07, R076-07 and R099-07. He noted that R070-07 was withdrawn. Regulations R084-07 and R116-07 were held and addressed under the next item.

The remaining regulations were: R006-07, R007-07, R011-07, R012-07, R014-07, R016-07, R019-07, R024-07, R025-07, R026-07, R027-07, R028-07, R029-07, R030-07, R038-07, R040-07, R043-07, R044-07, R052-07, R055-07, R057-07, R058-07, R059-07, R071-07, R073-07, R074-07, R075-07, R097-07, R100-07 and R101-07.

SENATOR MCGINNESS MOVED APPROVAL OF THE REMAINING REGULATIONS. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

The chair thanked those in attendance for being available during the meeting in case there were questions on particular regulations.

Mr. Anderson said that he had made telephone calls to some of the contact people at the agencies with his questions prior to the meeting. He thought it was helpful to obtain his clarifications so that they did not have to "hang around" unnecessarily.

Chair Townsend said he thought that was a very efficient way to do things because many times legislators have had an opportunity to work on a specific area of the law or regulation and others are not necessarily as familiar with it. He said it is wonderful when a question can be answered with a phone call and was glad counsel was able to accommodate members with the names and phone numbers of contacts.

Senator Care said that the way he read proposed Regulation R141-06, there does not necessarily have to be any rinsing but ultimately the levels in section 1 remain the same. He was wondering if someone could explain what it means when the language "be rinsed" is deleted and yet the same levels remain in the regulation.

Leo Drozdoff, Administrator, Division of Environmental Protection appeared before the commission in Carson City. He introduced Curt Colby, Supervisor of the Mine Closure Branch within the Bureau of Mining Regulation and Reclamation. Mr. Drozdoff explained that when the regulations were first written in the late 80's and first 90's, he guessed there was a prevailing thought that rinsing of "heaps" would be the most beneficial way to meet the standards which do not change. It has been learned over the last 15 years or so that is not necessarily the case – sometimes it is but sometimes it is not depending on the type of material in place. It has been sometimes found that if a lot of rinsing is done, then the leftover water has to be circulated and stored and ends up creating a worse problem. He said, "The bottom line here is that the standards don't change but there are different ways to ensure that they are met as opposed to just rinsing."
Senator Care thanked Mr. Drozdoff for the explanation.

> ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R141-06. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

Senator Care said that the question he has centers around section 1, subsection 3, of Regulation R005-07 from the Board of Medical Examiners. It concerns the liability of the physician assistant but not the liability of the supervising physician. He said the answer may lie in statute which he did not have time to review but was wondering if the regulation is adopted, who if anyone would be liable for the conduct of the physician assistant in the context of an emergency. He asked if the supervising physician is not, could conceivably the hospital be, if it were to happen in a hospital? He was also wondering if physician assistants, assuming that they would be liable, are required to carry some sort of insurance.

Edward O. Cousineau, Deputy General Counsel with Board of Medical Examiners

appeared before the members in Carson City. He said the genesis for the regulation was at the request of the members of the physician assistants advisory committee for the board who had concern that, while there is the Good Samaritan statute in place under NRS 41.005 et al, there was concern about administrative liability i.e., being potentially subject to discipline due to their licensure status with the board. The request of the advisory committee was that the regulatory language is put in place to obviate the potential of administrative liability as long as the physician assistants are acting in good faith within the scope of their training and education and meeting the threshold which is an accident or other emergent circumstance that would require their participation tendering medical services absent the formal notice or approval of their supervising physician. If the question relates to civil liability, he did not believe that was the intent of the regulation, it is more of an administrative concern. He reiterated that Chapter 41 of NRS does touch on the good faith Samaritan exception and maybe that would answer the senator's question.

Senator Care said it probably is answered in statute but he did not know. He recalled that in 2002, in certain circumstances, immunity was granted to physicians in an emergency context but he did not recall whether it was extended to physician assistants. Mr. Cousineau said that he did not believe physician assistants were specifically delineated and that may have been one of the considerations as well but he believed that it would be more toward the administrative ramifications. The civil liability might need to be addressed "down the road." He said that physician assistants are not enunciated the way he understands it. He believed doctors are but the board cannot do that as a regulatory body and would have to solicit that from the Legislature or the physician assistants would have to do that unilaterally.

> SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R005-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED WITH SENATORS CARE AND TITUS AND ASSEMBLYMAN ANDERSON VOTING NAY.

On Regulation R010-07 from the Nevada Tax Commission, Senator Care inquired if there is something in statute about agricultural or property that is zoned agricultural that is converted to another use and how that might work and how the deferred tax would work. Dino DiCianno, Executive Director of the Department of Taxation appeared before the members in Carson City. He introduced Terry Rubald, Chief of the Division of Assessment Standards to respond to the senator's questions. Ms. Rubald said that she understood the senator's question to be how does the conversion to a higher use work and does that apply to a golf course. She said that there is an example in Clark County where a current golf course may be undergoing a change of use to a resort complex associated with one of the hotels. She said that most of those regulations have to do with how the golf course shall be valued. Section 15 does address, in some way, how the conversion would be applied and that is that the deferred tax because it is considered to be open space there would be a calculation between what the value as established as a golf course would be versus what it would be as a normal taxable property and that difference is deemed to be a deferred tax and would be collected at

the time of the conversion to a higher use.

Further, Senator Care inquired if that is what would happen with agricultural land. Ms. Rubald responded in the affirmative. Senator Care asked what is the golf course Ms. Rubald spoke of and she replied that she believed it is associated with the Wynn properties.

Chair Townsend said that as he remembered in reviewing the regulation, the first part of it, up until the conversion, deals with the improvements on the land and how they are to be taxed. There was some serious discussion in the Senate Taxation Committee on what is an improvement and what is to be considered open space, whether it was a shed or a clubhouse. It was discussed at considerable length to help clarify some of those issues.

Senator Titus said that she wanted to be sure she understood the regulation. She asked, "If you have a golf course that's taxed like open space, then you sell the golf course to turn it into a housing development, so they now assess it not as open space but as they would for property for a housing development and they go back with some kind of calculation that you pay back five years. Is that what it is? Well, I'm looking at section 10 and it says you determine the value of the golf course in the same manner. You multiply the amount of acreage by $2,860 plus the percentage change in the consumer price index, immediately preceding the date of the valuation as compared to 04. If it's greater then you use that value, if it's less then you use the product obtained by multiplying the value by section 1 times .07 and . . . then you have to use .79. Could somebody explain to me how they came up with this formula and what the rationale is for all of this?" Ms. Rubald explained that the first part refers to what is actually in statute with regard to the price per acre – $2,860 times the consumer price index – as the value that would be established for an acre of golf course land. It would apply to a golf course anywhere in the state. She said that there are some golf courses that might have excess land that might be valued at something less than $2,860 and it would be that way whether or not the regulation had been put into place. She gave an example such as there might be a golf course in Douglas County where there might be excess land that is already being currently valued at $500 an acre or some nominal value. The regulation would allow that to continue so the maximum would be the $2,860 per acre times the consumer price index (CPI) which she believed to be just over 3,000 now. For other kinds of land that have previously been established at a taxable value less than that, that provided for this. She said that the .74 is something that has been applied and has been in the agricultural bulletin of the department for a number of years and is a discount factor that is based on the tables for three and one half years. Three and one half years is selected because that is midway of the seven year period which is the deferred tax period so there is actually a reason for that number.

Ms. Buckley said that she is fairly confused, not having had the opportunity to sit on the tax committees and hear the detailed discussion, so she will begin with some elementary questions. She said the regulation looks quite complex and wondered if

there is "anything on the books" to this level of detail at the present time and, if so, what exactly is being changed. She thought she understood the part about the conversion to a different use in section 15 but in the rest of it she is still not clear what is new and what is not new. Ms. Rubald explained, "Basically, what's happening here is that the assessors use a manual called 'The Marshall and Swift Costing Service' and within that manual there are a number of choices to be made as how to cost a particular kind of property. What this basically does is set parameters on how that manual will be used. It also provides for a method, a specific kind of method, for applying obsolescence."

Ms. Buckley inquired, "How many decision points are in this and which ones did we choose? Did we choose ones with more latitude, less latitude?" Ms. Rubald responded, "I believe that the decision points here have to do with the classification of the course, for instance if I may, compare it to how you classify houses for valuation. There are different classes, quality classes of building of houses. Similarly, this is providing for decision points on how to classify a golf course and what the quality of the golf course is. So, it's a formulaic way of approaching it and therefore more limiting."

Ms. Buckley stated, "Thank you. I think I'll stop there. I think before I could vote on this I would need a more detailed breakdown of this regulation and what the impact is. The Legislature considered for a couple of sessions various bills with regard to golf courses and how they should be assessed. I remember two of them dying in the Assembly on the Assembly floor until this one passed and there was a great deal of consternation about whether golf courses should be classified – I think one session it was 'let's classify a golf course as a park,' then 'let's classify a golf course as open space,' and I don't know if those are correct analogies because certainly people couldn't picnic on them when they were allegedly to be classified as a park or you can't just decide to forge an open trail and the reason I think that's relevant is this decision was made with regard to open space and if there are additional breaks, tax breaks, that are being given to folks with golf courses, I think those need to be clearly spelled out to the committee. Maybe there's not but I think, if anything, we've learned a lesson in the Legislature, it's 'let's be clear.' Let's be clear about what we're doing, what the fiscal impact is and so I guess that's my final question – what's the fiscal impact of any of these decisions among the various continuum that Marshall and Swift's gives us?"

Mr. DiCianno said that he thought it was important to keep in mind that the Department of Taxation is an administrative body. All the department is doing here is implementing legislation that this body passed during the last session. All they are trying to do is comport with that language in relation to the way that assessors value property statewide, utilizing the Marshall and Swift Manual to assist them in that valuation process in order to make sure the golf courses statewide are valued uniformly and equally. He has no concern about providing members with additional information and they will do that but he would be concerned now with respect to reviewing fiscal impacts. He did not know how to address that concern.

Chair Townsend said that he understands the concern and some members attended the hearings and might be helpful. He proceeded with questions from other members.

Mr. Goicoechea asked if the department only goes back seven years on "ag deferred?" Ms. Rubald responded in the affirmative. Mr. Goicoechea then noted that the maximum amount that can be assessed on a per-acre charge is $2,860 and commented that there is a golf course in Round Mountain that clearly is not worth $2,860 an acre but that also tells him that there might be properties that might be worth $100,000 an acre in Las Vegas can only be assessed at $2,860. He asked if that was correct. Ms. Rubald again responded in the affirmative. He observed that even by regulation, realizing they are trying to assess all things equally, they cannot. They are putting a cap on a property value in some of the urban areas that would be clearly false. He thought there was a mechanism in the regulation that allows them to discount in the rural areas where the land values are not that high. He opined that in Mr. Carpenter's district, and even in his own district, an acre of land is worth $3,000.

Chair Townsend said, "This may not be an adequate answer but it is the answer that could be helpful. When the Legislature decided to list golf courses as open space, there became a legitimate question by the Department of Taxation as well as the assessors with regard to 'what does that mean.' Therefore, the regulatory mechanism was required to define that and I think the Speaker is very accurate in talking about specificity. What does it mean? Is that everything on a golf course is now open space and, of course, the answer was no. So regulations were necessary and the ones in front of us today was to carve out what a course is and a course is grass, it's bunkers, it's trees, it's lakes, but it is not anything else and it is very specific when they talk about golfing improvements in section 6. So it's not the clubhouse, it's not the parking garage, it's not the shed for the carts. It's none of those land improvements. Those are assessed in the normal process. So this regulation defines a couple of things – it narrows down what is open space and then it says, 'now that we've determined that here is the mechanism that you're going to use and here's the conversion issue that you're going to use.' That was the history of that and hopefully that's helpful."

Senator Titus noted that there is a complicated formula for assessing golf course land that is said to be open space which is equivalent to agricultural land. Then, there is part three that makes provisions for exceptions, such as that mentioned, in which a golf course in the rural area is not worth the same amount as one in Las Vegas. She asked if there is a similar formula for assessing the value of agricultural land being different or is that across the board the same throughout the state. Ms. Rubald responded, "With regard to agricultural land, the Tax Commission goes through a process of approving an agricultural bulletin in which there are different classes of land ranging from grazing land up to fully irrigated land."

Senator Titus asked for an explanation of the difference between open space, agricultural land and golf courses. She asked if they are three different things or are they all the same now. Ms. Rubald replied, "Both agricultural land and open spaces

considered in Chapter 361A and it was deemed by the passage of legislation that golf courses would be deemed to be open space."

Senator Titus said that it seems to her that all the business about agricultural has gotten mixed up with open space provisions and asked what is the difference in those two. Ms. Rubald said, "What is similar between the two is the treatment with regard to deferred tax. In other words, some portion of the taxable value is being deferred for payment at a later time when the property is converted to a higher use. Otherwise the open space is created for purposes that are designated in the statutes to promote certain social issues and with regard to the agricultural, that was also put into statute. I believe many decades ago there was a problem that reached the Supreme Court about whether agricultural land could be treated differently than other types of land and as a result of that decision, the Legislature adopted this idea of deferred taxation and allowed agricultural land to be classified and treated somewhat differently than others."

Senator Titus stated, "So, let's put agricultural land aside. Let's talk about the golf course is open space. How is other open space taxed, other than golf courses, or is it not taxed – it's open space and it belongs to the public or how does that work?" Ms. Rubald replied, "They're open spaces, taxed at taxable value and then discounted by the factor of .74 which is what you also see in subparagraph 3. The .74 is not applied where the limit of $2,860 adjusted by CPI is already reached, but for anything less than that the .74 is applied just like it is for other open space land." Senator Titus said, "So this would be the exact same as all other open space, so then this isn't new, the only thing new about this is that it's now applied to golf courses – this is the exact same thing that already exists for other open space?" Ms. Rubald replied, "To the degree that taxable value is less than $2,860, it's treated the same, otherwise that .74 is not applied to the maximum limit of $2,860."

Further, Senator Titus asked what would be an example of other kinds of open space that would be taxed the same way as a golf course. Ms. Rubald responded, "Well, let's see, I'm trying to think of an example, it seems to me that there might be – I should also say that in open space there are also historic buildings included in open space law – so I believe that there are applications available throughout the state whereby a taxpayer would apply to the county assessor and then it goes through the process of either the city or the county, the appropriate governing board, in approving the designation of open space. That part of the process does not apply to golf courses. With regard to golf courses, the assessor automatically designates it as open space."

Chair Townsend said, "I believe the senator's question was be specific about what is open space other than golf courses that we have. Would that include Winnemucca Ranch? Would that include Ballardini? Something that's tangible for us to understand what open space is that is not a golf course." Ms. Rubald replied, "Yes, if it's owned by private taxpayers, the purpose of it is not to designate between public land and private land, it's just for private land that's designated by open space." Chair Townsend said, "That's not being used for agricultural purposes." Ms. Rubald responded, "Right."

Chair Townsend said, "So those might qualify, I don't know if either one of them are being used for agricultural purposes, I would probably guess not but that isn't a very

educated guess." Ms. Rubald indicated that she did not know but she believed that Ballardini Ranch is an agricultural use according to what she read in the newspaper.

Mr. Goicoechea offered the following additional clarification: Any property that is held in private hands has to generate at least $5,000 to be "ag-deferred" property. If someone had a piece of property and was not raising $5,000 in crops in it, then they would petition to become open space if they were looking for an open space deferral. He asked if that was correct. Ms. Rubald said, "Yes, but I believe that there are criteria to meet that open space and I'm sorry I can't tell you exactly what that criteria is right now."

Mr. Carpenter asked, "If I suddenly decide to subdivide my ranch or my farm and the assessor then values it the same as whatever the subdivider is paying me for it and then I have to pay the taxes on that value for seven years back, is that the same as this golf course or are they going to get a bigger break than I would when I subdivide my farm?" Ms. Rubald responded, "I think the short answer is 'no,' they don't get a different break. The deferred tax is applied in the same manner. There is a calculation between what value was calculated under the open space and what it would have been as taxable value. Did that answer your question?" Mr. Carpenter said, "Well, yes and no. I think that if I sell my land for $100,000 an acre and then I'm going to be taxed on that seven years back and it doesn't look to me like the golf courses under this formula, why they are getting a bigger break than I would be on subdividing my ranch. If the golf course is subdivided and they get $100,000 an acre, it looks to me like they should pay the same amount of deferred tax as I'm going to have to." Ms. Rubald responded, "Let me, if I may, try and make it more clear. If, for instance, golf course land at its highest and best use might have been valued at $100,000 an acre but it's limited under open space to $2,860, the difference between those would be subject – when the property's actually converted to the higher use, the assessor would go back and see what, if they converted it to residential, it would go back and figure out what it would have been for the seven years as residential – the difference between that and the $2,860 is what is subject to the deferred tax. Did that help?"

Senator McGinness said he wanted to clarify that there are no new values placed in this. He said, "The $2,860 was put in there and I believe it was 2005, another one of those tax issues in that session . . . and all of the other formulas, the .74 calculation is all in statute and as much as some of us would like to change that, what this is doing is trying to make the calculation on golf courses throughout the state, according to the Marshall and Swift Manual. So, we're not making any changes, we're not giving anybody any more deferments or tax breaks on this, we're just trying to clarify how it gets there."

Ms. Buckley referred to page 1 of the regulation, section 5, it defines golf course land as

meaning (1) a golf course and (2) any related improvements. On page 2, section 8, it defines related improvements as clubhouses, restaurants, swimming pools, tennis courts, nurseries, along with some other things. Section 10 uses the term golf course land in coming up with the assessment. She said, "Again, I guess I have the same questions as before. I thought the purpose of it was to say that the land is treated differently than the improvements but that doesn't seem to suggest that unless I'm missing something." Ms. Rubald responded, "The related improvements is actually a phrase that is used later on in the regulations for a calculation of obsolescence. What is happening is that there would be a calculation for the golf course land, say at the $2,860 per acre, there would be a calculation according to the formula within these regulations for the golf course improvements such as tee boxes and fairways. Those two are specific by formula. Then, the related improvements are costed as usual per the Marshall and Swift Manual according to their quality class and so on. Then, for purposes of calculating obsolescence, all of those things together–the related improvements, the golf course improvements and the land are added together–and compared to a full market value, a full cash value, to see if it exceeds the full cash value and if it does after all of these calculations, then the assessor can take steps to recognize obsolescence."

Chair Townsend said he would give members time to think about that because it is confusing. He thought Senator McGinness was correct that anything that is a calculation is already in statute. He thought part of what was done in the regulation was trying to differentiate between golfing improvements, related improvements, as well as how one would actually assess this based on buildings and things that were considered part of the course as opposed to what many would call improved property as opposed to real property. Improved property was articulated as clubhouses, pro shops, restaurants and so forth.

> SENATOR MCGINNESS MOVED TO ADOPT REGULATION R010-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED WITH SENATORS CARE AND TITUS, ASSEMBLYWOMAN BUCKLEY AND ASSEMBLYMEN OCEGUERA AND MABEY VOTING NAY.

On Regulation R013-07 from the State Personnel Commission, Gary Wolff, Business Agent, Nevada State Law Enforcement Officers Association (NSLEOA) appeared in Carson City and Ron Cuzze, President of NSLEOA appeared in Las Vegas. A letter dated October 17, 2007, from Mr. Wolff was sent to members and a copy is attached as Exhibit E. Mr. Wolff said, "For what it's worth, over the years that I've been here, this is the first time before this commission that I have ever opposed any regulation submitted by the Department of Personnel through the Personnel Commission. I'm bound to do so this time. Normally, we can work them out but I've got to tell you, these regulations are terrible. They circumvent the normal process of what our valued active state employees do. It allows way too much leeway for the appointing authorities to move forward in selective certification, it's all through here and the current language is, we look at is way too broad, vague. There are no specifics in this

language. It's just not a good regulation. Right now, the current laws and regulations allow the appointing authority two years. In other words, if an employee leaves within a two-year period an employee can come back and the appointing authority can reinstate that employee. This regulation would open it up forever. You could be gone 10, 15 years and if Personnel approved it, that employee could come back and take a position in state government even though you maybe have an active list of active employees sitting on that list. During the last commission meeting, even the commissioners were making the same statement – this regulation is way too broad and vague. I don't want to get into the nuts and bolts of this because I know my counterpart in Las Vegas, Mr. Cuzze, does want to speak on this but I've got to tell you, I encourage you on behalf of fairness to your active state employees, do not allow these regulations to go through as they've been written. Thank you."

Mr. Cuzze said that in December 2006, representatives appeared before the Personnel Commission and voiced their objections. In September, representatives again appeared before the Personnel Commission and voiced their objections but told them that they would compromise. They said they would not oppose the regulation change if they were allowed to go to the workshop on October 6 and get the change. When representatives appeared, they left them off. Because they could not get a change before the Legislative Commission hearing, Mr. Cuzze asked that the regulation not be approved for the following reasons, noting that he represents all the state cops who are certified by the Peace Officers' Standards and Training (POST) and are required to keep current. Representatives told them that had to be put in the regulation and it was not. Additionally, it could allow for an open competitive list and there could be people currently in state service and they could circumvent the list and bring back someone who has been out of state service. Mr. Cuzze said, "These regulations, little by little, are chipping away at state personnel and it is not fair to people who stayed in the system. We told the Director of Personnel we understood that in about four or five years they are going to have a real problem in manning some of the positions in the state. Well, if you'd pay the state employee what they're worth they wouldn't have those problems. We've said that time and time again. Before every legislative session, the Legislature gets a study from Personnel based on other state employees in different states. Well, that's not who you're competing against, especially with cops. You're competing against Metro, North Town and Henderson. When are we going to quit comparing our state employees to those who work and live in Idaho and Utah? Again, we'll compromise with them if we can get it back into a workshop and get some wording into this thing that gives our employees some safeguards. That's all we're asking for and since the Personnel Commission wouldn't put us on the agenda for the workshop, perhaps this body can and send it back to Personnel and let's get this thing done right. Thank you."

Senator Hardy asked if there is someone from the Personnel Commission who could address the issue. He said there is at least one serious allegation that they were not allowed to have their concerns heard. He would also like to hear some explanation as to why they feel that the regulation is necessary – are they having difficulty recruiting from

within – what is the issue. He said that some clarification is needed before he can in good conscience vote for it.

Todd Rich, Director, Department of Personnel, appeared before the members in Carson City. He said he would like to discuss both regulations before the commission and shed some light on why they thought it was important that the regulations were passed, as they were already passed through the Personnel Commission which is the regulatory body that supports the classified systems within the state of Nevada. Mr. Rich said, "284.361 describes a change that would allow leaders and managers within the state to put in the system what we call a designation of specialized qualifications. For example, if we have a job series like an IT Professional–Information Technology Professional–and there is a layoff that needs to occur in that area, there may be a database person and there may be a network person and that department determines they only need a database person. What this allows the leaders to do, as long as they do it 75 days in advance, is to put a specialized experience notifier on the situation so they can keep the best qualified person. As we experience layoffs, we need to make sure that we keep the right folks within the state that they can perform the duties that department needs to do. In response to 284.386, this talks about lifting the two-year period and as was talked about before, we are facing a major recruitment issue in the next five to ten years. In fact, we are seeing it right now. And so to be able to bring former employees back into the state makes a lot of sense to us because we don't have to pay for training. They know the system and we can bring them in. I think it would be far fetched to have a leader that is hiring a person not to look internally and say, 'gosh, I've got a great person here, why wouldn't I promote him' but if I don't have anyone that isn't qualified to do the position, I'm going to look outside and the first place we can look is former employees and we are seeing that a lot in the private sector where they bring folks back that are retired that have the skill-set, that have the knowledge, they can do the job and the required training is much less, it saves dollars and it gets that department running and providing the services that we're supposed to be doing."

Continuing, Mr. Rich said that there are a couple of other issues he would like to talk about. He said, "It was commented that these regulations are terrible. I don't feel that way at all. In fact, the Personnel Commission passed the first one 5-0 unanimously. At that time there was no discussion from Mr. Wolff's association, they did not attend the workshop. They did have some concern about the second one but that regulation was passed 4-1. These are HR/Human Resources professionals that sit on the committee and look at this so we have to fall back to their knowledge and their skill-set to determine if these regulations are right for our state employees. I'd be glad to answer any questions."

Senator Hardy said, "The regulation speaks to selective certification. So your testimony is, as I understand it, what you would like to do in these situations where there is a special qualification for a position, you would like to be able to certify the highest ranking eligible person for that position. So, your testimony is that sometimes people

may have left the service of the state but they may be eligible for the position that is there and you would like to give them basically equal standing with those currently in state service? Am I understanding you correctly?"

Shelley Blotter, Division Administrator for the Employee Management Services Division, Department of Personnel, said that she would address the senator's question. She said, "So if I understand correctly, you are saying that an appointing authority would have the opportunity to hire somebody who had left state service, they had performed at a standard or better level when they were in state service, they had previously been a permanent employee, and they have the opportunity to bring that person back or if there was a list in place, then they could select from someone that was on a certified list and that's correct. They could do either one of those things." Senator Hardy replied, "That's clear. It says they certify the highest ranking eligible person who possesses the special qualifications. That doesn't speak to current or former state service at all. Is that a criteria or can you just go and rank an eligible person who possesses the special qualifications? In other words, you are looking to draw from the largest pool possible but does a former state employee have any standing over a current state employee? Does a person that's never been in the employ of the state have a higher standing of some sort in the process or is it all equal?" Ms. Blotter said, "I believe we may be talking about two different regulations and so we are kind of mixing apples and oranges here."

The chair asked that the discussion stay on Regulation R013-07 if possible and then attention could be turned to another regulation.

Ms. Blotter said if she could, she would address first NAC 284.386 which has to do with reinstatement of a former permanent employee. The new aspect of that particular regulation would allow for reinstatement of a former permanent employee who, in their last appointment was something other than permanent. She said, "Maybe they came back, they retired, they filled a temporary position, and now they are wanting to come back in the next year. Due to our retirement regulations, they can only make a certain amount of money within a particular year. Let's say they've reached their cap, they filled that temporary position, now they come back the following year and fill a temporary position. So this just allows them to continue to come back and support our work force. The other aspect of this is that it's beyond two years and so previously the agency was allowed to bring someone back within two years–that was part of the current regulation. This just says if they want to bring someone back and it's now four years, that the Department of Personnel would have to approve that to ensure that they met the minimum qualifications for the job. That's part of the regulation. They have to meet the current licensure, certification, education experience, requirements of the job and this would allow the Department of Personnel to approve those situations that are over two years."

Senator Titus indicated she did not understand the part about someone retiring and then returning part time and asked about how someone would come back full time to be

reinstated to the position from which they retired. Ms. Blotter said, "For instance in the Department of Employment, Training and Rehabilitation, they needed some computer employees–IT professionals–they had a Legacy system, there was a certain project that they needed assistance on. They came back, worked on that project for up to the maximum dollar amount allowed under the retirement system. They finished that project and then in a subsequent year they needed to have assistance again on the maintenance of a project, so they would bring that employee back, reinstate them on a temporary basis." Senator Titus asked, "For a part time job?" Ms. Blotter said, "It could have been full time for the temporary period they were there."

Senator Titus said, "I guess the problem that I see is that – I can understand maybe two years somebody could circle in and out for two years but if you go beyond that it seems to be two problems. One, if somebody's out of a position for more than two years and you are just kind of holding that position for that person, after two years I would think they would lose some of the skills–computers move on, the technology changes and you're just kind of keeping that job open for that person. Maybe they shouldn't have retired to start with and it also seems like the morale for the other people in the system who are looking to be promoted and have done a good job and they are on the list and are looking to come up for something and they know that somebody who's been out there ten years can just come in and take that position. What would be the incentive to do a good job and try to stay within the system as opposed to go somewhere else?" Ms. Blotter said that she completely agreed with Senator Titus that it would be poor management for any agency director to hold open a position for this situation to occur. She said, "That's really not the intent. It's meant to fill positions where there is a need right now, it's not meant to save it for someone to come back and supplement their retirement earnings. So that's not the case, it is something that there is a job need, that we need to have a business need to have these positions filled. And I agree with you also that it would be in an agency director's best interest to, if they had a qualified person to promote the people that are within. To give you a perspective on how often this is used, we have around 16,000 employees in the Executive Branch, give or take depending on the day, and in most years there's around 100 positions that are filled through reinstatement. This is not something that's used all the time but when there is a need it is available to agency directors.

Senator Titus inquired why it is necessary to make the change if it is working the way it is now with the two-year limitation. She said she does not hear any evidence that there is something beyond that two years that requires the change. She realizes that the people there at the present time would not abuse it but there is a lot of potential room for abuse when something could be kept open for a friend to keep returning and supplementing their retirement. Ms. Blotter explained, "The reason that we looked at extending it beyond the two-year period is because of our anticipated retirements. The projections that we have for January of 2007 indicate that 22.65 percent of state employees would be eligible to retire within the next five years and 42.9 percent within the next ten years. So, we are anticipating a large exodus of state employees within the next few years, this would just give another mechanism for those positions to be filled."

Senator Titus asked, "How's that going to fit with the governor's proposed hiring freeze?" Mr. Rich responded, "We're hoping the hiring freeze will not last for the next five years so we're going to be very short of skilled workers so we are trying to do everything we can to manage this process and manage this challenge that we're all facing."
Chair Townsend said, "I think that what the senator is trying to say is even though this seems to be a very good faith effort, perhaps it's slightly premature given the atmosphere in which we are operating at the moment. Moment, I guess, is the operative word. I mean, you're doing the right thing based on what the commission is asking you to do and you're trying to meet certain standards and no one is more sensitive to the loss to retirement than those of us who have worked with the fine people of LCB and many of the people in state government. We're very sensitive to that but I also think that this might be slightly premature, even if it is by a month because we're going to meet again in six weeks, two months. I'm just not getting a big sense that there is a lot of 'love in the room' for this yet. I may be wrong."

Mr. Anderson said that he agreed with the chair and if the chair was willing to accept a motion he would be willing to make a motion to not approve the regulation with the view that the commission would like to have an opportunity to see it in the future and not closing off the Department of Personnel's opportunity to return to discuss it with the members again.

Chair Townsend said that before he takes the motion, he thought that one of the things he is hearing from the members in Las Vegas is a reinforcement of specificity. He asked, "What is the problem and we understand you're looking in the future and we respect that but is it narrowed to technology people, is it narrowed to–the ones we hear all the time are those that serve in the gaming control area where they have a very narrow area of expertise. Obviously, IT people certainly can go anywhere in the private sector including the company for which I'm a partner and get paid significant dollars. What are the specific areas that you're looking for? I hope that helps you but I think you're right. I think you're doing the right thing. I think you're going out there and trying to be proactive but maybe just a little narrower kind of focus could be helpful. If you have IT problems, let's address those as a future. I think what you're trying to see is–we've seen the statistics of how many people are going to retire over the next 20 years and we understand that–and this is addressing that generic large body but maybe some of my colleagues are a little more sensitive to being more specific as opposed to general. I don't know if that helps you at all and I don't want to put words in my colleagues mouths but I have served with a couple of them for 20 years so we kind of know how each other thinks I guess is the best way to put it."

Senator Hardy said that he appreciates the response from the Department of Personnel and his questions are answered. He said, "This is something we dealt with and grappled with quite a bit on the Legislative Procedures committee and we want to provide the

tools that are necessary for Personnel to fill these vacancies. I see this regulation, as I read it, would have the opposite effect. It would actually allow them to reach out to those that for whatever reason have left to go to work for Metro or North Las Vegas and potentially try to attract them back. I think the regulation, from my perspective, is fine and fits along the lines of what the Legislature did. I just was a little concerned about the feeling there was a lack of input and so from that perspective only, I wouldn't necessarily have a difficulty with them going back and taking 'another crack' at this but I think, certainly, from what our committee did in the Senate, what they've done here with the regulation is consistent kind of philosophically with what we've done to give as much latitude as possible to bring back retirees and to bring back others that have left the service of the state so I don't have a difficulty from that perspective but I was troubled by the perception there was a lack of input into the process."

Chair Townsend asked Mr. Wolff, "Did or did you not attend the hearings regarding R013-07 as stated by the Personnel group that are here?" Mr. Wolff replied, "I have the minutes from the January 4th submitted by at that time director Greene and I'm all through that. I did attend and we did oppose the regulations as submitted. What they did is they put them through as temporary, we agreed and that we understood that we would oppose them unless they were changed. Mr. Cuzze didn't get into a lot of it, some of this, but he was there also and we're in it right here and I can show you they're here. The issue was again that these needed to be amended because that was exactly a lot of our questions where they focused on, what are they doing. If you open this this broad, it just opens up everything."

Chair Townsend commented on the question of attendance. Mr. Wolff stated, "I didn't attend the second workshop, the one that they had and then we did address the commission again but we had already addressed the commission in our opposition at the other one." The chair indicated that, while he was not speaking to Mr. Wolff specifically but to the public in general, the workshops are opportunities and state agencies afford them all the time. Everyone who has concerns should try to attend the workshops and make sure their input is heard. He said that he does not have a panic feel similar to that articulated by Senator Hardy that he does not. He stated that the biggest problem that will be faced in the next five to ten years is competition from other states. He said there is no doubt and it is seen in teachers and whoever the governor and legislators are at the time, since state law is requiring many legislators to move on, are going to face a very tough situation finding good state employees. While some folks like to isolate problems, he said, "I'd put our state people up against any other state in the country in any division, any department, any time and when you go to replace those folks, we're going to find out how valuable they are because they aren't going to be easy to replace. This is tough work and there's going to be some challenges."

ASSEMBLYMAN ANDERSON MOVED THAT THE COMMISSION NOT APPROVE REGULATION R013-07 FROM THE STATE PERSONNEL COMMISSION. MOTION SECONDED BY ASSEMBLYWOMAN BUCKLEY.

Under discussion, the chair said that the action is not a repudiation of the efforts of the Department of Personnel and they are to be commended. He said, "We're not going to always agree with everyone up here but I think the important issue is if you get to another workshop, another hearing, maybe a little time between all the parties. This doesn't mean that we're telling you to acquiesce to Mr. Wolff or any other group. That is not what this is about. This is about maybe having a dialogue, maybe they don't understand your issues as well as they should and maybe you don't understand his as well as you could. Let's just try that and if we reject this, let's all go in there as friends and Nevadans and try to solve the problem because it won't go away. Even though all of us – two-thirds of us – won't be here in five years, we're still going to be Nevadans living here so we'll be just citizens dealing with this issues so we want to be sensitive to that."

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

At this point, the chair directed attention to the "LEED" regulations from the Department of Taxation and the Office of Energy under the next agenda item and returned to this agenda item at the conclusion of that action after which the following discussion took place.

The chair called attention to Regulation R017-07 from the State Dairy Commission. Tom Orzech, Operations Manager of the State Dairy Commission appeared at the witness table in Carson City. Senator Care said that he only has a question because he recalled in the 2003 Legislative Session, before the Senate Judiciary Committee there was an informational hearing on the competition or lack of competition amongst the dairies in Nevada. When he read the proposed regulation, he had a concern and asked if he understood correctly that the thrust of it is more that it means fewer meetings or at least not meetings in eastern Nevada and makes the reporting requirements more efficient. Mr. Orzech responded, "That's exactly it, Senator. Basically what it was–we had three marketing areas in the State of Nevada and when the commission began years ago, it was decided to have two marketing areas in the northern section of Nevada. One that extended from the Reno area to just this side of Battle Mountain and then we would have the eastern marketing area that would be from Battle Mountain to the Utah line. Over the years, we don't have any dairies producing in the Elko area and the eastern side any more. As far as licensing of distributors, there is very few independent distributors there now and most of the products are coming in from out of state, by out-of-state distributors. For licensing purposes, it makes it a whole lot easier for them to meet in Reno. We've also seen at the meetings in Elko, we've had very limited participation from the public and we've also, because of the problems in Elko getting in and out with the problems at that airport, we've had trouble with the distributors getting in and out that are trying to be licensed so we decided this would be a whole lot easier to just have the northern area and the southern area."

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R017-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED

UNANIMOUSLY.

Chair Townsend directed attention to Regulation R020-07 from the Manufactured Housing Division of the Department of Business and Industry. Senator Care indicated that he had a question on this regulation but his question has been answered.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R020-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

The chair called attention to Regulation R054-07 from the State Apprenticeship Council. Senator Hardy referenced a letter from the U.S. Department of Labor dated October 10, 2007 (copy attached as Exhibit F) and said while he did not see anyone from that agency present, he did have a couple of questions and concerns about it, largely from the agency's letter. The two issues about which he is concerned are: first, this appears to be addressing the standing issue in terms of processing applications for apprenticeship programs and he knew that has been an ongoing discussion among the State Apprenticeship Council and there have been some lawsuits and other things. The Department of Labor indicates their concern and opposition is that this provides some standing in the process for competing programs–to play a role in rejecting a program that wants to be accredited for apprenticeship. He needed to know what was the intent and whether it was contemplated in allowing input or whether it was an actual standing in the process. The second question relates to the concerns of the Department of Labor address and how that might impact Nevada's accreditation or recognition by the Federal Government. That has also been an ongoing issue with the council.

Michael Tanchek, State Labor Commissioner and Secretary-Director of the State Apprenticeship Council appeared before the members in Carson City. He said, "I think the issues that were raised by Senator Hardy are pretty much the correct ones. My understanding of the objection that was filed by the U.S. Department of Labor is that by permitting formal standing to parties that might have competing programs, in applications for new programs that we might be opening a back door toward some sort of restriction of competition among the programs which is against federal policy–that's their stand, that's their position on that. This would allow parties with competing programs to be granted standing in these cases. This goes back to Senator Hardy addressed a couple of lawsuits. I think one involved Associated Builders and Contractors wanted to have a program and I believe the carpenter's union came in to oppose and they were not granted standing. That was by my predecessor. And then more recently, the carpenters came in with a program and the painter's union came in and objected to that and I didn't grant them standing either and so this regulation was intended to deal with that. In terms of what the U.S. Department of Labor is doing, they are pointing to California which has been decertified. The State Apprenticeship Council in California has been decertified. We talked to them today about that and they seem to be quite happy with that. They say their program is going strong and doing well despite not being certified by the U.S. Department of Labor at this point. If there

are followup questions on that, I'd be glad to answer them."

Senator Hardy commented that the whole standing issue was before his time as President of the Associated Builders and Contractors and he does not really have a position on that. He thought other apprenticeship programs should have some input into existing programs so he doesn't really have a position on that issue. He wanted to make sure it was on the record that was what was being talked about. He said, "My concern more is the impact that adopting this regulation might have on our federal standing, our federal recognition, and I know there is some discussion that is going on with regard to that. I'm concerned that because as the Department of Labor has indicated, this is in violation and which I think the letter did indicate that adopting this would be in violation of one of their rules and regulations that might lead to a decertification of our program and I think that's a more global policy discussion that perhaps the Legislature should have. So, my only objection to the regulations as they stand before us is that it might have that peripheral effect or unintended consequences, or maybe that is the consequence that's intended by the State Apprenticeship Council, I don't know. I just think that's a policy decision that ought to be made by the Legislature and not necessarily the State Apprenticeship Council, or at least this commission, to vet those issues and decide what's best for our apprenticeship programs in the State of Nevada."

The chair asked if there was anyone in southern Nevada representing any of the issues who might add some light to this matter.

Kevin B. Christensen, Chairman of the State Apprenticeship Council, appeared before the members in Las Vegas. He said he wished to address some of the issues that have been brought up to provide the intent in passing the regulation. It is just section 7 that has been objected to by the Department of Labor and Senator Hardy has properly framed the concerns. The letter says the regulation would limit rather than promote apprentices. The council has taken a look at the history and he wanted the commission to know that there are, he believed, 47 parallel programs in the State of Nevada for apprenticeship training. A good example of that is the electricians program and there is also a lineman program. In the lineman programs, there are at least 11 approved programs, some are organized programs through joint management and labor committees and others are
in-house with entities such as Sierra Pacific. He said there are also some A.B.C. sponsored programs that are approved. It has not resulted in an exclusion of approval of apprenticeship programs. He said, "What the Nevada State Apprenticeship Council wanted done was to receive all of the pertinent comment on the adequacy of proposed programs and no one has a better ability to do that than a present parallel program and so typically the types of information that we receive from those programs are: what is the safety training proposed, is it adequate, what are the work processes, what's proposed for on-the-job training, what is the curriculum and is it competency based, is it significant in its detail and will it qualify an apprentice. The instructors, do they have qualified instructors, is there appropriate funding? All of those things come into that

decision by the council to approve or deny an application that comes before us. So, as the Labor Commissioner indicated, there have been some programs that have been denied in the past. One fairly recently that resulted in a case that ended up before the Nevada Supreme Court and 'standing' was the issue and the council determined that they derived a great deal of benefit from these other parallel programs that can come before us and inform us of an industry and what should be required to qualify somebody to become a journeyman through the apprenticeship training program. We, in the minutes if you'd like to see the minutes of that last meeting where we approved these proposed regulations, there were three members of the council that spoke primarily in favor of this particular section 7 and Mr. Campbell who's a council member and Mr. Gouker who's a council member and I all addressed these same objections by Mr. Longeuay and by Mr. Swoope and they've always had input into the adoption of the regulations and we simply felt that their objections were inappropriate, that we had different bases for wanting this additional information from parallel programs in considering a new application. So, we would urge the commission to go ahead and adopt these regulations. We've spent two years and we've had many workshops and council meetings dedicated to discussion of these items and we think that they are defensible. One other thing that I wanted to state was that in the past when the Federal Government has indicated that they think we're outside of what they consider qualification requirements, we have enlisted the congressional delegation and have met with and/or submitted correspondence to the Department of Labor and in each instance, the Department of Labor has recognized that there is a different interest and that the State of Nevada is independent and has a right to impose additional requirements and obligations in its apprenticeship training programs. For those reasons, we request your favorable consideration of these regulations today. I'd be happy to entertain any questions."

Senator Hardy asked Mr. Christensen to explain section 2 as he read that as part of the standing issue and what is the effect of that. Mr. Christensen said that the discussion on that particular section involved–does the union, if it has through its collective bargaining agreement an interest in that kind of work that is being considered for training purposes, do they have the right to participate. He said, "I think our consideration of this section 2 was if a union chose to participate, it would be part of its collective bargaining. If it chose not to participate, it would at least have received this notice and if the notice was sent and the union didn't object, then they could go forward and the program could be adopted and there are some programs that have gone that process." Senator Hardy asked, "Does that require a program of an employer or an association of employers seek an acknowledgment from the union that it does not object to the program in process?" Mr. Christensen responded, "Only if it's a program or a particular trade that is covered by an existing collective bargaining agreement."

Further, Senator Hardy asked, "So if a nonunion company wanted to offer a sheet metal apprenticeship program, that would have to be approved by the union?" Mr. Christensen responded, "No. Only if there's a union involved with that association." Senator Hardy said, "So, if you've got a collective bargaining agreement that covers the

steelworkers, for example, and a steelworker local had one and another steelworker local wanted to do one then they would have some input but it wouldn't impact, necessarily a nonunion–the objective, and I want you to know I support all of the union apprenticeship programs, they are phenomenal, they're needed, they're what the nonunion programs aspire to be but we move towards requirements that nonunion contractors have apprenticeship programs and I just want to make sure there's no barriers to nonunion contractors being able to get the program." Mr. Christensen replied, "No, in fact there was lengthy discussion and I believe if the association already has a collective bargaining agreement

or the association is already working with a union in an existing program then the notice is required and the sign-off is required, basically."

Senator Hardy said, "So my only concern, Mr. Chairman, remains the impact that section 7 might have on our federal recognition. I think that this commission ought to be very concerned that the Department of Labor has objected to our proposed regulation. I don't know if we can move forward or if our only objective is to reject the full regulation or if we can reject section 7 and move forward with the rest but I have grave concerns from that perspective. I don't question the work of the council on the issue of standing, I'm just concerned about the impact it might have on our federal recognition and so I can't support that section of the regulation. I don't know if we have the option to recommend or approve it with the removal of that. If we do, that would be my motion. If we don't, I would recommend that we reject the regulations until that is addressed."

Chair Townsend said, "We don't have the option of rejecting only a part of it so I would take your motion to reject the entire regulation." Senator Hardy emphasized that it is simply because he thought the whole issue of what impact it might have on the federal recognition should be vetted. He thought it was a policy decision the Legislature should make.

> SENATOR HARDY MOVED TO REJECT REGULATION R054-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA. MOTION CARRIED WITH SENATORS CARE AND TITUS AND ASSEMBLYWOMAN BUCKLEY AND ASSEMBLYMAN OCEGUERA AND MABEY VOTING NAY.

Chair Townsend proceeded to Regulation R056-07 from the State Environmental Commission. Leo Drozdoff, Administrator of the Division of Environmental Protection and Mike Elges, Chief of the Bureau Air Quality Planning of the Nevada Division of Environmental Protection appeared before the members in Carson City. Senator Care inquired about section 1., subsection 2 b 2 where it says the director may suspend imposition of the increase, and so forth. He asked what would be the discretionary call of the director to do that and what would be the criteria. Mr. Elges explained, "This is a provision that was put in place to accommodate industry's request to try to take the lumps and bumps out of repeated increases that had negative impact on them in the

past. Essentially, what we'd be looking for is if our revenue streams were consistent, we would suspend the increase to make sure that we weren't over generating revenue to support the program."

SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R056-07. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

The chair directed attention to Regulation R060-07 from the Department of Education. Senator Hardy said that he had requested this regulation be held. He noted the regulation requires that charter schools use a different chart of accounts – one prescribed by the Department of Education instead of the current one prescribed by the Department of Taxation. He said he was just wondering what was the reason for that. Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department of Education, appeared before the members in Carson City. Dr. Rheault explained that in a review of charter school regulations, it was not determined why the Department of Taxation was there. All of the schools follow the chart of accounts prescribed by the Department of Education and this change would put the charter schools doing the same chart of accounts that the public school districts do. He said the change "was really a cleanup" and he thought that in the last couple of years they had been required to follow the department's chart of accounts rather than that of the Department of Taxation.

SENATOR HARDY MOVED APPROVAL OF REGULATION R060-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

Attention was directed to Regulation R061-07 from the State Board of Education. Senator Hardy inquired about why a separate set of requirements is being prescribed for licensure of schools that are accredited by the Northwest Association of Accredited Schools. He said, "I always get a little concerned when we adopt different regulations and different licensure when those things generally can be uniform and I'm just wondering the reason for the separate process." Dr. Rheault explained that the intent was to save some paperwork for schools that went through the process of accreditation and actually provide some incentive for the private schools to obtain the accreditation. He said, "When you look at the regs they look quite cumbersome but the only thing beyond the accreditation for those that choose to go through it, that will cover the curriculum and some quality issues there. The only reason in this regulation that it looks like a different compliance issue is these are items that aren't covered under the Northwest accreditation requirements, such as facilities and safety inspections and things like that. It was really intended, and it was at the request of private schools that expend an enormous amount of time getting accreditation, that they can save a lot of the paperwork on applications and renewals by showing us what they did for the accreditation and then providing the additional items that aren't covered under the accreditation review." He confirmed the department would take the whole document from the accreditation review to answer a lot of questions they have if they are not going through that process.

SENATOR HARDY MOVED APPROVAL OF REGULATION R061-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

The chair turned attention to Regulation R062-07 from the Public Utilities Commission of Nevada. Senator Care said that he had his question answered and no longer has a question.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R062-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

The chair directed attention to Regulation R076-07A from the Public Utilities Commission of Nevada. Senator Care said that in the materials provided he had a question on page 2, question 5, where it says the estimated economic effect of the adopted regulation will potentially make it easier for businesses to develop projects since the Utility and Environmental Protection Act (UEPA) application process is being streamlined to make the filing requirements less burdensome and easier to comply with. He asked for some elaboration on that wording, where the language is and the need to do it.

Dave Noble, Assistant General Counsel, representing the Public Utilities Commission of Nevada appeared before the members in Carson City. He said, "What we've done with this regulation is actually start from scratch. The regulations that we did have were kind of put together over the years that followed the genesis of the UEPA statutes. What we've done is put in regulation the two-step process for both the application process and amended application process that's required in the statutes. The regulation directly tracks the requirements in NRS 704.870 as far as the application requirements as well as NRS 704.890 with regards to the six finds the commission must make in order to issue a construction permit." Senator Care asked if the regulation in any way disturbs any existing requirements for public hearings and anything else in the normal unfolding of the process. Mr. Noble responded, "No, it does not."

Senator Titus said she would like a little elaboration on streamlining the filing requirements making them less burdensome and easier to comply, reducing the permitting time for needed facilities. She would like to have some reassurance that the commission is not cutting short public hearing or public scrutiny especially as the proposal of three coal-fired plants in Nevada is being reviewed. She asked if it was somehow connected to that process. Mr. Noble responded that all the proposed coal plants that are on file now will have to go through this process just like any other large utility facility construction project. The problem was that there was one regulation that required a litany of information both for the initial application when there was a federal environmental analysis required as well as when there is no federal environmental analysis required or that analysis has already been done, there is an amended application that is filed with the commission and that is where it is seen in section 3, items 1 through 12 is all the information that is required. It just makes it more explicit that is the information needed. It does nothing with regard to the hearing process and noticing that is required by statute and that is done by the commission. Also, he said they did

include an element with regards to interstate transmission facilities that provides an analysis of that interstate benefit. What has happened is that the Federal Energy Regulatory Commission (FERC) has adopted some regulations in line with the Department of Energy's designation of national interest energy transmission corridors where if the state where that transmission line is going through cannot look at the public interest of the interstate benefits of that transmission line – FERC automatically usurps authority to do the siting for that project. The regulation included that one additional requirement that the commission in the application wants to look at the interstate benefits of that transmission project.
Further, Senator Titus said what she wants to know is if the new streamlined process makes it easier for those plants that are proposed or if they are already in the process under the old regulation. Mr. Noble responded, "All three proposed coal plants that filed their initial application under the UEPA permitting process, they will be filing amended applications once the federal environmental analyses are completed. So, they would be subject to the section 3 streamlining requirements. When I mean streamlining, it's packaging that information so that information can be processed cleanly and efficiently. We have 120 days to review this information on an amended application time scales provided in NRS 704.870 and while that information in a somewhat convoluted way was required by regulations that had been piece-mealed together over time, this directly tracks the statutory requirements in 870 and 890 of NRS 704."

Additionally, Senator Titus inquired if the 120 day time frame is changed. Mr. Noble replied that the 120 day time frame is provided for in statute.

> SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R076-07A. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED WITH SENATORS CARE AND TITUS AND ASSEMBLYWOMAN BUCKLEY AND ASSEMBLYMAN OCEGUERA VOTING NAY.

The chair directed attention to Regulation R099-07 from the State Board of Health. Mr. Carpenter said he has nothing against immunization and he believes in it. The regulation is adding one more mandated immunization and in the rural areas there are not enough personnel to immunize the population against the ones currently required. He wanted to bring that concern to the attention of the State Board of Health that help is needed in rural areas if immunizations are mandated.

Alex Haartz, Administrator of the Health Division who in that capacity also serves as secretary to the State Board of Health. He acknowledged that Mr. Carpenter was correct. He said that throughout the state, the challenge is making sure that there are private providers who are willing to provide childhood immunizations. The division is not insensitive to the issue raised and sometimes community health nurses also are burdened by the demand for childhood immunizations. All the actions that are being taken by these changes received broad support from the major school districts, including Elko County, Carson City and the various associations. Mr. Carpenter said, "I realize that. In Elko County, we don't even have a public health nurse anymore so it is very

burdensome out there. I just want you to be aware of that so that maybe when we come to you we can get some help." Mr. Haartz replied, "That's understood and we're continuing to work with Nevada Health Centers which, as you know, has the primary care health clinic out there and try to help them to be able to serve everyone who approaches. But, I do understand what you're saying and I'll be happy to talk about it with you."

Mr. Anderson said his question is particularly going to be aimed at university freshmen and their housing. He asked if that was the target population the division is trying to reach. Mr. Haartz responded, "There are several changes to these regulations. The one you're referring to will require meningococcal disease vaccination for freshmen who intend to reside in dormitory or on-campus housing at either UNR, UNLV or Sierra Nevada College. So, it's a limited population, it also is age limited to 18-23 which is the high-risk population." He clarified that Sierra Nevada College is located at Incline Village and is the only other university with campus housing.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R099-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

The chair proceeded to agenda Item IV. as the discussion of regulations was concluded.

2. Regulations submitted pursuant to NRS 233B.0681.

Earlier in the meeting, Senator Care said that Regulations R084-07 from the Nevada Tax Commission and R116-07 from the Director of the Office of Energy were not received by him; however, he did see them on the legislative website late the previous evening. He stated he knows the commission had prior discussion on the regulations and the subject was discussed during the legislative session but he was uncomfortable voting on a proposed regulation as complex as he thought at least one of them is and wondered if it could be moved to the next meeting of the commission. The chair said both of the regulations would be held and the senator's request would be taken up.

Following is the discussion that took place at the conclusion of the action on Regulation R013-07. It is placed in agenda order for purposes of continuity.

Chair Townsend directed attention to Regulation R084-07 from the Nevada Tax Commission and Regulation R116-07 from the Director of the Office of Energy. The chair said that the regulations are commonly known as "LEED" for Leadership in Energy and Environmental Design Green Building Rating System. The chair asked if the regulations should be addressed separately or taken together.

Dino DiCianno, Executive Director, Department of Taxation, said that there are parts of the regulation that could be taken separately but there is a part that should be taken in cooperation with the Director of Energy and that has to deal with the definitions for pre-construction contract and construction contract. Chair Townsend asked if those are

the ones that the Speaker had asked for commonality between the two regulations. Mr. DiCianno responded in the affirmative. Chair Townsend said, "Why don't we do this. Why don't we take everything else that's in your reg, we'll deal with that first, then we'll deal with the commonality."

Mr. DiCianno said that he believed the members have already seen the language that was contained in R084-07 excluding the definition for pre-construction contract and construction contract. The purpose of the regulation is to define what materials qualify with respect to the abatement. Clearly, it has to relate to improvements to real property or fixtures and those have been delineated in the language before the members this day. It does not include other items like golf carts and things of that nature. He believed they have moved past that and they have had concurrence with respect to the project representatives that are present this day and he is ready to move forward.

The chair said he would take questions from the commission members about everything other than the definitions that are common in both regulations and then he would take any questions from the audience or public. He asked if there were any questions regarding the first component of the department's regulation. There were no questions.

Mr. DiCianno referred to page two of Regulation R084-07, section 1, paragraph c containing the definition of pre-construction contract which he read into the record as follows: "To mean a written and executed agreement that (1) precedes construction or the execution of a construction contract, (2) is entered into for the purpose of project financing or engineering, design, architectural, cost estimating labor, demolition or subcontracting services, and (3) evidences a commitment to construct a project for which a partial tax abatement is sought." Mr. DiCianno said, "I need to be very clear here that this only relates to the sales tax abatement. Following further on page two is the definition under 1 2 b, definition of a construction contract to mean a contract between an owner of real property and a contractor which (1) defines their respective roles and responsibilities for the construction of a project on the property, (2) establishes the scope of work, the amount of money to be paid to the contractor and the allowable time for the duration of the contract, and (3) describes laws and ordinances that apply to the project or any writing that evidences the terms and conditions of a project constructed by the owner of the project or by an affiliate or subsidiary of the owner. Mr. Chairman and members of the commission, this is similar language that you will find in the Director of Energy's regulation. We believe it works and it has been publicly noticed for adoption by the Nevada Tax Commission on Monday, November 5th. Thank you, Mr. Chairman, I'd be more than happy to respond to any questions."

Chair Townsend said that Mr. DiCianno has outlined in section 5, the construction contract that is comparable to that which will be found in the next regulation. He said there was a request by Assemblywoman Smith and Assemblywoman Buckley for consistency so that those who made application would not have to "walk an uneven line between two regulations." The chair said he would take questions on that portion of the regulation.

Mr. Carpenter referred to page two and the text "any writing that evidences the terms and conditions of a project constructed by the owner of the project or by an affiliate or subsidiary of the owner." He said that appears to be "really broad" and does not seem to him that it "ties it down enough to do what we want it to do." Mr. DiCianno responded, "I think it's important to understand that given the circumstances that have occurred with respect to the projects that are ongoing down in Las Vegas right now, I think it's important to understand the corporate structure of these entities. These entities contain their own development companies and it is possible with respect to those that the subsidiary, one could be the owner but there could be a subsidiary of that owner or an affiliate of that owner. We need to be very careful as to how we apply that abatement because without that language then that affiliate or subsidiary of the owner would not receive it, when in fact they should."

Mr. Anderson inquired if, in the scenario laid out by Mr. DiCianno, it would mean that each of the subordinates would receive a reduction in taxes or only one of them. Mr. DiCianno responded, "There would only be one abatement."

Senator Care referred to subsection b. 2., and asked if the wording "any writing" would include a memorandum of understanding or letter of intent. Mr. DiCianno responded, "Yes, it would."

Further, Senator Care referred to subsection c. 2., where it says "is entered into for the purpose of project financing or" and noted that it says "or" as opposed to a comma, and then says "engineering, design, architectural, cost estimating." He asked about the significance of the conjunction "or" as opposed to a comma after the word "financing." The senator clarified he was referring to page two. Ms. Erdoes stated, "I only know the answer to this because an editor caught it, I did not. That first phrase, we put the 'or' in there because the rest of those are followed by the term 'services.' Services applies to the rest of those – subcontracting services. It's project financing or and then starting with engineering, going through design, architectural, all those things including subcontracting go to the term services at the end there, or modify services, but project financing does not. That's the reason for that 'or' there." Senator Care said, "We should read this to mean then financing or services – the enumerated services." Ms. Erdoes responded in the affirmative.

Senator Titus asked if she could follow up on that issue. The senator asked, "So this would mean that anybody who has talked to some company about demolishing some property would qualify. That's all they would have had to do is talk to a demolition company about knocking down a building that's there and that would be enough to qualify? That would be a pre-construction contract?" Ms. Erdoes responded, "No. Just simply talking to someone about one of these things would not do it. The first part of this requires, I know it's hard to follow because of the way it's broken down but if you look at c. where it says pre-construction contract to mean 'a written and executed agreement that' and so any of these in 1, 2, or 3 have to be in a written and executed

agreement. So, in other words, for the demolition services you would have had to enter into an agreement that's in writing and that both parties executed, i.e. forming a contract there for those demolition services in order for that to qualify under this provision."

Senator Titus inquired if a pre-construction contract has to be more formal than a construction contract which Ms. Erdoes just said any writing could be a letter. Ms. Erdoes replied, "Yes, and I believe that's because pre-construction contract was a little bit less definite than a construction contract, was my understanding of why that's so." The senator asked, "So, if a person has a contract with a company to blow up an existing building on some property where they're going to build something in the future, that would be enough to qualify for the tax rebate?" Ms. Erdoes responded, "So long as that contract is written and executed because you can have oral contracts, so that's the difference. Yes, if they had a contract to blow up the building on the land that they're going to build on I believe that that would qualify under this provision. Although it would be up to the director of the Department of Taxation to determine."

Ms. Buckley asked with regard to the pre-construction contract and the issue of the demolition, would the fact that there is also section 3 and an "and" evidence a commitment to construct a project? She said, "Let's say I owned a piece of land and I had a contract to demolish some old buildings that were on it. But, at one point I was thinking of putting up a 7-Eleven there and then I changed my mind and I wanted to put up something–a casino–up there. Would I not have to have some evidence that I intended, evidence of a commitment to construct a project for which the abatement is sought–so I have to have some evidence that I'm going to build a casino, right? So I guess that's my first question, maybe to Brenda. My second question is about the construction contract – b. 1. I understand – a contract is a contract. You have to obligate yourself to do something or it's illusory and it's not really a contract. But, reading paragraph 2., a contract means any writing that evidences the terms and conditions of a project constructed by the owner or by an affiliate or subsidiary. Does that require an intent to be bound to a non-affiliate, non-third party? Basically, with another person such that you are obligated. I guess those are my two questions." Ms. Erdoes replied, "To the first question, I believe the answer is 'yes' and that's what my shorthand reference to, and I apologize for that, to the Executive Director of the Department meant. You can't just blow up the building. You have to meet all these requirements. In other words, 1. would apply also to the demolition example. It has to precede the construction or execution of the construction contract. But 3. also applies, you'd have to have some sort of evidence satisfactory to the department that you weren't blowing up the old building to put a 7-Eleven instead of something that was actually going to qualify for the abatement. On the second one, I don't know if Dino wants to answer this one or if he'd like for me to." Mr. DiCianno said, "I'd like to take the easy route. I'd like to throw the ball back to Brenda but in fairness to Brenda, I think it's important to keep in mind that the construction contract, and I think you all will know this, is a legal term. It's a binding document and that binding document can flow between an affiliate and a subsidiary of a owner. That's why it was important to

include that because of the corporate structure of these project owners. That's the reason for that. I don't know if I've answered Speaker Buckley's question unless if you have a better answer, Brenda." Ms. Erdoes commented, "The only thing that I would add is that I believe that the writing has to evidence the terms and conditions of a project constructed by the owner of the project and then that's an 'or' – 'or by an affiliate or subsidiary of the owner.' So, I believe that it could be writing that evidences the terms and conditions of a project constructed for the owner, for example, by an affiliate or by a subsidiary of the owner and I think that goes to the last part of the Speaker's question."

Ms. Buckley said, "So, to be clear, if you have a company with several affiliates or subsidiaries, they can't have contracts with each other or writings that evidences that ABC Construction Company promises to build a building for ABC Owner. It has to be a contract amongst those affiliates of the applicant for the abatement with a third party. Is that correct?" Ms. Erdoes responded, "I'm not sure that that is correct. I would read this, and I'll defer to Dino, but I would read this as allowing for any writing that evidences the terms and conditions of the project. In other words, any writing that could be some other sort of document that is a commitment of an affiliate, for example, to build the building because, as you say, you're not going to be entering into a formal contract with an affiliate or a subsidiary to build the building for you in most cases." Mr. DiCianno said, "If I may also respond to the Speaker, that is correct. That is my understanding of this language. It cannot be just one contracting with oneself. That's not the case here."

Additionally, Ms. Buckley asked, "So, Dino, you're saying that there would have to be a contract with a party that is not either an affiliate or subsidiary – it would have to be with someone else with regard to construction." Mr. DiCianno replied, "That's my understanding, yes."

Senator Hardy said, "This pre-construction contract, when you get a group of contractors in a room and try to determine what a pre-construction is, that's going to be a long discussion. I think under subsection 2. there's a good faith effort to narrow it somewhat 'as entered into for the purposes of project financing or engineering, design, architectural, cost estimating, labor, demolition' it's fairly broad but at least it's a good faith attempt to define what we mean when we say pre-construction contract. I get lost when we talk about 'evidences a commitment to construct a project for which a partial', I don't know what that means. What is evidence–evidences a commitment to construct–I don't know how you do that short of having a construction contract." Mr. DiCianno responded, "If I may answer Senator Hardy's question, which is a good one, I think one needs to read the entire definition as a whole. The whole point of trying to determine whether someone will qualify for a sales tax abatement under this particular provision, I need to know what evidence there is with respect to project financing, engineering, design, architectural, cost estimating, labor, demolition or subcontracting services that is prior to the construction of the project because I think

it's important to keep in mind what this period was, initially in A.B. 3 that flowed into A.B. 621. There had to be evidence during the periods of October 1 of 2005 and December 31st of 2005. That had to occur. Clearly, most projects of this caliber and size without financing in some of these other contractual pre-agreements for design are critical prior to entering into final contracts for construction. That's why we've tried to define it in this manner. Hopefully, I have addressed your question, Senator Hardy." Senator Hardy said, "Well, I think you have. It certainly is the threshold issue that kind of got us here in the first place. This I guess, Mr. Chairman, is an attempt to clarify it but I think it's still pretty murky."

Senator Titus said, "I still am not satisfied with that either because of all these 'ors.' They aren't 'ands,' they're 'ors' so it doesn't seem to me that you'd have to have information on all these things. You could have information on any one of these things. I'd like to go back to the Speaker's question–it seems to me that we got contradictory answers from the Tax Commission and our Legal staff or maybe I just misunderstood that. Third, if we are leaving it up to the Tax Commission to determine in a subjective way what evidences commitment, that's what got us in the problem in the first place when they used their judgment to expand the existing statute. So, I'm not sure we want to go back to giving them that kind of authority because that was the problem. So maybe we could hear something about those three points."

The chair asked for clarification on the questions. Senator Titus said there were three things. She said, "Going back to the Speaker's question–does this contract have to be between the owner and his affiliates and a third party or can it refer to some agreement or written letter between the owner and affiliates. I think we heard the tax commissioner say, 'no, it has to be a third party' and I thought I understood Brenda to say that's not how she understood it, she thought it could be any kind of letter and I just want to be clear on that. The second point was I still don't understand the comma and the 'ors.' The way the tax gentleman describes it, you'd have to have all this information before he could determine a commitment and it looks to me that all he'd have to have would be one of these or somehow 'or' instead of 'and.' The third point was this evidence of the commitment, he's going to make the judgment or the commission would make the judgment whether all of that evidence is a commitment or not and that seems to me to be a problem because that's a subjective judgment and it's coming from the commission not from the language of the statute and that's how we got in this fix in the first place."

Ms. Erdoes said, "I think you are correct at least as I understand it that the Executive Director of the Department of Taxation and I may differ as to our interpretations of that sub 2 in the construction contract and it may be that this is an issue of my not understanding the facts that surround these things enough to be able to express it but I would just point out again that because to me it says construction contract under b. means and then 2. and there is an 'or' there, I would point out that in 1., those are all ands and after 3. there is an 'or' so it's 1. or 2. and 2. is any writing that evidences the

terms and conditions of a project constructed by the owner of the project or by an affiliate or subsidiary of the owner. So, it may just be that we disagree there. On 2., your second question, the 'ors' and 'ands' are meant there I think to make sure that you can, as I said, you can use construction contract to mean 1. or 2. and then pre-construction contract has the same sort of setup except for that it is 1., 2. and 3. in order to get the pre-construction contract." Senator Titus interjected that she was speaking about the 'ors' within the section 2., financing or engineering, design, cost, labor, demolition or subcontracting services. Those are the 'ors' she was speaking of. Ms. Erdoes continued, "Yes, those are all 'ors' as well and any of those would work. You only have to have one of those, in other words, that's what those 'ors' are meant to

express, at least in the way that we drafted this. I think that was the question. As to the evidence of commitment, I don't think I have an answer for that–your third question."

The chair acknowledged that there were new people at the witness table in Carson City. He asked if the questions of Senator Titus could be addressed it would be helpful. Hatice Gecol, Ph.D., Director of the Office of Energy, said that she had Doug Walther, Senior Deputy Attorney General, present with her. She said that the two languages are the common language for their regulations and she would like for Mr. Walther to address the questions and provide further explanation.

Mr. Walther said that in addressing subsection 2. of section 1., the intent of the language was just recognition of the fact that in a corporate structure you could have a corporation doing its own construction in which case there isn't necessarily going to be a contract with a third party. It is just going to have a writing that details the construction project and it is going to build it itself. That same scenario might unfold with an affiliate, a wholly owned affiliate, or a subsidiary. It might not take the form of an arms-length type of negotiated contract but it is still evidences the project itself.

The chair said apparently there is some disagreement, that projects of the magnitude that are being developed in southern Nevada are so big that in many cases their corporate ownership is also, if not the entire owner, the primary owner of a development company and/or construction company that would be the developer of the project. He thought that was what Mr. Walther was saying and what Mr. DiCianno was trying to explain – the complexities of today's development world in terms of the new entrance to the market, private equity firms as well as public traded firms and how they are structured and how very complex they are. He thought Mr. Walther was attempting to recognize that by subsection 2 of a construction contract by putting the term project owner, affiliate or subsidiary of the owner. It gives the flexibility in that language to accommodate those new structures. He asked Mr. Walther if that was accurate. Mr. Walther responded in the affirmative.

Chair Townsend said he believed it was Senator Titus who felt that there was a different

interpretation between what Ms. Erdoes said and what Mr. DiCianno said. He said there is apparently an understanding between the Energy Office and the Legislative Counsel but Mr. DiCianno says there would have to be a third party under that language and that language is consistent through both regulations. Mr. DiCianno said, "Mr. Chairman, if I may clarify my statement. If I misspoke, I apologize. Mr. Walther is correct, that is also my understanding. I was trying to address a particular situation where the owner–there would not be an affiliate or subsidiary of the project owner. Clearly, there would be a contract with someone else but for the purposes of this regulation and the description that you just described with respect to the projects that are occurring down in Las Vegas, my understanding is the same as Mr. Walther and that understanding would be the same within the Tax Commission's regulation and the Director of Energy's regulation."
Mr. Carpenter asked what was meant by 'any writing.' Mr. Walther said he thought the general intent was to make it more flexible than a contract which would connote a negotiated binding agreement and you cannot enter into a contract with yourself. In some corporate structures, you might have 100 percent control of the affiliate or subsidiary and it is not really a negotiated situation either–it's an order to build the project according to the specifications. The intent was to make it broad enough but specific enough that it has to evidence the terms and conditions of the project. He said, "As examples, I guess it could be an internal corporate memorandum, a letter of understanding or something of that nature."

Senator Care said, "I need to follow up on that. If a memorandum of understanding is a construction contract, I think a memorandum of understanding could be construed to be an agreement or it could be construed to be an agreement to agree. In other words, a memorandum of understanding could be a contract and it may not necessarily be a contract. If that's the case, and I believe it to be, then how would the department determine whether a memorandum of understanding is, in fact, a construction contract if I'm correct in that it isn't always a contract." Mr. DiCianno responded, "If I may back up a little bit. I think it's important that we keep in mind that what the department reviews and takes in front of the commission is that we have looked at all of it. We don't just look at one piece of paper. In our mind, the paragraph 3 in pre-construction contract is very important. Clearly, it has to show to us that there's an evidence–there is evidence shown–that there's going to be a commitment to construct the project. Now, what do I look for when I look for evidence of a commitment to construct? I look at project financing. I look at whether or not there has been service agreements, so to speak, or memorandums of understanding that relate to engineering, design, architectural, so on and so forth, and that it precedes the construction of the project. Because, again, we need to remember that when we were reviewing this we were looking at it from a period between October 1, 2005, through December 31st of 2005. All of this occurred prior to any formal contracts being agreed to–that's the importance of paragraph 3. We don't just look at one little piece. We look at the entire body of evidence and that's what ended up making the decision in my process to write those letters of opinion at that time that occurred prior to February 1, 2007. We are only talking about a handful of projects that could only apply for this sales tax abatement.

There are not going to be any others. It's over. It's done. That's why this language is very critical. Hopefully, I've addressed your question, Senator Care." The senator responded in the affirmative and thanked Mr. DiCianno.

Senator Care said that Mr. DiCianno previously referred to a November 5th date and he has a procedural question as to if the regulations are adopted this date what happens on the 5th of November but he will wait until later.

Chair Townsend said the senator's question is a good one. He said there is a provision in the statute that allows the Legislative Commission to pre-approve a regulation and at the next meeting for the regulatory body to accept the language as submitted to the Legislative Commission and it then becomes a permanent regulation. If the regulatory body attempts to change it, then the whole process begins again. That's the purpose of the pre-approval here. He emphasized that the regulatory body cannot change it.

Mr. Oceguera asked Mr. DiCianno about the discussion on the memorandum of understanding (M.O.U.) and if the intention is to review the memorandums of understanding again or re-do them and update the deferral certificates prior to final approval on the projects. Mr. DiCianno responded, "I had discussions shortly after A.B. 621 passed with all the project representatives and I made it very clear to them that we would have to go back and re-do the M.O.U.'s and the deferral certificates in light of A.B. 621. We are going to do that. Now, I don't know if I can get them all done prior to the adoption of this regulation by the commission on the 5th but we have every intention of doing so."

Ms. Buckley said, "I'm not sure where the committee is going to go in terms of these regulations but just speaking for myself, I'd like to move on. I mean I think at the legislative session we tried to adopt a balance of encouraging LEED construction while ensuring public resources–public services–were kept unharmed. A future legislature may decide to change that balance but we passed the measure that we did and it's time to get this behind us. Whether it's this meeting, the next meeting, but as much fun as this has been for all of us and for all of those who have worked so hard I think the time has come for us to try to get this finished and move on. I guess the biggest question I have left is the b. 2. section. Construction contract I understand – you have a contract between an owner and the contractor – that's pretty clear to me. With regard to b. 2., I guess I'm just wondering do we really need that. What does that bring to the discussion? So I guess that's just one thing that I wanted to throw out for discussion. And then it seems like the second issue of concern is the 'ors' in c. 2., project financing or demolition or. I don't know if that has to be reworked to meet those concerns or if something can be put in the record that says c. 2. also has to fit with c. 3., and that is there has to be some causation between what you're going to build and what the contract is for because this was to show evidence of intent to construct and you also, of course, have to have the application within a certain time, the letter given from the Tax Department at the same time so it's cumulative. It seems like those are the two remaining issues and if we could maybe get some sense as to where folks are with

those two, then we can kind of, maybe, move forward. Just a suggestion."

Chair Townsend commented, "I appreciate that, Madam Speaker. No one would like to get this behind them more than me since I've spent 30 years on energy issues while you guys were saving the rest of the planet. So, I'd like to get this behind us too and I particularly would like to get it behind us given the fact that the Majority Leader of the United States Senate who happens to be from this state has gone way out to try to advance the discussion of conservation and renewable resources of which this is a key component and I admire and respect his efforts because he didn't have to do that and he did. I think your questions are good ones and let's go directly to them. The issue of–does it have to be there–and I think that is the issue of c. 2. of section 5, 'any writing that evidences the terms and conditions constructed by the owner of project or affiliate' I don't know why you would take it out. I think Mr. DiCianno's made a legitimate case with regard to the issues of the complexities of these projects and the different entities in which various components are housed–whether it's the financing arm, whether it's the publicly traded arm, the equity arm, the construction arm, the design arm–that particular language, I think, covers those and that's an important thing to be covered and with regard to the issue of section 19, pre-construction contract 2, I believe Ms. Erdoes tried to identify the fact that's entered into for the purposes of and then each one of these things constitutes a trigger point. You still have to have 1. and under 2. you've got to have one of these, meaning you 've got project financing or engineering, design, architectural, cost estimating, labor, demolition, subcontracting services. You've got to have one of those and you've got to have 3. Is that the way we're reading this correctly?" Ms. Erdoes responded, "Yes, and the 'and' at the end of 2. there is what shows you that. You have to have 1., 2. and 3. Yes." The chair said, "And inside of 2., you just have to have one of those. I think that's clear. We're arguing about six companies here and to be honest with you, the goal of this individual legislator is to get this behind us and keep us from being litigated. Because if we litigate this, we're going to take 30 years of leadership in the energy field and the conservation field and the renewable field and we're going to wash it down the drain because nobody's going to trust us again. That's my sense. Having said that, if anyone else has any statements let's make them now and move on and find out where we are."

Ms. Buckley asked, "With regard to b. 2., if a company with today's complexities sets up multiple companies, financing arm, construction arm, wouldn't they still have a contract between the company that's acting as an owner and the company that's acting as a contractor? I guess my question is, I don't know that that's mutually exclusive, right? And I'm looking at Senator Hardy or Senator Schneider but wouldn't you go ahead–you'd still have to have a licensed construction company no matter if it's your affiliate or not, you're going to have to get a license, contractor's board, right? So, they would still be under b. 1., it just means that instead of there being a memo – oh, gee, maybe we'd like to do this – you'd actually have a contract. So that was my only point."

Senator Hardy said, "I guess that's part of my confusion, Mr. Chairman, because 2.

seems to replace 1. The 'or' applies to, as I'm reading it, 1. So, you have a contract between a owner of real property or a contractor which is very clear and I think that's appropriate but then it says 'or' any writing that evidences the terms. That makes, as I'm reading it and again I'm the new guy on the block, as I'm reading it that potentially makes a pre-construction contract a contract for purposes of section 5 or it makes a request for proposal a contract potentially. So, it's that 'or any writing that evidences the terms or conditions of the contract' which in my reading, if I'm wrong I'm happy to be corrected, in my reading potentially completely–you have to do 1. a., b. and c. or you can throw all that out and go directly with the writing that evidences the terms. Now if it's supposed to be read 'that describes the laws and ordinances that apply to the project or' if the 'or' applies to just c. and 1., then that's different, I'm reading it wrong. But that's where my confusion comes in and I may be completely lost, Mr. Chair." Chair Townsend said, "I believe that the difference between 1. and 2. and, Ms. Erdoes, is the difference between those individuals who contract with this third party who is outside the loop of the corporate scheme and 2. which addresses the issue of the complexities of these projects inside of a corporate structure. So, 1. would be Casino A goes and hires Construction Company B–they don't know each other, they want to bid, they build, they go. 2. Is Land Development Company A who has a contractor's license that they own B who has a bunch of subcontractors, C that they're also an affiliate of, etc. That covers this language. I think that's what you were attempting to do because that's the way I read this."

Mr. Goicoechea said, "I think that what we're grappling with is the word 'any' versus 'a.' If it is 'a' writing that evidences, it puts it in a different context–then we're saying there has to be something instead of a written contract and that writing would provide the evidence that there was in fact a negotiated package. And, I realize we can't change the document but if we can just move away–just block 'any' out . . ."

> SENATOR MCGINNESS MOVED TO ADOPT REGULATIONS R084-07 AND R116-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA. MOTION FAILED WITH SENATORS CARE, SCHNEIDER AND TITUS AND ASSEMBLYWOMAN BUCKLEY AND ASSEMBLYMEN ANDERSON, OCEGUERA AND MABEY VOTING NAY.

The chair returned to the previous agenda Item III. E. 1. to address additional regulations which had been held for further discussion.

Item IV--Informational Items:

A. Legislators' Travel Reports.

B. 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 Marriage and Family Therapist Examiners.
4. Board of Occupational Therapy.
5. Board of Psychological Examiners.
6. Board of Registered Environmental Health Specialists.
7. Board of Veterinary Medical Examiners.
8. Chiropractic Physicians' Board of Nevada.
9. Health Division Bureau of Licensure and Certification, Department of Health and Human Services.
10. Nevada Board of Dispensing Opticians.
11. Nevada Certified Court Reporters Board.
12. Nevada State Barber's Health and Sanitation Board.
13. Nevada State Board of Accountancy.
14. Nevada State Board of Architecture, Interior Design and Residential Design.
15. Nevada State Board of Athletic Trainers.
16. Nevada State Board of Hearing Aid Specialists.
17. Nevada State Board of Massage Therapists.
18. Nevada State Board of Medical Examiners.
19. Nevada State Board of Nursing.
20. Nevada State Board of Optometry.
21. Nevada State Board of Pharmacy.
22. Nevada State Board of Physical Therapy Examiners.
23. Nevada State Contractors Board.
24. State Board of Professional Engineers and Land Surveyors.

D. Miscellaneous Reports from State Agencies and Others: Report from Nevada State Board of Medical Examiners.

Item V--Public Comment:

The chair noted that because of concerns over revenue, it would be his suggestion that wherever legislators are located, an attempt be made to utilize videoconference meetings to control costs.

Also, the chair advised members to plan on a meeting in January 2008.

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