

Minutes of the

**LEGISLATIVE COMMISSION**

Nevada Legislative Counsel Bureau (LCB)

Legislative Building, Room 4100

Carson City, Nevada

**December 11, 2000**

The fifth meeting in 2000 of the Legislative Commission, created pursuant to Nevada Revised Statutes (NRS) 218.660, was held on Monday, December 11, 2000, commencing at 8 a.m., in Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada with a simultaneous video conference to Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada.

COMMISSION MEMBERS PRESENT:

Senator Ann O'Connell, Chair (in Carson City)

Senator Dean A. Rhoads, Vice Chair (in Carson City)

Senator Jon C. Porter (in Carson City)

Senator Michael (Mike) A. Schneider (in Carson City)

Senator Dina Titus (in Carson City)

Senator Valerie Wiener (in Las Vegas)

Assemblyman Bernie Anderson (in Carson City)

Assemblyman Greg Brower (in Carson City)

Assemblywoman Barbara E. Buckley (in Carson City)

Assemblyman Dennis Nolan (in Las Vegas)

Assemblyman Richard D. Perkins (in Carson City)

Assemblywoman Sandra Tiffany (in Carson City)

OTHER LEGISLATORS PRESENT:

Senator Randolph J. Townsend (in Carson City)

Assemblywoman Sharron Angle (in Carson City)

LCB STAFF PRESENT:

Lorne J. Malkiewich, Director (in Carson City)

Gary Crews, Legislative Auditor (in Carson City)

Brenda J. Erdoes, Legislative Counsel (in Carson City)

Robert E. Erickson, Research Director (in Carson City)

Gary L. Ghiggeri, Senate Fiscal Analyst (in Carson City)

Mark W. Stevens, Assembly Fiscal Analyst (in Carson City)

Donald O. Williams, Chief Principal Research Analyst (in Carson City)

Stephen M. Wood, Chief Deputy Legislative Auditor (in Carson City)

John M. McCloskey, Chief Accountant (in Carson City)

Marilyn K. White, Executive Assistant (in Carson City)

The meeting notice and 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 rosters for the Carson City and Las Vegas locations are attached as Exhibit B.

**Item I--Approval of Minutes of Meeting Held September 25, 2000--**

Senator Ann O'Connell, Chair.

SENATOR SCHNEIDER MOVED APPROVAL OF THE MINUTES OF  
SEPTEMBER 25, 2000. MOTION SECONDED BY ASSEMBLYWOMAN TIFFANY AND CARRIED.

**Item II--Legislative Auditor:**

**A. Proposed letters to Senate Standing Committee on Finance and Assembly Standing Committee on Ways and Means on audit recommendations--Gary Crews, Legislative Auditor.**

Mr. Crews referred to material contained in the meeting packet for this agenda item. He said that this is a process that has been followed for the past 14 years whereby the commission has recommended to the "money" committees that they form subcommittees to follow up on and monitor audit recommendations that have been made during the past biennium. The process has worked quite well and it is thought that better action has been received from executive branch agencies when there has been follow up during the legislative session as well as the six-month reports that have been done during the interim. Consequently, he is requesting the approval of the proposed letters.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE PROPOSED LETTERS. MOTION SECONDED BY SENATOR PORTER AND CARRIED.

**B. Report on audit follow-up survey of other states--Gary Crews, Legislative Auditor.**

Mr. Crews again referred to material contained in the meeting packet. He identified a letter to the commission written by him. He recalled that there were questions raised at a previous meeting with regard to whether other states have sanctions on the executive branch for failure to implement audit recommendations and what actions are taken by other state auditors to try to encourage the implementation of audit recommendations. A survey was conducted with legislative auditors of some of the states across the country to determine what type of process they had in place. He referred to a schedule following the letter which indicates the results of the survey. He pointed out that there are really no sanctions in place by other states to either withhold money or funds from the executive branch for failure to implement audit recommendations. He pointed out that the response from the State of Maryland was a qualified answer whereas the state legislative auditors audit committee can recommend to the governor to withhold funds up to 25 percent of the administrators salary for failure to implement audit recommendations. He said that process is similar to the one in Nevada, which is identified on the second page of the schedule. Nevada's process seems to be much more

comprehensive than any other state which was surveyed. The process has worked quite well over the years and while there have been "glitches," it has taken constant monitoring by the commission and the audit subcommittee. It is a process that probably should never cease, he opined. As an example, he cited the difficulties with the Division of Parole and Probation. The emphasis on that particular audit was highlighted to such a level that in the year following the audit, the revenue collected from supervision fees has increased \$800,000 in one year. He stated, "we can't do this alone, it takes your support."

Following the schedule is a case study of Nevada's legislative audit process for audit follow up. It is an excerpt from a study that was conducted by the United States General Accounting Office in 1991. It felt that Nevada's procedure was a very good, sound process. As with any process, Mr. Crews said, there is always room for improvement but it does take constant monitoring by his office, the audit subcommittee and the Legislative Commission. The process has stayed the same with some "fine tuning" since then. Within the past one and one-half years, the audit subcommittee has added to the process. After a six-month follow up process, if an agency is not satisfactorily implementing the audit recommendations, the subcommittee will invite it back a third and sometimes a fourth time. He reiterated that it does take the constant monitoring and supervision of the agency to see that the recommendations are implemented. In response to Chair O'Connell, Mr. Crews indicated that the Division of Child and Family Services may be invited by the audit subcommittee to return for a fourth visit.

Chair O'Connell inquired if, during the course of the survey, Mr. Crews discussed any difficulties the states had or if it was just something upon which their attention has not been focused. Mr. Crews said that his office has quarterly meetings with state auditors and the problems are very similar to those experienced by all state auditors--trying to get agencies to implement audit recommendations. He thinks Nevada is a "step ahead" of most of them because it does constantly monitor through the audit subcommittee. With regard to collections, he thought Nevada was a little slow but legislation was passed last session which put some controls in place and strengthened the process. Time will tell how that process is working, he concluded.

### **C. Request for audit of the Office of the Military--Assemblywoman**

Sharron Angle.

Ms. Angle provided a handout (copy attached as Exhibit C) of a letter to the chair dated December 11, 2000. She proceeded to read from the letter which outlined the responsibilities and funding sources of the Office of the Military and expressed her concerns regarding how state and federal costs are allocated and recorded.

Senator Rhoads inquired what are the recent issues which have come to the attention of Ms. Angle. She responded that she is researching a bill draft request for the Office of the Military and found out that there is a reorganization afoot in the office that would not keep the lines clear between federal and state funding and how the state funds are administered, who they are administered by and who is supervising the employees and their work. She noted that the office has certain branches of the Air Guard, the Army Guard and there is a section where there are state employees that work in maintaining the armories. There is a function of supervision that has come straight down from the Adjutant General to the state employees. About six months ago, there was a reorganization afoot that brings the lines into question and now there are military people supervising state employees. She thinks it is something that needs to be discussed, along with internal controls of how the money goes from one agency to another. There is a voucher system and coding that needs to be investigated.

Senator Rhoads inquired of Mr. Crews when the Office of the Military was last audited. Mr. Crews responded that it has been approximately five years since the office was audited. When the last risk assessment was done, that office just "missed the cutoff" so it will probably be at least another two years before his division would have gotten to it.

Ms. Buckley said that her question would be of Mr. Crews in terms of workload, noting that there would be upcoming recommendations for audits in terms of air quality which are quite serious in nature. Mr. Crews replied that the division is currently concluding a couple of audits and he does not think it would impose a hardship on his staff. He would not want to stop an audit mid-course, but it could be handled when those audits are concluded in two or three weeks.

Senator Porter said that now might be an appropriate time with the change in leadership in the Office of the Military. It might give the new person an opportunity to review the facts. Therefore, he would concur.

SENATOR PORTER MOVED TO REQUEST THAT STAFF PERFORM A LEGISLATIVE AUDIT OF THE OFFICE OF THE MILITARY. MOTION SECONDED BY ASSEMBLYWOMAN TIFFANY AND CARRIED.

**D. Request for audit of University of Nevada, Las Vegas Lied Library Construction--Lorne J. Malkiewich, Director.**

Mr. Malkiewich referred to a handout (copy attached as Exhibit D) addressed to the chair and dated December 11, 2000, concerning construction of the Lied Library. This issue was discussed at the Interim Finance Committee (IFC) meeting the previous Monday. While it was too late to place in the meeting packet, there was time to issue a revised agenda to include the item.

In summary, the project started in 1995 with advanced planning and in 1997 a large amount of money was appropriated for it. The project has been behind schedule and has had problems with budget. The State Public Works Board has repeatedly returned to the IFC to move money into construction out of other areas such as furniture and equipment to try and continue to fund it. The IFC voted to approve the board's request to use the furnishings and equipment funds for the remaining construction costs but members of the committee requested that a request for a legislative audit of the projects design, construct, furnish and equip the Lied Library be placed on the Legislative Commission agenda.

Responding to the chair, Mr. Malkiewicz said that he thought the project was one year behind schedule. The plan was to open Spring Semester 2000 and now they are "shooting for" Spring Semester 2001.

Mr. Ghiggeri said that he has not been down to the project for a couple of months but he understands that opening for the Spring Semester is questionable at this time.

Ms. Tiffany inquired why an audit was thought about if it has already been funded and are there other bills coming up that they would like to take into consideration while the Legislature is in session that the audit would bring to light. Mr. Ghiggeri said that he could not address that question and noted that Assemblyman Joseph E. Dini, Jr. was the legislator that requested the audit. Part of the funding moved at the IFC meeting provided for a claims audit. Evidently, there is approximately \$5.6 million in pending claims against the state or contractor and a claims audit is going to be completed to determine if liability exists. It is his understanding that at this time there is no money in the project to pay those claims. Ms. Tiffany asked if the audit would then be supporting measures for a lawsuit. Mr. Ghiggeri said, "That I can't answer. I would probably have to refer to Gary Crews." Mr. Crews said, "Madame Chair, I'm not sure. I hope we're not involved in a lawsuit but I think the primary reason Mr. Dini wanted us to go in and take a look at this was to evaluate what went wrong here so perhaps we can identify some controls and management practices that should be in place so this doesn't occur again. . . Only with finding out what went wrong and why it went wrong will you be able to cut these things off in the future."

Chair O'Connell inquired, "Do we have a penalty clause in the contract?" Mr. Crews responded that he has not looked at this particular contract but there are liquidated damages in most of the contracts by the public works board.

Mr. Anderson asked if Mr. Crews would be able to perform the audit in a timely fashion given the commitment to the earlier audit request. Mr. Crews responded that his office could also move into this audit and provide some information while the Legislature is still in session before any real decisions are made and further funding is approved.

Chair O'Connell inquired if the IFC reviewed the contract. Mr. Ghiggeri responded that the construction contracts are not reviewed by the IFC nor are they reviewed by the Board of Examiners. Chair O'Connell opined that there should be some oversight by somebody that is dealing out the money and that there should be some interest in reading those contracts prior to the disbursement of the money. She asked if the public works board does that. Mr. Ghiggeri explained that what occurs on the construction contracts is that the project is put out to bid, the bids are reviewed by the public works board and a contract is then entered between the public works board and the contractor.

The chair requested Mr. Perkins to give the members the "flavor" of how the discussion went on the UNLV Lied Library during the IFC meeting. She said they were wondering what safeguards went into the contract to begin with, noting that they are a year behind. Mr. Perkins said that there were a number of discussions at a number of IFC meetings. The delays originally had something to do with the original contract and the contractor that was chosen had never before done a very, very large project. It may have been something that was beyond that contractor's ability to manage and accomplish in an appropriate amount of time. There were other discussions about changes--the change orders that occurred, some weather issues and some issues of mold that began to occur in the library probably because of the unusual humid conditions that took place in southern Nevada for a period of time. He is sure there are some other underlying issues that IFC was never able to ferret out.

Chair O'Connell inquired is there not a monitoring by the architectural firm or the public works board itself of the progress of the project? She thought it was a "late date" for them to step in and say they can't come up with the \$5.6 million. Mr. Perkins commented that IFC received reports all along during construction. The State Public Works Board (SPWB) was responsible for overseeing the project. They have management and inspection fees that provide for personnel from that agency to oversee the project and time after time the IFC was told by the manager of the SPWB that it was going to open on time. Now it is delayed by a year or more. That manager is no longer the manager at the SPWB. There has been discussion on how to more closely manage the manager of the SPWB through the board members or some other process.

Mr. Perkins said that the governor had conversations with him and voiced some frustration that manager works at the pleasure of the SPWB. The manager

handles upwards of one-half of a billion dollars worth of projects at any given time and there is no recourse for the Legislature or the governor to remove that person if anybody thinks that should happen.

The chair asked if there was going to be some proposed legislation on who has the authority to remove a manager. Mr. Perkins said that he has a bill draft in to do that but he was unsure if there were others. He thought there would be good debate during the legislative session. He observed that it is a huge amount of money for somebody who is not answerable to any elected official. The SPWB themselves would say they are trying to manage that and "get a handle" on it. He thinks there needs to be some cooperative environment involving elected officials since "we are ultimately responsible to the voters" and that is a great deal of taxpayer dollars.

Mr. Anderson asked Mr. Crews if the audit would only look at the fiscal flow or would it also look at the procedural questions that have been raised in terms of the supervision performance questions of the audit. Mr. Crews said that it could cover a little bit of both areas. Initially, it could look at how the cost estimation process starts, the selection of architects, how the bidding process is done, how requests for proposals go out and how they are reviewed, scored and evaluated. The contracting process would also be looked at to see if the proposals for contracts are reviewed by a second party. Additionally, the construction monitoring process would be looked into and how the costs are accounted for and the monitoring of those costs. The audit would cover the "full gamut" of the construction management process. It would not look at appropriateness of architectural or engineering work. The division does not have the staff to do that.

Further, Mr. Anderson inquired if the audit would look at the number of cost overruns and architectural changes that came about. Would those be clearly identified? It seems in most large construction projects when an architectural change happens, there is a cost overrun that follows as a result. Mr. Crews said that he would envision reviewing change orders and presenting that as information in the report, the description of what the change order was for and the need or justification for it. They would not be able to resolve whether the fault would lie with the architect or contractor with respect to any arguments. However, what the issue was about could be placed in a table.

Mr. Anderson observed that the questions raised already are the very ones that would point the need for an audit. He offered to make a motion when the chair was ready for one.

Mr. Malkiewich said with regard to the comment made previously "wasn't the public works board supposed to be overseeing these things," that was the point of the IFC. The audit would be of the management of the project and that has come out in subsequent comments.

Mr. Perkins said that the IFC has been extraordinarily frustrated with the report that comes every time it meets. There are a number of things that are changed which cost additional money, in fact, huge changes in scope of projects that are not authorized by the Legislature. When they are brought before the IFC, things have already started down that path. The members are sitting there looking at a project and trying to decide whether to approve it and the building is built or not approve it and then the university system or another state agency is stuck with half a building. He was unsure how to "get to the heart of change orders." He recalled that the SPWB came before the IFC on behalf of the Truckee Meadows Community College on a building that was supposed to be "x" number of square feet and it was going to be a shell, which was what was approved. They came back and said "let's build it smaller and use that money to plan phases two and three." What that would have done is brought a new project back to the next Legislature and leveraged it because "now they have this stuff planned already and if we don't go forward with it, we've misspent the money." All of those things are the kind of things that are going on and it is really starting to get out of control, he stated.

Chair O'Connell mentioned that a bill would be coming forward next session that has been requested through the Clark County School District. It is a building process that supposedly eliminates change orders and it might be something that can have the scope of how it is used broadened. It has been used successfully across the country, especially in Chicago,



Illinois where they have cut between 15 to 35 percent of their building costs. She suggested that there may be something in the context of that proposal that might be worth the state's time to look at as well. She assured

Mr. Perkins that she would get him a copy of it.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE REQUEST. MOTION SECONDED BY SENATOR SCHNEIDER AND CARRIED.

### **Item III--Progress Reports and Appointments:**

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

Ms. Erdoes said that there are two cases pending. In Mello v. Georgia Rohrs, Gary Crews and Rick Neil, the motion to dismiss the case against Mr. Crews and Mr. Neil is still pending before the court. The court did grant the motion to dismiss in Wisniewski v. the National Judicial College, et al, but the plaintiff has appealed and the LCB must file the briefs with the Ninth Circuit Court by January 26, 2001. Since the last meeting of the commission, she filed an amicus brief with the Nevada Supreme Court in support of the constitutionality of NRS 293.260, an election law. The court ultimately denied the petition which sought to declare the statute unconstitutional.

#### **B. Legislative Commission's Subcommittee on Air Quality Programs in Clark County (S.B. 432).**

##### **1. Report of the Subcommittee--Senator Jon C. Porter, Chairman.**

Senator Porter said that he introduced Senate Bill 432 in the 1999 legislative session to address serious air pollution concerns in Clark County. He is particularly concerned with the fact that the residents of the Las Vegas Valley have been periodically subjected to unhealthy concentrations of carbon monoxide, ozone and particulate matter. In addition, the county is in danger of the federal government imposing sanctions for continued violations of air quality standards. Those sanctions include the loss of federal highway funds for road and highway construction that is needed to relieve

current traffic congestion and allow for future growth in southern Nevada. Despite these concerns there is considerable disagreement and uncertainty over how bad these problems really are and what action should be taken to improve air quality and to satisfy public concerns. To address this situation, he introduced and the legislative body enacted

S.B. 432. As directed by that legislation, the Legislative Commission appointed the interim subcommittee consisting of three senators and three assembly members to study the programs for air quality in Clark County. The commission also appointed a

16 member advisory committee to assist the subcommittee in the study. The advisory subcommittee members represent state and local government, environmental groups and various business organizations.

Continuing, Senator Porter said that as part of its responsibilities the subcommittee was directed to contract with a qualified, independent consultant to conduct the study of air quality in Clark County. The bill required that the consultant submit a written report on or before June 30, 2000, and required the subcommittee to review the report on or before October 15, 2000. Further, the bill requires the commission to submit a report of the subcommittee's findings and recommendations to the 2001 session of the Legislature. The bill included an appropriation of \$500,000 from the pollution control account of the state General Fund to carry out the provisions of the bill. In August 1999, the commission allocated \$100,000 of the \$500,000 to the Department of Motor Vehicles and Public Safety for a pilot program to inspect the emissions of heavy duty diesel vehicles in Clark County. After the commission approved \$13,560 for the subcommittee's meeting and operating budget, the sum of \$386,440 remained for use in contracting with a consultant to conduct the air quality study. In September 1999, he requested the advisory committee to meet and prepare a request for proposal (RFP) for consultants to conduct the air quality study. Subsequently, the subcommittee approved the distribution of the RFP and the advisory committee later met and screened the seven proposals that were received. After hearing presentations from the three consulting firms recommended by the advisory committee, the subcommittee selected ENVIRON International Corporation to conduct the study. A contract was signed and the consultant began its work in January 2000.

The consultant presented the subcommittee with monthly progress reports and participated in all the subcommittee meetings after its work commenced. A draft final report was submitted on June 13, 2000. At the direction of the subcommittee, the consultant revised the report and submitted it as a final report on September 29, 2000. The report includes detailed information and analyses of current and future air quality programs in Clark County and potential future air pollution control measures for the county. In addition, the report included information and recommendations regarding the current and future funding requirements and governmental roles and responsibilities for air quality programs in Clark County. He expressed his appreciation to ENVIRON International Corporation for the excellent work and to the subcommittee for its efforts and the acceptance of the final report.

The subcommittee held a total of eight meetings, including the final meeting and work session. All of the public hearings were held in Las Vegas and video conferenced to Carson City. The subcommittee obtained extensive expert and public testimony. At its final meeting and work session, the subcommittee adopted 25 recommendations including five bill draft requests for consideration by the 2001 Legislature. The recommendations address the following major topics: governmental roles and responsibilities for air quality programs in Clark County; funding requirements for air quality programs in Clark County; alternative fuels; and motor vehicle emissions.

Throughout the study, the subcommittee received a significant amount of testimony and written correspondence from Clark County citizens, groups, employees and individuals who expressed serious concerns with the policies and practices about the Air Quality Division of the Clark County Health District. The consultant compared the health district's air quality division with similar agencies in other states. It found that the division had serious shortcomings. More specifically, the consultant rated the division as seriously deficient in the categories of staff management, compliance and enforcement. The division was rated as below average in agency staff, external support, oversight and public outreach. The consultant also found that the public and certain governmental agencies did not trust the management staff of the air quality division. The consultant also discovered considerable conflict and lack of communication between the division and other air quality agencies in the county. As a result of these findings, ENVIRON recommended the creation of a new, single purpose air quality agency in Clark County with a governing board of various state and local officials. The proposed agency would combine the existing split responsibilities between the health district's Air Quality Division and the air quality team of the Comprehensive Planning Department of

Clark County.

At the subcommittee's meeting on June 5, 2000, Senator Porter directed the local governments in Clark County to develop a plan to restructure the existing air quality programs in the county to avoid the Legislature forcing on them a new agency structure. He gave them until the first week of July to develop a proposal and an additional

30 days to provide the subcommittee with an implementation plan showing how it would work, how the transition would take place and whether any other legislation would be needed. With the oversight and the assistance of the Southern Nevada Regional Planning Coalition, the local governments in Clark County responded to his directive and presented the subcommittee with a preliminary proposal at its meeting on August 7, 2000. The proposal is reflected in Recommendation No. 1 of the subcommittee's Summary of Recommendations (contained in the meeting packet) and includes a BDR and a request that the legislative leadership authorize the members of the subcommittee to meet as a joint select committee during the session to consider the proposed legislation when it is introduced.

Another major issue raised by the members of the subcommittee and identified by the consultant is the need for the State of Nevada to provide increased oversight and technical assistance to Clark County in the area of air quality compliance. It was recommended that the Nevada Division of Environmental Protection play a bigger role in the development, review and approval of the state implementation plan and its revisions. At the direction of the subcommittee, the administrator worked with the local governments and Clark County to develop several proposals to increase the state's role in Clark County's air quality programs. Most of the proposals were adopted by the subcommittee and are included in the recommendations. The final major issue relates to Clark County Health District's Air Quality Division. Because of the various allegations made about the management of the division and the operation of its Emission Reduction Credit (ERC) Program, the subcommittee recommended that the Clark County Health District initiate an independent management organizational study of the air quality division and a separate independent audit of the ERC Program.

The subcommittee's final report will be completed in January 2001 and ready for distribution prior to the beginning of the session. Senator Porter said that he speaks for the other subcommittee members in saying that the recommendations in the report reflect their commitment to improving and protecting the air quality in Clark County and Nevada as a whole. He assured the commission that the members of the subcommittee plan to work hard in the upcoming session enacting the legislation to address the problems identified and will continue the efforts to make sure the information and

directions are carried out by local government agencies.

Chair O'Connell inquired if all of the recommendations were unanimously supported by the subcommittee. Senator Porter responded, "Yes, they were Madame Chairman."

**2. Consultant's report on "Study of Air Quality Programs in Clark County"--Dave Souten, Principal, ENVIRON International Corporation.**

Mr. Souten read from his presentation remarks contained in the meeting packet for this agenda item, and he noted that the report is very extensive and provides a substantial amount of support to the subcommittee. A copy of the complete report was provided to commission members and is attached as Exhibit E. He said that his comments will be short for two reasons. One is that Senator Porter did an excellent job of summarizing the points made in the voluminous report and the commission agenda is "packed" today. He expressed appreciation to the subcommittee for its courtesy and professionalism and for the assistance of the staff of the LCB. He acknowledged the respect for the consultant's independence and said that at no time during the project did the staff or the subcommittee try to "lead" them to any conclusion or recommendation. Therefore, ENVIRON and its subcontractors take full responsibility for the accuracy of the information presented as well as the interpretations of the information developed or gathered and the resulting recommendations.

A substantial amount of comment material was received on each of the reports and the compendiums produced over the course of the project. All of the comments were read by team members and the factually-based comments that had an effect on the recommendations were fully considered in the report. However, he pointed out that the comments received did not significantly alter the overall content of the recommendations. He is pleased that the hearings and earlier drafts of the report have initiated an apparently productive dialog in the Las Vegas region, likely leading toward the formation of a regional air quality management entity. Although the process is still evolving, the information currently available from the process was used in the final report. The report indicates where the proposed structure and the implementation are consistent with recommendations and areas where it is believed more attention is need. He noted the conscientious involvement of Nevada's Division of Environmental Protection at the subcommittee hearing of September 18, 2000. Additionally, he noted new discussions between the U.S. EPA and Bureau of Land Management and sensitivity to local particular air pollution issues indicate an improved attention to the air quality concerns of the Las Vegas region.

Mr. Souten said that it is his hope that the report will continue to serve as a reference document for those responsible for effecting change in the Las Vegas region. While much attention has been focused on the recommendations which are organizational in nature, there is a large amount of useful technical information contained in the report. Many of the comments received indicated technical areas of strong disagreement that should serve as good indicators of where additional work should be done.

In conclusion, Mr. Souten said that while the report completes the bulk of the ENVIRON effort under the contract, he stands ready to assist the Legislature as needed in the forthcoming session. He is convinced that the subcommittee's activities will lead to a better air quality management process in the Las Vegas region. Properly implemented, it will lead, in turn, to continued air quality improvement and healthy air quality for all citizens in the area. He is proud that their report may play a part in that result. He expressed appreciation for the opportunity to work with the State of Nevada in a very important area.

Chair O'Connell inquired if Mr. Souten has had the opportunity to work with any other cities or counties in the United States on this same issue. Mr. Souten responded that the company does an extensive amount of work throughout the country in providing technical, administrative and management support in evaluating control strategy measures and activities in various cities and counties--multi-county areas throughout the country. Further, the chair asked if the firm was involved with what has currently happened in Denver, Colorado or Salt Lake City, Utah. Mr. Souten replied, "No, we were not involved in either of the issues that are of current concern in Denver and

Salt Lake City. However, I would mention that we did do an audit for the state auditor's office in Colorado on the automobile maintenance inspection program in that area two years ago which led to several recommendations for improvement in that program as well."

Chair O'Connell commented on fines and the amount of time available to "clean up our act." Senator Porter invited Christine Robinson, Director of the Air Quality Division of the Clark County Health District to join Mr. Souten and him at the witness table.

Ms. Robinson said that Clark County Department of Comprehensive Planning prepares the state implementation plans for submittal to the Environmental Protection Agency. Currently, Clark County is in nonattainment for both carbon monoxide and particulate matter. The carbon monoxide emissions budget was approved by the EPA approximately two weeks ago. It is very good news for the community. In the particulate matter State Implementation Plan (SIP), there were two key components. Clark County submitted a SIP in 1997 to the EPA. The Clark County Board of Commissioners withdrew that SIP last week at its meeting. Parallel to that process, the county has been working on a new submittal--a particulate matter SIP that it is believed will be approved by the EPA. The county, as well as the health district, has been working closely with the EPA "up front" in receiving comments as the process has progressed. Approximately 20 pages of comments have been received on the last draft submitted. The county is working to deal with the comments and anticipates that it will submit a SIP that will be approved. It will come before the county commission for public comment and then be submitted about April 2001.

Chair O'Connell commented, "So we are really still in limbo as far as knowing exactly what the cost is going to be or exactly where we are." Ms. Robinson responded, "I wouldn't call it limbo. The CO SIP is looking very good. The PM-10 SIP is out there still for consideration. We do believe it will be approved and we do not expect any monetary sanctions."

Responding to the chair, Senator Porter said that the subcommittee looked at a number of areas and recommendations

have been made from air quality standards to implementation. An area of serious concern was management and serious deficiencies were found. Part of the challenge for air quality in southern Nevada has been multiple agencies in charge of air quality management. What is recommended is a combination so there will not be two or three agencies that are involved. Very serious allegations were looked into and he believes the recommendations will satisfy and improve upon the air quality in southern Nevada from standards to management to organization.

Replying to Chair O'Connell's question about who will be in charge, Ms. Robinson said that currently the Clark County Board of Health oversees the regulatory enforcement component associated with air quality and the Department of Comprehensive Planning oversees the planning and putting together the state implementation plan. The thought is that those two components would be merged into one for a more comprehensive approach. Further responding to the chair, Ms. Robinson said, "Ultimately, the buck stops with the EPA. Right now the county commission is responsible as designated by the governor for SIP preparations and the health district is responsible for the regulatory components. I would say the buck stops at both agencies right now." The chair asked if Ms. Robinson felt confident that the proposed legislation is going to give you the authority that you need. Ms. Robinson said that she has not seen the proposed legislation. She said that if the appropriate legislation is prepared they would have the authority they need to move forward.

Ms. Tiffany inquired how one agency would work with various "funding pots."

Ms. Robinson said that currently the Clark County Health District is funded through both state and federal grants as well as a small component of the Clark County Health District general fund which it receives from the county. Primarily, the health district is funded through its fee structure. The planning component at the county is funded through its general fund. It is anticipated that none of that would change in terms of creating a new agency. There would be a gap, as there is today, which has been one of the challenges. Those are issues that need to be addressed and they are addressing. The regional planning coalition and its series of air quality subcommittees are addressing potential funding sources at its December and January meetings to accommodate those gaps. There is no question the health district is in need of some additional funding to meet the requirements of its federal mandates. "Gap" is general right now which is the purpose of the next several meetings with the regional planning coalition to zero in on a dollar amount and from where those additional funding sources would come.

Further, Ms. Tiffany asked who would be the administration that would be responsible for the management portion that would be funded differently, with different reporting capabilities to ensure that they are all working together even though they have different bosses, different auditing and different reporting. Ms. Robinson said that at this point in time she does not believe that there is anyone in the Las Vegas Valley who could provide a definitive answer on what the structure would look like. Discussions have revolved around creating a separate board where its responsibilities would include only air quality activities. Elected officials have been mentioned in the discussions in which she has been involved. Senator Porter explained that part of the process has been asking the regional planning coalition to have an example--preliminary draft--of the board and how the organization would be structured to be presented by February 1, 2001. He has also requested that the subcommittee be allowed to meet informally or formally during the legislative session to finalize the findings of the regional planning coalition. A concept is available but by February 1, the full format should be available to the full legislative body and to address the funding as the session unfolds.

The chair invited Senator Titus to make any comments as she is a member of the subcommittee. Senator Titus said that she was sorry she missed the presentation due to a delayed flight. She said they met earlier in the week and she had some reservations about the ERC program. She was assured that it was going forward and that an RFP is being drawn up. Ms. Robinson said that the management study will address some of those concerns as well as the ERC audit which are the two final items under this air quality item that she is prepared to discuss. She also noted that an item which is not shown but is a key element and is occurring parallel to the other items is a cost analysis. The regional planning coalition and others have contracted with Hobbs, Ong and Associates to prepare a cost analysis and what she refers to as the "nuts and bolts" of what this would look like. It includes everything from desks and chairs to human resource issues and union contracts. It will dovetail with the next agenda item which she will be discussing.

### **3. Recommendation for management study of the Air Quality Division (AQD) of the Clark County Health District--Christine Robinson, Director, AQD.**

Ms. Robinson said that during the discussion of the functioning of the air quality programs in southern Nevada by the S.B. 432 subcommittee, the local governments represented on the regional planning coalition and the Clark County Health District endeavored to outline an organizational management study that would address the areas of concern identified by local government staff and through the legislative interim committee, particularly through the ENVIRON study. The proposed management study was presented by Clark County Health District to the subcommittee for discussion. The subcommittee strongly encouraged local governments to complete the study as quickly as possible. In mid-November, the Clark County Health Board approved a contract with Ralph Anderson and Associates to complete a management study addressing generally the areas of structure, function and program efficiency, to take the ENVIRON study further and to make solid independent recommendations regarding improving the service capacity of the air quality division. It is anticipated that the management study will be completed in January. The results of the study will better equip the administration in the district, and Ms. Robinson, to make improvements in the efficiency and effectiveness of the air quality division. Additionally, the information will lay a strong foundation for potentially building an integrated agency with solid programs and measurable outcomes that benefit the community. The timing of the study is such that the Legislature and the local government can use the results as each body deliberates on restructuring the air quality functions among the Clark County local government.

### **4. Recommendation for audit of the Emission Reduction Credit (ERC) Program operated by the Air Quality Division (AQD) of the Clark County Health District--**

Christine Robinson, Director, AQD.

Ms. Robinson said that the ERC Program is one that seeks to offset pollution impacts of minor sources such as aggregate processing facilities, concrete batch plants and printing companies. Those sources exceed the minimum threshold for the ERC program but do not emit enough pollutants to qualify as a major source such as a Wells Cargo or a Chemline. There are several pollutants that the program seeks to offset including carbon monoxide, particulate matter, oxides of nitrogen and volatile organic compounds. Each source is assessed annually based upon its amount of emissions and must offset the emissions through the purchase of credits by two to one. While there are other options to

meet the requirements, historically credits have been banked and subsequently purchased through the paving of roads. The ERC Program is extremely complex and has a tendency to confuse many people including district staff and the regulating community. Over the past several months and years, the ERC Program has come under intense scrutiny. The S.B. 432 subcommittee, the district attorney's office, the ENVIRON report and concerned citizens have advocated for a comprehensive audit of the program. In the past, independent accountant reports have been conducted to assist in evaluating the design and implementation of accounting procedures of the program. However, it is the intent of the Clark County Health District to conduct a more thorough audit which includes programmatic aspects of the ERC Program. To that end, the health district created a subcommittee to prepare a scope of work and approve developing an RFP for a comprehensive audit of the ERC Program. It is anticipated that the scope of work will be complete and out for bid in December. The health board anticipates entering into a contract sometime in January. The S.B. 432 subcommittee would receive a status report in April and it is expected the final report would be complete in late summer.

Senator Porter said that the ERC audit is one of the more contentious issues that the subcommittee addressed. There were serious questions about management and deficiencies throughout the organization. There was a question about inconsistencies in fines and inconsistencies in credits. The ERC is an area where credits are provided. The subcommittee members were adamant that it be an independent audit and investigation of the credits to be sure there has been consistency and will be in the future to make sure that the questions of improprieties are eliminated.

Chair O'Connell inquired if the county will be included in the committee that will have the oversight of the program and is it connected with the regional transportation committee. Senator Porter introduced Phil Speight with the Southern Nevada Regional Planning Coalition that is putting together a proposal and said that he would like

Mr. Speight to address the chair's issues as to the proposed legislation.

Mr. Speight said with regard to the legislation that is proposed that the group is going through an analysis primarily of the roles that will be necessary for each of the local governments, the regional transportation commission, and how the regional planning coalition is going to be involved in the process as it moves forward. There is an increased and established role for the state EPA to play. The administrator has spent quite a bit of time with local governments and doing part of the analysis as well as establishing their increased role. It was one of the areas of concern to all the members of the S.B. 432 subcommittee as it related to where the state is going to be in this role. The group has not finalized any of the issues at this point in time and is waiting for the

financial analysis to be completed and the rest of the management study to be finished before it actually delves into the role of each of the agencies as it relates to the emission credits.

Chair O'Connell inquired about a chain of responsibility and the importance that there is a logical line of authority so that the state is not in the mess it is in today over the situation. Mr. Speight said that was the prime concern of the S.B. 432 subcommittee as it relates to the state. It is his experience that the federal EPA is a lot more comfortable in dealing with the state NDEP as there is no corresponding agency within Clark County nor the health district that has a similar role as the federal EPA and the state NDEP. A prime concern was how the state's role in developing the state



implementation programs and how the PM-10 monitoring programs as well as the CO programs were going to be working and established. They are working on how that relationship is going to not only coexist but how the relationship is going to be established so that the federal EPA has a lot more comfort in dealing with their work product as it comes through the state and is then submitted to the federal EPA. That is how the establishment of the roles and responsibilities will be finally culminated.

The chair asked if anyone knew if Reno has had any of the problems identified as yet that Clark County has had. Ms. Robinson said that Jolaine Johnson of the state is in the audience and possible could address the question. The chair said that what the question is going to lead to is the plan going to be effective for the entire state although the north does not have the same problems as the south.

Jolaine Johnson, Deputy Administrator for the Nevada Division of Environmental Protection (NDEP), said she has been involved in the proceedings throughout the interim study. She said that Washoe County does have a couple of nonattainment issues. One recent issue was basically on an administrative matter and they were redesignated from moderate to serious nonattainment for PM-10. She does not believe that Washoe County has experienced the difficulties in the management structure that Clark County has. It is partly due to the fact that the planning responsibilities and the regulatory responsibilities lie with the same agency. With regard to the state implementation plans, she said they are required for areas that do exceed the ambient air quality standards. It is appropriate that a separate SIP be developed for Clark County PM-10, then a SIP for Washoe County PM-10 because the reasons for their nonattainment are very often quite different and have to be addressed separately. In addition, there is a SIP for the rural attainment areas of the state that assure the federal EPA and the citizens of Nevada that they will always maintain those standards.

Ms. Robinson said that the discussions the commission has heard today regarding a regional air quality agency would be specific to Clark County. Chair O'Connell said with the connection with the state and the federal government feeling more comfortable with dealing with the state, she wants to make sure that is going to be workable so that we don't go through the same exercise in the north. Ms. Robinson said that many of the recommendations include working more closely with the state. While the south has worked with the state in the past in the submission of plans to the EPA, it would like to work more closely so that those lines of communication are there. The chair emphasized that "we just don't want to be reinventing the wheel in the next two years or the next four years on this issue."

Senator Wiener said that on Recommendation No. 19 she had a couple of questions on the incentive programs for repairing high emitting vehicles. She noticed that there has been a pilot program with 1,100 vehicles being repaired and she wondered what kinds of incentives are being created or considered and how relative is the 1,100 compared to how many did not comply.

Ms. Johnson said that the details and the specifics of the effectiveness of that program are still due to the state. She said that they are anxiously waiting for that. The pilot program was funded by a grant through the Department of Motor Vehicles and Public Safety smog check fees and 1,100 gross polluting vehicles were brought into the program and repaired because the owners of some of the older smoking vehicles were not able to afford to repair them. While they are still awaiting the figures of the effectiveness of the program, she anticipates that "gross polluters" are a serious part

of the problem for carbon monoxide emissions in the county. How the 1,100 compares to how many of those kinds of vehicles in Clark County is still awaiting answers.

Senator Wiener wondered in addition to the gross offenders how many vehicles do not pass smog tests in whatever degree and what relativity the number might have. The amount of small offenders would still accumulate. Ms. Johnson said she does not have the numbers on the amount of vehicles that do not pass the smog check but would be happy to find the numbers and report back to the committee. She said that there have been estimates in the past but the gross polluting vehicles make up less than five percent of the vehicles that cause more than 50 percent of the carbon monoxide pollution.

Responding to the chair, Ms. Johnson said that current law requires that a car go through a smog check in order to be registered. There are some car owners that are avoiding registration and therefore the smog check. For those that go through the smog check and registration, there are programs for those persons who cannot afford to repair that vehicle. If you spend as much as \$400 to repair the vehicle and it still cannot pass the smog check, a waiver is provided to the person to be able to operate the vehicle in the county.

Chair O'Connell inquired how that could be justified when those vehicles cause

50 percent of the problem. Ms. Johnson said, "That's a very difficult question." Of course the problem is that the poor motor vehicle owners that are trying to get to work. The incentive program for repair of those vehicles through other types of funding mechanisms and other types of incentives is the answer to that problem. Right now there is not a formal program for repair of those vehicles. There was a grant for a pilot study of that type of program.

Mr. Anderson said that one of the big problems in Washoe County is the number of vehicles that travel in and out of the county from adjacent counties that do not have to meet the same standard requirements. He inquired if Clark County has a similar licensing problem and was it determined whether those people might be traveling into the county from surrounding areas and are they registering out of county to avoid meeting the pollution standards. He said it is a big issue that his constituents bring to him all the time. Ms. Robinson said that might be a more appropriate question for Clark County or DMV&PS representatives. She did, however, note that there have been many discussions about vehicles that come in and out of the county from various places. She said that she could not speak to whether or not they are doing that to avoid pollution regulation. Mr. Anderson inquired if that factor was taken into consideration during the course of the study with respect to the number of out-of-county and out-of-state travelers. Ms. Robinson said that the pilot study for the 1,100 vehicles was conducted by Clark County with a grant from the DMV&PS and she did not think there was a representative from Clark County in attendance this day.

Senator Porter called attention to Recommendation No. 20 which includes a statement that recommends that the State Environmental Commission through NDEP to assume increased responsibility for setting emission standards statewide. Ms. Johnson said that she would like to add that one of the recommendations out of the report is for the State Environmental Commission to reconsider that issue of cars that are registered out of the county but regularly commute into the county. She said that was done many years ago and at that time the commission found that it was an

insignificant number and that it would not make a big difference in the air quality. However, with the growth that has been experienced, that may have changed and should be reevaluated should the recommendations be adopted.

Jack Greco of Las Vegas said he was a member of the local subcommittee that is going to look into the ERC's. (A copy of a statement submitted by Mr. Greco to the commission is attached as Exhibit F.) He said approximately 12 to 15 percent of a figure that now exceeds 700,000 vehicles in Clark County failed the emissions test. The gross polluters are approximately 5 percent of the vehicles that fail. They create well over

50 and sometimes 70 percent of the overall pollution inventory. He said that regarding the program for helping people with vehicles that failed, they are not the smokers. People that had vehicles that smoked were not entitled to have someone try to repair their car. They were vehicles that were gross polluters and failed the emissions test itself. Smokers were not eligible. It had to do with their income and after the vehicles were checked they were retested and the data should be available at some point in time to the state. He was unsure why it is not currently there. Additionally, the waiver, if one achieves it, is good for one year and one year only. In order to qualify for the waiver, you must spend \$450 toward the repair of the problem from the emissions test and that does not include if a person has been involved in altering the vehicle such as the removal of a smog device, an air pump or a catalytic converter. The money has to be spent on regular engine and mechanical repair. It is a very small number of persons that actually acquire waivers.

Mr. Greco said that he submitted a few written concerns having to do with the RFP being authored by the health district staff. His concern is that separate oversight be provided from the health district staff. The subcommittee should be involved in the selection or interview process with proposers before a bid is granted. It should also be queried how they will solve different audit issues within that investigation.

Senator Porter said he appreciated the comments and that is exactly why he has requested that the subcommittee remain in place during the legislative session to provide oversight in looking at the proposed legislation for the audit and management performance and the ERC regarding the credits to ensure that there is proper oversight. He shares in the concern that it be done appropriately.

James Sohns, president of the Nevada Car Owners Association, said that he wanted to thank the members of the S.B. 432 subcommittee for their participation. There are a few major concerns on the ERC financial audit. It seems like a lot of things continue to be changed. A big issue that has not yet been addressed is a pattern of the whistle blowers in APC and NDEP that are not being taken seriously in bringing forward information to make changes. Mr. Sohns mentioned two faxed letters--one on

Las Vegas Paving letterhead and the other on Clark County Health District letterhead. (Copies of both letters are attached as Exhibit G.) He said that he had submitted a pile of documentation over one inch thick to the S.B. 432 subcommittee. He spoke of discrepancies in records and logs, special treatment on an ERC audit, logs being changed and the shredding of documents. "The changing of the books that are being done, we don't trust anything that's going on," he said. He also spoke of correspondence that was generated without the knowledge of certain persons. He reiterated his concern that the audit stay independent without management of the health district looking over it so that it "stays clean."

Senator Porter said that Mr. Sohns comments adequately summarize some of the concerns that the subcommittee members have. There were questions of management, inconsistencies, improprieties and the subcommittee has addressed those and will continue to do so. With respect to protection of employees, item 25 is also providing for whistle blower protection for employees. He shares the concerns expressed by

Mr. Sohns and wants to assure the commission that was the subcommittee's charge and is its charge going into the legislative session. It will look into reorganization of the health district air quality division. He noted that Ms. Robinson is the new management professional now "on board" and he assured the commission that the ERC audit investigation will continue and be independent from the existing processes that are in place. He looks forward to working in the next session to finalize and improve air quality in southern Nevada.

### **C. Presentation of independent auditor's Report on the Financial Audit of the Legislative and Contingency Funds for the year ended June 30, 2000 and 1999--**

John M. McCloskey, Chief Accountant.

Mr. McCloskey said that he was there to present the financial statements of the legislative fund and the contingency funds for the year ended June 30, 2000, and the auditor's report thereon. The financial statements are contained in the meeting packet under the tab for this agenda item. The financial statements themselves begin on

page 5 and conclude on page 28. They show monies received, monies spent and how the monies were spent. There is explanatory information that describes choices among accounting policies and explains how the numbers were arrived at. The auditor's report is on page 3 and at paragraph 4. there is what is commonly called a "clean opinion" where they have found no issues to which they take exception. The auditors were asked to review the system of internal controls and compliance with state laws and regulations. The report on that is on page 29. They were also asked to report to the commission any significant issues of noncompliance. There are no issues of noncompliance with state laws and regulations nor issues of internal controls that they felt needed to be reported to the Legislative Commission.

Chair O'Connell requested that a letter of congratulations be sent to the office and thank them very much for their hard work and the fact that the LCB received such a good audit.

Mr. Malkiewich said that he would like to echo the chair's comments and thank the staff for the fine work that they do. He recalled that an audit report was received a couple of meetings ago. They were a little slow last year with the results

of the audit and this year's report was received much quicker. He recalled that on some of the past audits there have been "minor" issues but this audit was completely "clean." He commended Mr. McCloskey and his staff and thanked them for doing such a good job.

ASSEMBLYMAN ANDERSON MOVED TO SEND A LETTER AS OUTLINED BY THE CHAIR COMMENDING THE STAFF AND ACCEPTING THE AUDIT. MOTION SECONDED BY SENATOR TITUS AND CARRIED.

**Item IV--Legislative Commission Policy:**

**A. Review of Administrative Regulations--Brenda J. Erdoes, Legislative Counsel.**

Ms. Erdoes said that there are three regulations which were recently adopted and one regulation which has been revised in response to an objection of the regulation committee. The Public Utilities Commission of Nevada regulation R172-99 was withdrawn by the PUCN.

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

Ms. Erdoes said that R103-00 from the Division of Employment Security and R106-00 from the Department of Motor Vehicles and Public Safety are believed to be within the authority of the adopting agencies and, with the concurrence of Assemblyman Brower, she would recommend approval.

ASSEMBLYMAN BROWER CONCURRED WITH THE RECOMMENDATION OF THE LEGISLATIVE COUNSEL AND MOVED APPROVAL BY THE COMMISSION. MOTION SECONDED BY ASSEMBLYWOMAN TIFFANY AND CARRIED.

Ms. Erdoes said that regulation R100-00 was adopted by the Public Employees' Benefits Program to carry out the changes made to chapter 287 of the NRS by the Legislature during the 1999 session. It is believed that the regulation is

within the authority of the program to adopt but several persons are in attendance today to suggest to the commission that it should object to the regulation on the basis that it conflicts with legislative intent. She said that Jan Marie Reed is in attendance to represent the program and Gary Wolff would also like to make a presentation to the commission as well. A copy of the regulation is attached as Exhibit H and copies were provided to members and made available to the public at the meeting.

Chair O'Connell invited Ms. Reed to speak about the regulation. The chair said that in reading the regulation, section 13 is a major concern of hers. Having been the sponsor of the legislation she does not feel that it complies at all. She said it would be helpful to her if Ms. Reed could address some of her comments to that section.

Brett Kant, legal counsel to the state Public Employees' Benefit Program, requested he be allowed to make some opening comments and provide some background before addressing the chair's specific concern about section 13. The regulations are mandated in part by NRS 287.0479 and relate to the board's exercise of its statutory authority to permit groups of not less than 300 persons to leave the state's benefits program. Under the statute, the board may exercise its statutory discretion in permitting groups to leave except the board may not permit it in two specific instances. One, in the event that a group in leaving to participate in a separate employee benefits plan that in the determination of the board is not fiscally sound. The second event in which a board may not permit a group to leave would be in the event the group's departure would impact state premiums by more than five percent. The regulations as adopted (1) prohibit an arbitrary and capricious exercise of the board's discretion in determining whether or not to allow a group to leave; (2) ensure that a departing group and its members continue to receive adequate coverage; and (3) ensure that a group's departure does not harm the remaining participants in the state's program. The regulations as adopted recognize that the board's responsibility lies with state employees as a whole--both state employees that leave in a group and the employees that are left behind. They ensure that all state employees have adequate health coverage.

Jan Marie Reed, Executive Officer for the Public Employees' Benefits Program, said that she has been on staff with the state since last October. She thought it was important to provide some history about what the program has done in the past year because in their reading of the legislative history a lot of the language came from the results of the history of the program. At the time, there was a lot of doubt about where the future of the program lied. She said they have made tremendous efforts and a lot of progress relative to the financial status of the plan. Fifteen RFP's were bid to result in over

\$3 million in savings. The plan has been redesigned to be a much more modern plan and one that is beneficial in the self-funded plan for folks that use the plan tremendously as well as those who do not. The deductible for 2001 was lowered to \$250 and changed the administration process on that deductible so that families can meet the deductible much sooner and the family deductible was lowered as well. The threshold amount was also lowered so that families meet the "out of pocket" 100 percent maximum at \$2,000. The plan was also designed to include a national PPO for folks that travel outside the state or live outside of the state. The wellness benefit was also improved so that physicals and child immunizations and things like that covered up to \$300 without being subject to the deductible. Town hall meetings were held early in the year and she traveled throughout the state. The goal of the town hall meetings was to hear from the participants what was not working in the plan, what they wished to see changed and what could be done better. A survey was done during the town hall meetings and received a lot of positive input. As a result, many of those benefit changes were made. It is a volatile market and health care is looking at 14 to 18 percent trend factors in inflation. In those trend factors, and in spite of them and the changes in the plan, the program is looking at about a \$15 million plan overall operational savings for this year. They were still able to do that with reinstating and making benefits better. She believes they are on the correct path. The incurred but not reported reserves are fully funded. The fiscal year ended

with about \$2 million in addition to what the budget was projected to end at. With that in mind, they started last November building the regulations and have spent hours debating and discussing the statute language and what the intent was as well as the implications of running a business. The Division of Insurance was accessed for its input. They have received input from their consultants and actuaries and have held public workshops and requested written comments as well. All of those things have been considered.

Ms. Reed said that relative to section 13, they are not in any way writing the regulations to be punitive or to prevent folks from leaving but it is a business and it is a volatile business environment. They believe therefore that it is important to build regulations that protect all state employees: those that would propose to leave the plan as well as those who would want to stay. The regulations were built to ensure that if a state employee wants to go to another plan that that plan is in a position to be able to be there in a financially solvent manner for those participants that leave as well as looking at the plan where many people want to stay to ensure that its impact would not be negative by adverse selection or elimination of retirees and those kinds of things that affect both plans. She said you have to keep in mind that the Public Employees' Benefits Plan as it currently stands is statutorily required to take retirees whether they have participated as inactive or whether they have participated currently as an active group. They have a door that says you must take retirees and they did not read the intent in the legislative history as the goal to also open a door that only actives would leave by. No plan in the country would survive a door that must always take retirees and you must always let only actives leave. The regulations were written with that in mind and also relative to application periods. They have a requirement of not more than 105 percent impact. It is believed that an application period in which they can assess all of the input of those who would want to leave and make a financial assessment is important and, therefore, they have put in a 30-day window in March to receive all applications.

Continuing, Ms. Reed said that they believe that the group of 300 was designed for groups, it specifically says not individuals, and they have designed that group definition with the Department of Administration and advice from other states relative to what it is that they can do administratively to be able to carry forward and follow the statute so that groups are allowed to leave and they can still manage it administratively. Financial statements have also been required from the group opting to leave. They also required that they have an opinion from an actuary that says that the plan they are going to is financially solvent and can absorb the group that is proposing. She encouraged the commission members to keep in mind that as they were writing the regulations they did not know what group it is or in the future may be a group that wishes to leave. They are writing regulations that really address many kinds of scenarios: it may be a group that wishes to go with an insurance carrier; it may be a group that wishes to go with a self-funded plan; it may be a group that wishes to create its own self-funded plan. With that in mind, they built in good financial and business practices for all the groups that would be considered under many options. An 18-month reapplication period was put in because if there was an application not approved then that group could come back to the program. It is important because they need the most recent data, the most current audited financial statements and things like that in order to really understand where the group is currently, not where it was perhaps 12 months ago when the application was first received.

Chair O'Connell asked Ms. Reed to tell the commission members where the fund currently stands financially. Ms. Reed responded, "I guess the question is what is solvent. We pay our bills on time and have for well over a year. Claims are paid timely and all the requirements of the claims contract are being met and have been for well over a year. Our incurred but not reported, which is the lag in claims that we know folks have gone to the doctor in the last 30-45 days, those claims haven't necessarily come in to be paid. That is fully funded based upon the actuarial's advice. We have two other reserves that we would like to build over a 3-5 year period and we are working with the Budget Office currently to put that into motion for going forward. Kafoury Armstrong has just completed their audit, both of the claims function

and administration. Really very minor recommendations are included in that audit and they have reported huge progress in both administration and very minor suggestions in claims." The chair said, "So, your answer is that the plan is now solvent." Ms. Reed responded, "Yes, ma'am."

Chair O'Connell said that a question that she thinks needs to be answered is, "I don't believe that the state has the liability that your recommendations would seem to infer after the group leaves. If they make that decision to leave, I think that the state has no further liability. It would seem to me that in reading the regs, that this is a major concern of the committee. Is that correct?" Mr. Kant responded, "There is a concern that once a group leaves, if in some instance a participant that has left in a group is not covered for some procedure that they would have been covered had they stayed with the state's employee benefit plan that they might turn around and seek some recourse against the state. That is a concern. We wouldn't know unless somebody tried to come back against the state in that instance. Obviously, if a group leaves under this scenario, we would take every effort to contractually isolate ourselves from liability for the participants in a group. However, we don't know what our potential liability could be and our concern is to minimize that potential liability in any way possible."

The chair inquired of Ms. Erdoes if there is a way to find out if there is any precedent in the law on this issue. In addition, she said that the reason the bill was passed from her standpoint, and she thinks that she can speak for the Senate Government Affairs Committee, was that they did not feel that in any way, shape or form the employees should be punished for the mismanagement of the state which is what brought them to the situation they were in. The bills were not being paid, the oversight was not what it should have been. The employees should not have to pay for those mistakes which is what had happened through the increase of the deductible and the problems that the employees have had with not being able to afford coverage for their families. It has been a big concern of a lot of legislators. In meeting with some groups during the interim, she has heard stories from a number of employees that were pretty tragic. Many times she heard that they would rather have the health coverage than a pay increase. She feels it is incumbent upon the state to face the responsibility of whatever it is to allow these employees to be able to have their choice of coverage. When they can look at other plans and see that they could pay half of what they are currently paying with the state, she is puzzled over the numbers because numbers are what usually brings down the cost of a health insurance program. She is sure the commission will hear from people in the audience about the cost of being able to compare what they could get outside of the state's program. She asked, "Is it because we are playing catch up with trying to again bring us to a solvent position that we have out priced, if you will, the coverage of spouses and dependents or just the plan that we have. I'm not understanding this at all."

Ms. Reed said the reality is that they look at inflation factors across the country. No plan really escapes 16 to 18 percent inflation factors that are projected for this year and 21 percent inflation factors for pharmaceuticals. This plan currently pays close to

\$1.5 million a month in pharmaceutical costs. There is a mix of retirees and active employees. The average age of the plan's active population is about 46 years old. It is not different or is not incurring anything currently in this plan than any other plan in the country will not, if not this year in the next several years, incur. She wonders about the price of other plans because that is not information which has been provided to them consistently or possibly accurately. She thinks that there is a very big difference in plans and it is important to compare "apples and apples." What is the plan and what is being offered. There are plans that may be touted as a better plan but if you know and understand insurance and you look at the plan, the question is, is it better or are there things in there and design in it that changes the nature of the plan or the cost of it. She reiterated that the plan has been revamped to make it much more modern and expects to continue in that direction over the next several years.



Ms. Reed said, with respect to the chair's question about "playing catch up," that she would agree that the management of the plan in the past years has not been appropriate. She said, "This year, I would think we played catch up simply through what I sort of call one time magic in the fact that you are taking a plan that has not been managed and been able to find about \$14 million in savings to turn that around. I don't believe that is being passed on to the participants. I did look at the salary and benefits survey results and I think if the Legislature would be willing to look at that we might understand why some of the benefit plan that we currently offer is what it is. It is not richer because the subsidy is not there, not because the plan is being mismanaged or because we are playing catch up but because, relative to other states, and we are state employees and would like to be compared with other states, the amount being paid per employee for the coverage is much lower, as well as other Nevada public employers. We could make this plan as rich or richer than other states' plans because we are functioning and operating in a method that we need to. The income and the subsidy is part of the issue. You can only use the money that you have for benefits. That would be my response."

The chair asked Ms. Reed to refresh the committee's memory on exactly what the state's contribution is presently and what an employee's contribution is and include in those figures the spouse and dependent coverage. Ms. Reed said that she did not bring the rates with her for this year but she could say that the state's contribution is \$368, which is a composite rate paid for each employee and helps to subsidize the dependent cost by about 50 percent. The cost in the self-funded plan for an employee only remains at zero. For an employee plus spouse, it is about \$124 and the family coverage is about \$224. She offered to verify the figures and get back to the commission.

Ms. Buckley asked how the figures for the state employees compare to some of the other large public employees groups such as Clark County, Henderson, Reno and others. Ms. Reed said they began a study to compare the figures this year but the difficulty of that is the make up of the particular population, the average age of the population and what the benefit design is all have to do with what that comparison is. The actuary came forward and stated that they really believed that for the amount of benefits that were offered--\$40,000 for life insurance, travel accident, death, accidental death and the benefit plan--that the state was one of the best plans that they were administering and they administer about 11 state plans. Ms. Buckley inquired about the figures for the groups previously mentioned just to give the commission members an idea of the amount. Ms. Reed replied that she did not have those figures with her.

Responding to Mr. Perkins, Ms. Reed said that the actuary has gathered quite a bit of that information, however, she did not foresee these questions today but the figures could be made available to the members. Mr. Perkins said that the commission did not want to get into a "full blown hearing" on what the Public Employees' Benefit Program is but he guessed it is "part and parcel" to this regulation. Further, he said there are ways of comparing "apples to apples" if the premiums are taken and broken down into the employee only, employee and spouse and employee and family and on another page what the benefits are, but his concern is that, "It's great to have a great program but it's no program to somebody that can't afford it." He said that while the balance is up to the employees themselves, he shares the chair's concerns about the regulation as it has been proposed.

Chair O'Connell inquired if the state has a "cafeteria plan" for the employees. Ms. Reed replied, "No, ma'am, we do not at this time. We will be evaluating that to look at the feasibility of it. There are a lot of state plans that have had cafeteria plans in the past and have felt it more appropriate to go back to a full plan. We need to do that evaluation and we intend

to do that over the next year.

Senator Titus said that she was one of the few people who voted against the bill to allow people to pull out of the health care system last time, not because she doesn't think people should be able to "shop around" and get the best deal but she felt that the state was right on the brink of reforming the whole system and it should be given a chance to work its way out to see if it was going to work. Also, she did not want people pulling out and leaving the rest of the state employees in a system that was worse off than where they had started. When discussions are held about people who can pull out and get better plans, she wants to ensure that regulations are in place that do not leave the people left in the system and don't have that option, with higher costs and more difficulties. She wants it to be balanced.

Mr. Anderson said that Mr. Kant mentioned two requirements in his presentation that were looked at and his question has to do with fiscal soundness. He inquired about the ability to monitor fiscal soundness of a group that has separated from the state program. He wants assurance that state employees are protected. Ms. Reed said that the regulations before the commission do continue to monitor yearly where the groups of 300 have gone and the financial soundness of the programs. It also helps to regulate the mix of the group and that it should remain mixed as far as the percentage of retirees to actives in order to help that plan maintain and the plan that those groups have left. Therefore, the answer is "yes," the regulations do continue to ensure monitoring of those programs.

Mr. Anderson mentioned a scenario where a group might leave and then come back for a time and then leave again and there would be a continual shifting back and forth.

Ms. Reed said, "We definitely can assume that would happen or could happen if a small group of folks chose to build their own self-funded plan, they could very likely not survive that and we know that those state employees would be back saying, well, we would want to come back into the plan. So, we've allowed provisions for them to come back in but also we've built stipulations by which that plan has to financially live up. I think there could even be the situation where a plan could go upside down, folks could not have had their claims paid for some time, they would come back to us and say, we didn't have these claims paid. Now what kind of situation financially are we in. The regulations have tried to address that so that we are in some position to be able to stand behind those state employees." Mr. Kant said, "The idea is to make sure state employees always have adequate health coverage and even if it looks like they can find a better deal elsewhere and they go through this process and are granted authorization to leave in a group and it is downhill from there, they can come back into the state's plan and still be covered and protected."

Mr. Anderson inquired, "Typically, how long does it take for an actuarial study to restabilize to make up for those losses . . . how long the recovery time would be for our own system taking those people back in." Ms. Reed responded, "That would depend on the size of the particular group that we were taking back in but what we have built into the regulation is that a surety bond would be put up ahead of time at the time that the group left so that if we needed to access that in order to stabilize those folks, that would be there."

Senator Porter commented, "I'm sure we all recall that this system was crashing and burning just a little over 18 months ago. It was in serious disarray and forcing serious decisions by the Legislature and by the administration. Having said

that, I guess I would like to know what has the history been over the last 18 months . . . what groups have asked to leave and what has been the success and trials and tribulations of that over the past few months." Ms. Reed said, "There haven't been any groups. We're writing regulations now that are effective January 1, 2001. We have had discussions with about three groups that felt they had an interest in leaving. We have met with them as they requested to discuss all of the--what we were doing in the plan design in this plan this year, what we were doing in getting their input on regulations. Two of those groups have come back to us and said never mind, we're sticking with you, we don't really want to go. The teamster group seems to still be interested in leaving. We do not believe the regulations prevent folks from leaving and going to plans that are financially stable, that this is not prohibitive but it is protective for both state and folks that would want to leave as well as those that would want to stay. I've been around for quite a while, Senator Porter, as far as the financial stability, I have seen it continuing to come forward and I sit in a position today of saying I had something to do with that in the last year but certainly what the Legislature did in the last time frame with the governor taking over the program and even prior to that with claims getting on board, all of those things were building to an appropriate program. We, I do feel, have a very strong foundation to now move forward each year and continue to move in a positive direction. I think, however, that stability is a very big key to that. I don't think that you can continue to add new things in requirements and statutes always onto the plan and expect it to stabilize and remain that way. My concern is about the retirees. Again, there is an open door that requires us to take retirees that have not participated and whose actives do not participate. That is a financial burden to the plan and we are able to carry that burden because of the mix of actives and retirees."

Senator Porter asked with regard to groups and the mention of a 30-day period, in looking at section 13 it looks like there is a window from March 1 through March 15. He asked if that was also the open enrollment period for new members. Ms. Reed replied that it is not in the same time frame. With the application period, they can request an application which will be provided. Those applications need to come back in between March 1 through March 15. That allows them to assess at one time all of the impact of everyone that is interested in leaving. The open enrollment time is late in the year. The regulations require that after your authorization to go out, you would pass one open enrollment period, or 12 months from the time you leave and that protects everyone against adverse selection.

Senator Porter inquired how much time is needed to adequately look at the application and when could that group expect a response. Ms. Reed said that they expect to respond within 45 to 60 days. Senator Porter said that he wanted to make sure that if the commission acts on this there would also be a time certain for her to respond so that the employees would then know what are their options. Ms. Reed said that she thought that was a change in the regulations but she would need to review. She confirmed that the application time frame is March 1 through March 15 and the open enrollment time period is normally the month of November. March was chosen because it gives them time to evaluate them and gives them time to do something else and then not be "back to back" with the open enrollment period for this plan. Some other plan may want to offer them at their open enrollment period. It was felt that folks would be interested in applying as early in the year as possible.

Senator Porter said, "So, let's assume that you approve their letter of intention to leave the program. Are you including in here the steps that they would need to take to do that? Would it become effective immediately? Or, would it become effective the next policy year? Or, when would it be effective?" Ms. Reed replied that part of the statute says that it would become effective 120 days after the approval and they are including the steps of exactly what they have to include in the application and the steps without limitation that the board would be taking. Mr. Kant pointed out that is contained in section 5.

Ms. Tiffany expressed concern about the liability question and the uncoupling of it because the state would be paying \$368 to whomever they choose as their provider. Mr. Kant responded that it is not addressed in the statute so it is a very real concern. Further, Ms. Tiffany said that if the employees actually get a benefit from negotiations, say a salary versus a medical benefit, how would that be translated if it was a benefit instead of money to someone that has pulled out of the system but is still a state employee. Ms. Reed said that it is a concern of theirs as well but not one that is addressed in the statute. It is a question that had to be considered but is not addressed and that is why the liability still remains there. Ms. Tiffany said that she is under the plan and pays at 100 percent and the only complaint she has had is that she doesn't need the richness of the plan and yet she has to pay for the richness of the plan and she does not consider there to be enough options and yet if she goes out and shops as an individual person, she has never found a better rate even with less benefits.

Senator Rhoads referred to paragraph (c) on page 8, noting that it says a person applying to leave the program will not cause an increase of more than five percent in the cost of premiums or contributions for the remaining participants of the program. He asked if the teamsters left the program would that be more than five percent. Mr. Kant said that he does not think it has been calculated at this point in time. It is unknown how many would be proposing to leave in the group. Responding to the chair, Ms. Reed said that they have not calculated it on the base of 300. The applications need to be received to know what the financial situation is, what the cost is and all of those things to do the calculations. It cannot be done without knowing the size of the group, who the group is and what is the make up of the group.

Responding to Ms. Tiffany, Ms. Reed indicated that the state has never funded the employee and his or her entire family according to her knowledge of the history of the plan.

Ms. Reed said that she wished to respond to a question previously asked by

Senator Porter and she does not see the issue addressed in the changes and has to do with a 30-day window. She will review her notes from a previous meeting.

Gary Wolff, business agent and lobbyist for the Nevada Highway Patrol Association; Andy Brignone, attorney, representing the Teamsters Trust Fund; and Gary Mauger, secretary-treasurer of Teamster Local 14 appeared at the witness table. Mr. Wolff said that he is also the designated spokesperson on this subject on behalf of Nevada COPS, Nevada Corrections Association, Teamsters Local 33, Teamsters Local 14 and Communication Workers of America.

Mr. Wolff said that everyone worked very hard on S.B. 544 in the last legislative session and there was a specific reason for 12.5 which was enormously controversial in the last session. He does not think that health benefits are a partisan issue. What brought on the issue was the mass failing of the state system and the failing has been going on since the 1980's. What he has heard today was about the failure of the private plans. He noted that the Legislature was who "bailed out" the state system. State employees have to take what the Legislature gives them. He said he totally supported bringing in the current committee because the last committee ran "in the red" over \$26 million. He said that "there is nothing been fixed in this system. I submit to you they come to you and tell you they are going to lower our deductible

by \$100 to \$250. Well, I'm sorry for the expression but whoop di do. In 1997, when we tried to change the make up of the committee in 1995 and 1997, the old committee reduced the rates by \$100 too and we fell in the red \$26 million. Don't let these kind of smoke screens come up here. You ask these employees what they are paying out of their pocket." Mr. Wolff cited a couple of examples of charges by Saint Mary's HMO to an active employee and also to a retired state employee and how the state supplements the premium. He noted that there have been some employees who have taken their children off the plan because they cannot afford it.

Additionally, Mr. Wolff said that the commission has been told that nobody has applied. He said his groups have asked to leave from the onset. The reason is because they can get a better deal for a few dollars more. The studies are very open. It costs \$425 a month to insure the entire family under the teamsters trust fund. The fund has been around for years and is historically sound. The problem is they have never been able to go in and show the plan because the regulations are so restrictive that nobody is going to get out of the plan. It makes it physically impossible to get out of the plan. Restrictions are placed on the groups that they do not place on themselves, Mr. Wolff stated. He referred to court actions from 1991 whereby the old committee was sued and the Supreme Court of Nevada said that state people are not held accountable. The Teamsters Trust Fund and most trust funds are under Taft-Hartley. He submitted to the commission, "Please follow the intent of the law. The law was very clear. . . It is evident to me, from day one this committee started, this new board, that they were adamant that we weren't going to leave." He questioned whether the state benefit program is operating in the black. He said that they may be paying their bills but at the last meeting there was a specific question asked by a board member "are we operating in the deficit" and the answer from Ms. Reed was, "yes." "I know the self-fund is in big trouble as far as being solvent. . . I beg this committee, please do not adopt these because what you've done is you've cut the lifeline from anybody ever getting out,"

Mr. Wolff concluded.

Mr. Brignone said that he is a partner in the law firm of Schreck Brignone and Godfrey and for many years he has represented employee benefit plans and employee benefit trust funds, principally in Las Vegas. One of them, the Teamsters Security Fund, has asked him to evaluate and comment upon the proposed regulations before the commission. He referred to letters dated September 8, 2000, and November 9, 2000, provided as handouts to the commission (copies are attached as Exhibit I). The letters to the Public Employees' Benefits Program detailing his observations and recommendations concerning the regulations. He did not wish to read the letters but wanted to talk broadly about the purposes that he gleaned from the statute in chapter 287 and match that to the regulations. He said, "I view the regulations as preventing the statutes purposes from being carried out. I don't think there is any question about that. The purpose of the statute as I read it was to give state employees, groups of not less than 300, the right to chose their own health insurance plan. And the statute is very brief. To accomplish that, the Legislature directed the board to do a couple of things. I happen to think that these were exactly the right things to do. The first thing was, you have to assess the financial stability and solvency of the proposed plan, determine whether it is actuarially sound. That is the right thing to do and that is what the statute requires. The board is to assess the financial stability of the plan and you can do that by an annual actuarial report and evaluation that all plans of the sort I represent have done every year, routinely have done year after year after year. Second, the statute directs the board to ensure that the employees have full disclosure so that they can make an informed decision on what is best for their group. There is another provision in the statute that protects the state's plan and that is that you can't allow a group to depart if their departure would cause an increase of five percent or more in premiums. Generally speaking, what the Legislature directed is that you take a look and make sure you have a financially sound plan, make sure the employees have full disclosure, let them choose."

Continuing, Mr. Brignone said, "The regulations, however, come from a completely different perspective. What they

say is, essentially, we can't trust the public employees to make their own decisions, we have to protect them from the consequences of their own foolish actions, and we are going to protect the state's plan at all cost and we are going to accomplish those two things by making it so difficult to apply, either the group or the plan, we're going to make it so difficult to apply and get approved that nobody's going to do it. The regulations reflect a mind set that the statute is a bad idea. The way I look at the statute is that in one respect it's an experiment. Now it's not an experiment which treats lightly the state's employees or their interests. It's basically the notion, what we've done in the past hasn't worked let's just try something else and see if it does work. You've built in some protections for that. Those protections should be there and they are wise. But these regulations go far beyond that and they go so far beyond that they reflect an entirely different purpose and, I think, a purpose that contradicts the legislative purpose in the statute." Mr. Brignone said that as an example, it seems to him that what the statute says is that once you determine that the plan is financially sound and that the employees have full disclosure, the employees get to look at it and decide for themselves. The regulations say that the board evaluates the benefits, not the employees. Second, the regulations require that the benefits be equivalent. There is a subtle consequence to that, he said, which is quite different in practical fact than what has been represented to the commission members. If the problems that the state plan has had in the past are due to poor or inadequate plan design--how you mix and match the benefits to provide incentives and disincentives and coverages so that you have good coverage at a reasonable cost--or if the state's problems in the past have been due to rising medical costs. A lot of times you do not have a lot of control over that as much as you do on plan design. Or, something that most people don't focus on but continues to be a problem for everyone, and something that needs to be focused on, is the third element--utilization. How easy it is to utilize the plan and how frequently it is utilized. He reiterated the three elements: plan design, increasing medical costs, and utilization. If the state's plan has been plagued by problems in those areas, the equivalency requirement under the regulation embeds those problems in the outside plan. It puts those same problems that the state plan has into the outside plan and thereby makes it unattractive to any state employee who is trying to escape the state's plan. When you add into that the detailed requirements about excess or stop loss insurance, that his plans don't have, and the administrative fees, you have created a plan that is indeed more expensive than the state's plan that the

employees are trying to escape. Therefore, it is not going to be attractive to any group of state employees and it's not going to be worthwhile for any plan to apply to get approval. It's not going to happen, he concluded.

Mr. Brignone said that there is a requirement in the regulations for a certain level of stop loss or excess insurance that are at such low levels that for anybody who is familiar with the stop loss market, especially the increasing cost of the stop loss market, the premiums for that would make your eyes water. Most plans that are well funded and have substantial reserves are moving in the opposite direction. Increasing their stop loss limits because their uncommitted reserves are sufficient to protect them based upon the advice they get from their actuaries and consultants to withstand any kind of a major hit above the stop loss limit. The actuaries and consultants of the plans Mr. Brignone represents, at least one of them, happens to be the state's actuary and consultant.

Mr. Brignone suggested that the commission members look at the regulations from the standpoint that they have been drafted in a way to discourage people from leaving, to make it nearly impossible for them to leave and to make it completely unattractive to leave. Group health plans are not going to apply because the requirements in the regulations cannot be met. He said that the beauty of the statute is that it allows some diversity, some differences of choice. You might have a group of employees who are interested in perhaps a higher deductible on prescriptions because they want a richer benefit on another side. With the equivalency requirement, no plan can satisfy the regulations unless it is the same

as the state. He has plans who, over the years, have been successful enough to bank substantial reserves. By reserves he means money that is not committed to actual claims and is above and beyond those claims, in some cases it amounts to tens of millions of dollars. Those plans have adopted prudent and conservative investment programs for those uncommitted reserves which, in turn, generates additional income which provides additional funding for the plan, keeps the cost down, but also results in stop loss limits of say \$250,000 per claim or per person per year. The required stop loss limits in the regulations are a fraction of that.

Mr. Brignone said that he was asked to comment on the original set of regulations and he did by his letter of September 8<sup>th</sup>. The revised regulations made some cosmetic changes and made no substantive changes at all. The regulations that he reviewed and were the subject of his September 8<sup>th</sup> letter are virtually the same as the ones that were the subject of his November 9<sup>th</sup> letter. He said he was asked, "Well, what can we do to fix this?" "I think the only way that you can fix this is to throw out the regulations and start over again to be honest with you. You can't take a motorcycle with a sidecar and make it into an SUV, not without a great deal of cost and a great deal of difficulty. I just think that the regulations reflect different purposes and a different mind set than what the legislation reflects. Thank you."

Chair O'Connell asked Mr. Brignone to comment on the state's liability for a group that opts out of the state program. Mr. Brignone responded, "Candidly, I have never thought that there was a real substantial concern in that respect. If you opt out and make your choice, then you live with the consequences of that. Let me give you an example. Forget about the opt out plan. Suppose you have a spouse that is a state employee and the other spouse is in the private sector. The state employee says, I'm not really going to pay the \$75 a month to Saint Mary's. I don't need your coverage at all. I really don't want it. I'm under my husband's or my wife's plan. So they don't enroll at all. They don't want any coverage at all and they have a claim that is not paid by the private plan. I don't think that person has a legal leg to stand on to come back to the state and say, well, I've opted out of your plan, I've made my legal relationship elsewhere and now I want you to absorb that. I just don't think that's a substantial legal position to take."

Mr. Anderson said that if the state is paying a premium for its employee and then for some reason the plan becomes too heavy and gets turned over in a short amount of time, he could see where the situation could change very rapidly and then the person who is in another program is without a plan. Then, it seems the state would still have to stand by its employee would it not? Mr. Brignone said, "Legally, I don't agree with that. I think if you opt out and you elect out it would be the same as declining coverage. You can't simply say thereafter, well I made my election, I made my decision, my legal relationship is elsewhere and now I don't like that result but now I want you to pay for it." Mr. Anderson said that he accepts the argument for the person who opts out of the plan but he is talking about the person who moves into another program and it falls apart, not a person who decides he doesn't want any program. He asked if Mr. Brignone is saying that the state no longer has any ongoing relationship at all. Mr. Brignone said that it is his view. The individual has established his or her legal relationship elsewhere.

Mr. Perkins asked for clarification on situations cited by Mr. Brignone where the board not the employee evaluates the program, the stop loss requirement and the equivalency requirement. He asked for the location of these requirements in the regulation.

Mr. Brignone said that the equivalency requirement is in section 13, sub 1 and section 13, 3. (d). There are a number of other provisions in there including one that says an opt out program has to take retirees in the same proportion as the

actives. There is absolutely nothing in the statutes that says that, in fact it is contrary to the statutory language which says active employees or retirees or any combination thereof. There is simply no authority for that portion of the regulations. The stop loss provision is section 13. 2. (g) (5) assuming the numbering is the same as that which was the subject of his November 9<sup>th</sup> letter.

Mr. Perkins asked if Mr. Brignone provided the information to the board during the public hearing process. Mr. Brignone responded, "Yes, and appeared at the public hearing as well."

Senator Wiener said she wanted to be clear that she understands the situation. If the group of 300 plus decide to go out and it is a "belly up" situation with that plan and we are talking about liability, she is hearing that the liability issue would be to cover what the "belly up" company cannot cover. She has been hearing that the state would be responsible for its employees and would need to take them back because there is a surety bond in place. Would the state's liability only reflect the point at which the state takes them back but any liability incurred while they were with the other company would not be the state's to carry but as soon as the state takes them back, then the liability would continue or begin to tick again. Mr. Brignone responded, "That's my view. That's exactly right. That's the way I view it."

Mr. Mauger (previously identified as secretary-treasurer, Teamsters Local 14) said that most of what he was going to say has already been covered but he would like to say a few things. "We had put in an official request, I believe it was in October, to withdraw our groups from the plan. We did make that request officially. We have some problems concerning employees right now that cannot afford family coverage. Concerns are that those employees are the ones that are only insured and their families are not. They are insuring the breadwinners." He disputes the figures for family coverage. He thinks it is higher than what they are already paying. His group is a Taft-Harley fund and subject to the Department of Labor, as are other Taft-Hartley funds, to audits and scrutiny by the Department of Labor done on a regular basis. The fund has been in place since 1955.

Wally Tarantino, legal counsel for the Nevada Highway Patrol Association and the Nevada Corrections Association, said that he would make his remarks briefer than he had originally intended as he knows the committee is not interested in repetitive arguments. He said that he wished to start with section 1 of the empowering statute that would allow groups of 300 employees to opt out if they can get better insurance elsewhere. He asked the members to compare it with section 4 of the regulation. He said he is agreeing with Mr. Brignone that the definitions in section 4 start to depart from the actual statutory language and the intent of the statute. The statute itself defines groups of 300 employees as officers, employees, or retired employees or any combination thereof. There is no reference to accepting retirees in proportional amounts as the state. The definition in section 4 of the regulation goes on to talk about those 300 state employees having to be employed by a state agency that shares job definitions. That is not in the statute. He said that to his recollection, it was not discussed during the legislative session or the legislative history doesn't demonstrate that. The real practical effect of that and it ties into the whole overall argument that the regulations that were promulgated should adopt the spirit and the intent of the statute, not frustrate the spirit and intent of the statute. There is a major departure if you look at the regulations literally, it would mean that even the groups of Nevada highway patrol members who belong to the association who have submitted a letter of intent and, he said, that is all it is at this date since the regulations have not been adopted, there is no application process but a letter of intent has been sent to the Public Employees' Benefits Program board demonstrating that their intent is to leave the program. Looking at this definition, that group may not qualify despite the fact they are all peace officers because sergeants do not necessarily share a job definition with a



trooper, a lieutenant does not share a job description with a sergeant and so on up the chain of command. It may be an absurd interpretation but what is not absurd is the statute talks about groups of 300 any combination thereof. There is nothing in the statute to prohibit Nevada highway patrol members, members of the Nevada Department of Prisons and members of the Nevada Department of Transportation (NDOT) from combining and coordinating their efforts to get a group with 300, 400, 500, 600 or 700 where they can shop even better in the open market place for insurance. That is being denied to them if you literally construe those definitions as they seem to suggest.

Continuing, Mr. Tarantino said that he would like to address section 13 from the perspective of a state employee and not an advocate. Several references have been heard about the teamsters opting out. Technically speaking, the teamsters are not opting out of anything. The teamsters is an organization that has a health and benefit plan that can be offered to groups of state employees who choose to opt out. Looking at it in terms of state employees, whether they are troopers, work for NDOT, regardless of where they work, if a group of 300 wish to opt out there are some of the inhibitions or prohibitions for groups of 300 employees. The regulations would expect that state employees, not the teamsters or an association, would be required to provide a security deposit of 105 percent of expected annual incurred claims and administrative costs as determined by the program--not by legislators or anyone else but by the program. Further, the proposed group will pay to the program all costs incurred by the program, staff and consultants associated with the move, including without limitation the cost of providing claim experience reports, plan documents and setting up new health plans in association with the program. The group of not less than 300 participants agree to pay the ongoing program administrative costs, not only the set up costs but ongoing administrative costs as determined in accordance with this section. On page 8 of the proposed regulations if, at the time that the group of not less than 300 participants leave the program, the program is in a deficit position through no fault of their own, the group must pay to the program an amount equal to the percent of the participants leaving the program times the amount necessary to return the plan to a nondeficit position. If the plan is in a similar position that it was two years ago with a \$26 million shortfall, that means that the employees who want to get out from under that debacle must come up with that money. "That is atrocious," he said.

Mr. Tarantino said that his closing comment would be similar to Mr. Brignone's opening comment, that these regulations frustrate the spirit and intent of the statute. The regulations should facilitate the spirit and intent of the statute as adopted by the legislative body almost two years ago.

Chair O'Connell inquired if Mr. Tarantino presented this same testimony at the hearing on the regulations. He said he did not, personally, but those statements or similar arguments have been made on several occasions during open meetings by Mr. Mauger, Mr. Brignone, Mr. Wolff and, most importantly, by state employees.

Senator Porter asked Mr. Mauger when his group and the teamsters formally requested the change. Mr. Mauger said that he believed it was in the latter part of October but he can't be sure of that but it was an official letter that was sent by Mr. Tarantino inclusive of the highway patrol, NDOT and he thought DMV&PS was involved.

Further, Senator Porter asked what happened after the letter was submitted.

Mr. Mauger said they haven't had a response.

Senator Porter asked Ms. Reed to respond to the comments just made by Mr. Mauger. Ms. Reed said that she does not have a copy of a formal request. She knows that the teamsters did attend board meetings and ask to make presentations of their benefits in an interest of leaving the program. They were told by the chairman of the board at that time that there was a process and that regulations would be built and that there would then be an opportunity to make an application to withdraw.

Mr. Mauger said that if the commission requests, he has copies of the letter to the benefits board requesting the opt out and can supply copies to members. He did not have a copy with him this date.

Senator Porter said, "It seems to me that this is another example of where we have a communication problem. A formal letter was submitted and we, apparently, don't have a formal process of responding. Having been aware that there had been a request made, I'm surprised that there is no acknowledgment on your part, Jan Marie, so you were not aware of the formal request is what you're saying." Ms. Reed said, "I was aware of the formal request to present to the board, that's what the board chairman told me he received a letter--a formal request to present to the board of the Public Employees' Benefits Program." Senator Porter said that when the regulations are finished they need to ensure that the process is simple and easy to follow for these employees.

Further, Senator Porter mentioned a requirement in the regulations that the group must have a certificate from the insurance commissioner. Ms. Reed responded that there are actually two sections where that is referenced. One is if the group of 300 is going to be covered by an insurance program, then there are certain requirements. In that, they were given direction by the Insurance Commissioner's office about what would have to be required--that they would have to be authorized to provide insurance in the State of Nevada by the Insurance Commissioner and she believes that is where the stop loss requirement is also stated because of the insurance regulations. There is another section that says if the group of 300 will be covered by a self-insured plan, then the regulations and the requirements for that are different. That does not require stop loss or Division of Insurance involvement.

Mr. Nolan wondered if it would be possible to provide a side-by-side comparison of the benefits of the current state program and those of some other insurers that write those types of policies in Nevada, including what the teamsters are proposing. Ms. Reed said they are working on that but she would remind the members that this is not written specifically for the teamsters. She said that she has worked a long time on Taft-Hartley trust funds and, in her honest opinion, the regulations would not be prohibitive to those trust funds that she has worked on as far as financial requirements and the bonds they put up. These are plans that have been around a long time and would not be the plans with which they would expect to have concerns. The regulations are built to protect relative to those plans that they would expect could have problems. She reiterated that they are working on comparisons.

Additionally, Mr. Nolan said that with regard to the cost difference associated with the various benefits, there seems to be some discrepancy with some of the benefits being mentioned and some persons in the audience took exception to some of the benefits and the costs associated with them. It would be helpful to have the comparisons in a "black and white" form. He understands that as a state and a state program, while it may have the numbers of employees in that program that would qualify it to participate in most major programs, perhaps Nevada may not have a great number of qualified insurance companies writing those types of programs within the state. He would like to see those companies that have been looked at, the type of programs provided and the costs associated with them included in the comparison as well.

Ms. Reed said that relative to a couple of other questions that were raised on the regulations, "reasonably equivalent" was the overriding language used throughout the statute. We were not saying that it needed to be the exact plan. We said "reasonably equivalent" and felt that was for the protection of the state employees. There was also a question raised relative to the retirees and actives and the need for both of those groups to be offered. She asked Mr. Kant to address that subject. Mr. Kant said that the issue of the necessity of maintaining a certain ratio to protect the ongoing viability of the state's plan has been covered. He said he wanted to clarify a couple of other comments that were made. On the issue of defining a group of not less than 300, he pointed out that in Mr. Brignone's letter, he proposes a definition that still encompasses the issue of having a community of interest among the group for something other than health insurance. You have to have, as he termed it "a community of interest." The benefits program has tried to clarify that by addressing the issue of being in the same agency or department. That is simply to permit reasonable administration of the program.

Chair O'Connell noted the comment about "shared job definitions." She said that is a very fine point but at the same time it can have a tremendous impact on the groups that are looking for a self-insured group for 300 employees. She thinks that it is totally out of context with the intent of the legislation. She invited Mr. Kant to continue his comments. Mr. Kant said that he wanted to stress the idea that even Mr. Brignone acknowledges the fact that the group has to have some interest other than just getting together to purchase health coverage. Additionally, he said that his next comment addresses the issue of "equivalency." The statute itself leaves it up to the determination of the board as to whether the group would receive adequate benefits. At some point in time, the board has to try to make some type of determination on what an adequate benefit would be. It was felt that it was completely reasonable to interpret that as a reasonably equivalent benefit or better. Part of the idea here is that groups can go out and get better benefits for their money and this certainly would not prohibit them from doing that. The statute uses the term "adequate benefits" and they had to arrive at some definition of what "adequate" would be.

The chair asked for an explanation of the logic behind the requirement on page 9 in section 13 under sub 4. where it talks about where the employees would have to make the system whole again. She said that she knows the arrangement was used for the workers compensation system but at that time they were talking about employers, not employees. She asked why this requirement was felt to be important since it is a state responsibility and not the employees responsibility in her view. Ms. Reed said, "The thinking and the discussion that revolved around this deficit position at the time that groups may leave--as a business, if you are running this, at that time you would be taking a portion of whatever the state subsidy was to fix that deficit position. The general discussion in the committee that was working on this felt that those employees that were choosing to leave at that time, their experience would have contributed to that deficit and therefore the committee felt that taking a portion of the subsidy to help repay that deficit that was incurred during the time those employees were contributing to it would be fair and would keep the program constantly in and out. Okay, the program isn't doing so well one year, people bail out. The next year the program is doing very well or two years later, they want to come back in. It is all of the groups experience that contributes the financial success, or not, of the program." Further, she explained that it comes from the subsidy, the state would continue to pay the subsidy for that employee because that

employee remains a state employee. A group of 300 could leave the state's program but they are not leaving state employment which means that the subsidy to the state employee to the state program continues. The program continues to maintain the eligibility and billing for that employee. The provision of sub 4 says that a portion of the subsidy would be held by the program in an effort to help repay the deficit that was created while that employee participated in the program. The program is still the one that receives the subsidy and that subsidy or some portions of it are passed on to the particular program that the group of 300 may have gone to. The subsidies are still paid to the program and the program pays, just as they pay today, vendors. The program would be paid for its premium for the employees that had left and gone to that coverage.

Mr. Anderson said that he thinks the commission has convoluted the situation with the recognition of the teamsters. "I don't think we are worried about the teamsters, I think we are worried about other groups that may be coming along in the future. I agree with that. So first of all this new group that comes along has to put up 105 percent, then if the actuarial is in a deficit position we also expect them to make themselves whole for the tail and they are not going to take with them that resides with the state. Is that what we're concerned about?" Ms. Reed replied, "It is. What we are actually saying is not that the group, if they were forming themselves as a new group, they would have a security bond of 105 percent or if they were going to a program that's already secure, the surety bond would be put up. But, the premium subsidies are still paid through this public employees program and the public employees program pays that other plan by keeping the eligibility. The concern is the tail of those folks that have helped create, if there was a deficit position and they leave at the time of the deficit, that they also help to repay the deficit." Mr. Anderson asked, "Is the tail that we're talking about those particular members that would be leaving or is it proportionate to the aggregate number that they could conceivably, because retirees after could opt into the program later on. We raise the burden so high--where are you going to go? It's going to choke it right there isn't it?" Ms. Reed replied, "No, if you had a group of 300 people and the plan had determined that of the subsidy, \$6 of the subsidy needed to be used to buy out the deficit, then that \$6 would be held for the period of time to buy out that deficit of those particular 300 people. Generally, we would be doing that if we were running the plan, we would be doing that on an overall basis for all 28,000 participants. We wouldn't say just these 300 are going to buy the whole deficit. They are only buying the relative portion that they contributed, as an aggregate."

Mr. Kant said, "Opting out doesn't absolve them of their responsibility for contributing a portion of their premium to reducing the debts." Mr. Anderson expressed concern about regulations becoming so restrictive that "we couldn't even take on a group that has a long time history of being financially stable would not be able to qualify in." While the intent is to look toward the new groups that could conceivably coming down the road, the way the regulation is written, it may exclude the universe. He expressed his frustration with the potential consequences.

Ms. Buckley said with regard to the "tail" issue and paragraph 4, it doesn't actually say what Ms. Reed says that it means. "If what you're saying is that you want that portion of the premium that's been appropriated to cure deficits in the program, that's what it should say and then it wouldn't be misconstrued to saying you want them to just make up out of the new premiums any portion that might be attributable to a deficit. I could see where that would cause some confusion. In listening to the testimony, it appears that there are certain portions of this regulation that do go beyond the statutory intent certainly the description of having to be employed by a state agency, shared job definitions, that's nowhere in the statute. It seems to me on some portions of this with regard to bonding and otherwise, you may need to have those protections in place to protect our other state employees and our goal has to be that both folks are protected--both the ones who remain are protected as well as allowing regulations to exist that are not overly cumbersome to allow people to shop because that is the law. Whether folks like it or not, that is the law. So, it seems to me that you folks have some more work to do, that there needs to be further hearings to have reasonably drafted regulations that are not

thwarting the intent of the statute that still protect the existing state employees."

ASSEMBLYWOMAN BUCKLEY MOVED TO OBJECT TO THE REGULATIONS. MOTION SECONDED BY ASSEMBLYMAN PERKINS.

Under discussion, Mr. Perkins said that he would vote to object to the regulation based upon the same concerns brought up by Mr. Anderson with regard to the subsidy. His biggest problem is "we have a fund, the state contributes 'x' numbers of dollars per employee to this fund and we have a group that manages the fund. That group is supposed to manage the fund, determine benefit levels based upon how much money we have and by no fault of their own, the employees may find themselves in a fund that has a deficit. Yet, when they leave the program, you are going to ask them to continue to pay into the program because of something that happened by no fault of their own. I have a serious problem with that. . . We can go back to just this last session and a

\$26 million bailout. How much are we going to then attach to those employees who want to get out if we are \$26 million in the hole. I could foresee this being a serious problem and I truly don't believe that was the intent last session and I don't think that even pits one employee group against another employee group. It is our responsibility as a Legislature and your responsibility as the employees' benefits board to ensure that it's not in a deficit situation, not the employees."

THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED.

The chair directed that the regulations be redone.

There was a handout (copy attached as Exhibit J) of a letter dated December 5, 2000, which was provided to members after the discussion on this item concluded and after the vote was taken.

At this point in the meeting, the commission departed from the agenda order and turned to discussion on Agenda Item IV. D. 3. At the conclusion of the discussion of that item, comments were made by Senator Townsend and are shown in the following paragraph.

Senator Townsend said that he does not understand why there is a \$75 difference between north and south in what was said earlier. He doesn't want the folks in southern Nevada to pay \$75 but he does not want others outside of Clark County to be disadvantaged. Also, he does not want the comment from Mr. Perkins to go unnoticed. The problems that have been faced not only by the commission but by others who are members of the money committees and the

Government Affairs committees perhaps can be looked at by the Legislature as a body the issues faced by the benefits committee in the following manner: there are a number of jurisdictions that break them into two separate groups. There is a committee on resources that is staffed by people who understand investment and the amount of dollars that it creates, then that number is turned over to a committee on benefits so they know exactly how much they have to spend and it's not putting the pressure on the same group. Once it knows how much it has to spend, then it can focus on the type of benefits that could be allowed to accommodate to get a number. He thinks that is something that needs to be looked at because then that does not put you in the bind of raising the money and spending the money all at once.

Mr. Nolan said that there was a witness in southern Nevada who was unable to address the commission and provide comment on the benefits' committee regulations.

Ron Cuzze, president of the State Peace Officers' Council (SPOC) and vice president of Nevada Conference of Police and Sheriffs said they are in the same coalition as Nevada Highway Patrol Association and some of the other persons who testified on this issue earlier. There were two things he believes need to be brought up. One of the things that the SPOC has been doing, while Mr. Mauger has been working on the insurance, he has been busy with the governor's committee on reorganization of state government. They have been talking with a lot of law enforcement agency heads on recruiting and retention. He knows that the regulation has been sent back to be rewritten but these things need to be rewritten keeping in mind that state law enforcement is going to become dysfunctional in the State of Nevada very shortly. One of the reasons is benefits. Within those benefits is health insurance. The Nevada Highway Patrol in Clark County is almost 30 percent understaffed. Throughout the State of Nevada, Parole and Probation is being devastated. To hire state officers in various agencies, it is mandatory that when they rewrite the regulations that they keep this in mind. He inquired why has not labor been allowed to sit down with Ms. Reed and her group. He said, "We've been around a long time. We can give them some insight they might not know. We can give them the feelings of the people and maybe avoid writing something back into it such as where if there is a deficit you put it back on state employees. They are not going to go through that again. He would like to see the commission have somebody who is writing the articles get in touch with them and perhaps some problems can be avoided in the future. The chair said that she had about a one hour discussion with the chairman of the committee on a recent evening about the very issues mentioned. She thinks that they probably have a better understanding of the legislators' concerns which are mirrored by the concerns just expressed by Mr. Cuzze. Hopefully, everyone is now going to see much more cooperation between the two entities.

Continuing, Chair O'Connell said that she did not give the commission the option of writing a letter to the benefits' committee but that can be done as well. She reiterated that she had a lengthy discussion with the chairman of the benefits committee. She told her of the concerns that she had. If Mr. Cuzze would like to request that the commission put those requests in writing, she will certainly take a motion from the commission to do so. Mr. Cuzze said that he would request that the chair do that because it is a little unfair of him, now making the statement, with Ms. Reed not present. He thought it would be a good idea and then they could get that out to all their people too so they do know what the legislature is doing for them. "One of the big concerns of the state workers is they don't think you are doing anything. A few of us know you are, we stay in contact and come to these meetings but there is a lot of state employees out there that just feel like they've been left out." The chair said that she would accept a motion to write a letter from the commission to the benefits committee expressing to them the concerns that have been heard this morning.

**SENATOR SCHNEIDER MOVED APPROVAL TO WRITE A LETTER TO THE BENEFITS COMMITTEE ABOUT THE CONCERNS. MOTION SECONDED BY SENATOR PORTER.**

Mr. Malkiewich said that he does not believe the motion would be necessary simply because when the commission objects to the regulation, the statutes provide that the Legislative Counsel must inform the agency of the reasons for the objections so there will be a letter coming from the Legislative Counsel to the Public Employees' Benefit Board indicating the reasons for the objection and he believes the material would be included in such a letter. Chair O'Connell said that she could see that Mr. Cuzze receive a copy of the letter if that would satisfy his concern. Mr. Cuzze responded, "Whatever is most convenient for you." He said he would ensure that every member of the coalition, all three groups, would get sent a copy.

The chair asked that the motion be withdrawn and it was subsequently withdrawn.

## 2. Regulations resubmitted pursuant to NRS 233B.0675.

Regulation R058-00 from the Board of Homeopathic Medical Examiners (a copy of the regulation is attached as Exhibit K):

The chair inquired if Dr. Fuller Royal was present in Las Vegas to discuss the next set of regulations. Mr. Nolan responded in the affirmative.

Mr. Brower, as chair of the Committee to Review Regulations, said that he did not believe any testimony was necessary as it was his understanding from Legislative Counsel that the revised regulation meets with the approval of her office. It is also his understanding that the various interested parties that debated this very regulation at the last hearing on the regulation have come to agreement and both sides agree that this is an acceptable regulation. He commended all sides for their hard work in coming together and arriving at a regulation that everyone seems to be able to live with.

Mr. Brower suggested that the regulation need not be debated again today but if anybody wishes to make a statement he was sure the chair would entertain the request.

ASSEMBLYMAN BROWER MOVED THAT THE REGULATION AS REVISED NOT BE OBJECTED TO BY THE COMMISSION. MOTION SECONDED BY ASSEMBLYWOMAN BUCKLEY AND CARRIED UNANIMOUSLY.

Bob Barengo said that he wanted to express his thanks to everybody who was involved in the regulation for all the hard work they put in. It was a very difficult regulation and he wanted to thank everybody on behalf of the Board of Medical Examiners.

**B. Approval of Bill Draft Requests--Lorne J. Malkiewich, Director.**

1. Reviser's bill.
2. Ratification bill.
3. Legislative Counsel Bureau generic bill.
4. Population threshold changes.

Mr. Malkiewich said that in the interest of time, he would try to cover all four of the bills at once. The reviser's bill makes minor changes to the statutes recommended by the statute reviser. The ratification bill corrects mistakes from the previous session. The generic bill is the one where all the minor changes the LCB wants are placed. The fourth one is the somewhat new one--every 10 years a review is conducted of the population thresholds in connection with the Census.

ASSEMBLYWOMAN BUCKLEY MOVED APPROVAL OF THE FOUR BILL DRAFT REQUESTS. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

**C. Proposed change to Rules and Policies of the Legislative Counsel Bureau to allow additional pay for required use of bilingual skills--Lorne J. Malkiewich, Director.**

Mr. Malkiewich said that this item is a proposal to amend the Rules and Policies of the LCB to allow special adjustment to salary for a person who is required to use bilingual skills or sign language for the deaf at least for 10 percent of their work time. The LCB does not have a position that meets these criteria. This is taken from NAC 284.206 and is something that is available to state employees in the executive branch. If the LCB did get a person in this position, it would like to have the same regulation in effect for the legislative employees that it has for executive branch employees.

SENATOR RHOADS MOVED APPROVAL OF THE REQUEST FOR THE PROPOSED CHANGE. MOTION SECONDED BY SENATOR SCHNEIDER AND CARRIED UNANIMOUSLY.



**D. Lobbyist Registration for the 2001 Session--Lorne J. Malkiewich, Director.**

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

Mr. Malkiewich said that the LCB did not propose any changes to the regulation on lobbying. The fee for a paid lobbyist would be \$95 plus \$1 for each person represented. The fee for a nonpaid lobbyist would be \$15. This would be amended based upon the action to say that a paid lobbyist excluding those who solely represent a nonprofit organization would pay an additional \$120 fee which would go to the Student Government Affairs Program. There are no other changes to the regulation. It has the usual definitions as to expenditures, most of which are taken out of the statute.

SENATOR SCHNEIDER MOVED APPROVAL OF THE REGULATION ON LOBBYING. MOTION SECONDED BY SENATOR RHOADS AND CARRIED UNANIMOUSLY.

**2. Installation of Lockers in Lobbyist Room--Lorne J. Malkiewich, Director.**

Mr. Malkiewich said that the new lobbyist room is completed on the first floor. It has a "few more square feet" than last year. The LCB would like to purchase lockers and install them. A set of six would cost about \$400 and he does not anticipate any trouble getting someone to pay \$70 to rent a locker for the legislative session. With the approval of the commission, staff would check to see how many lockers could be accommodated. The entire cost of the purchase could be recovered the first session through the rental fee. Responding to the chair, Mr. Malkiewich guessed approximately 25 to 35 lockers might be accommodated depending on space available. The more lockers that are installed, the more space is lost for other purposes. He could get opinions of lobbyists depending on their availability.

Mr. Anderson inquired about setting up rules for what kinds of things that could be left in the lockers during session and what happens to materials left after the end of the session. Mr. Malkiewich said that he would leave it to the self policing of the lobbyists.

SENATOR SCHNEIDER MOVED APPROVAL OF THE INSTALLATION OF LOCKERS. MOTION SECONDED BY SENATOR PORTER AND CARRIED UNANIMOUSLY.

### **3. Fee Increase to Fund Student Governmental Affairs Program--**

Senator Randolph J. Townsend and Cliff McCorkle, Development Officer, Student Government Affairs Program.

This item was discussed at the conclusion of the discussion of the regulations of the Public Employees' Benefits Committee.

Mr. Malkiewich said that this item will be presented by Senator Townsend and former State Senator McCorkle. Information is contained in the meeting packet for this item in addition to a handout of a brochure entitled, "America's Legacy The Foundation of Freedom," which was provided at the meeting. A copy of the handout is attached as Exhibit L.

Senator Townsend introduced former Senator McCorkle noting that over 20 years ago they faced one another in a most contentious state senate race which, based upon actual dollars, remains one of the most expensive senate races run in the state. He was the victor that time and it came down to a handful of votes. He said that it occurred to them today that the lack of commitment by people in terms of their voting and the fact that less than 50 percent of the people eligible to vote actually determine the outcome of elections. He said that the reason they are present today is to try and address that situation from a Nevada level. He also spoke of his concerns about the lack of participation by citizens at all levels of government on a daily basis. He said that they are presenting the program which could be one of the solutions to the lack of commitment on the part of the general public. They would like to see support for the program from lobbying colleagues in the form of funds which would be generated by additional fees which could be charged. He thinks the program has huge merit not only for individual school children but what they can take back to their families.

Mr. McCorkle said that he is development officer for the Student Government Affairs Program, which is the nonprofit arm of an organization that has been around for

40 years in Washington, D.C., called National Write Your Congressman. The reason he got out of politics 20 years ago after one term was that he was so frustrated by the system. He spent the next seven years living under other political systems in eastern Europe. He returned to Nevada in 1996 with a strong conviction that despite the imperfections of the political process in America, that it has by far the best system the world has ever seen and it needs to be defended. He began looking for instruments to fight for the American process and other issues he felt were important for the future of the country. The Student Government Affairs Program was one of those and its whole purpose is to involve young people in eighth grade social studies classes and twelfth grade American government classes to not simply vote as 18 year olds would but to communicate their opinion on public policy issues and be involved in the process. They wanted to provide the youth with tools and do it in a nonpartisan manner.

Continuing, Mr. McCorkle proceeded to name national political figures who are supportive of the program. The students receive a newsletter mailing each month and inside two issues and ballots are offered and then pro and con arguments are taken home by the students and discussed with their parents. The students come back to the classroom and debate

the issues if the teacher chooses to allow the time. The teacher then bundles up 50 to 100 ballots and sends them off to a senator or representative. The students then have the ability on the report to compare how their vote related to the national voting by other students across America. The purpose is simply to encourage youth to get involved. In addition, he reviewed other materials provided in the handout along with outlining other materials provided to the students and teachers. The materials are intended to complement other materials they already have available to them in the classroom.

Mr. McCorkle said that he and Senator Townsend thought that if anyone should be supportive of an instrument to encourage citizen involvement it should be the people that make their living from the political process and lobbyists should be right at the top of the list. It made sense that they would want people to be really aware of this type of thing and that it would be fair to ask them to support it. They are asking that a fee be added in addition to what they are presently paying to register as lobbyists and then that money would be used to involve every eighth grade social studies teacher and every twelfth grade government teacher in Nevada. In Clark County alone, they are estimating 100 government teachers and the social studies teachers are not included in that estimate. The estimate includes eighth grade and twelfth grade for Washoe County and all the rural counties and only twelfth grade for Clark County. The goal is to raise \$60,000 which would be enough to pay for the involvement of everyone of those teachers for the whole state.

Senator Titus said that she found the materials very interesting and thinks it is a good program and appreciates Mr. McCorkle wanting to bring it to students. Her only concern is that there are a number of similar programs. There is already in existence a Committee on Participatory Democracy that is headed up by Larry Struve which is considering doing the same kind of things and would love to have \$60,000. There is the constitutional competition program with which she was involved as a judge and holds statewide and national competitions. She expressed concern about putting the money into only one program and suggested a grant program where all the different programs might be able to apply and "tap into" the funding source.

Mr. Anderson said that he and Mr. McCorkle have had discussions about the various documents provided in the program. He said that the program has been supplying materials to the various high schools in the north. While the materials do not currently reach all the classrooms he assumes they will in the future. He thinks Senator Titus posed a very good question for the members. He referred to other programs such as "We The People" noting that Nevada continues to be one of the few states that sends student groups to that program. He said that he knows the new state proficiency standards are making several major recommendations, one of which is to do away with the specifics in titles of classes like American Government or U. S. History to just require two social studies classes and would be taking place earlier. He also commented on the redundancy of the materials already being paid for and the textbook fund. He liked the idea of putting forth a grant program where all the programs could compete for funding, as suggested by Senator Titus. He said that it is a good program and anything that comes into the classroom in which students can participate is worthwhile. He also commented about the information available on the Internet and computers in classroom and the fact that the children can look up all the information themselves which is better than if he hands them a completed document. He supports the concept behind the program but has concerns about the redundancy of materials already paid for and the competition of other worthwhile projects between which they are being asked to choose.

Chair O'Connell inquired if Mr. McCorkle was aware of the bill passed last session requiring some of the information to be further studied and the new history standards because they also include a great deal of the information provided by the program.

Mr. McCorkle said that he was aware that the bill was proposed but was unaware that it passed. Mr. McCorkle said with respect to the redundancy issue that the reason for using the materials is that the adults and parents would be as involved as the children. He thought the fact that money is being put into textbooks doesn't negate the value of this material being in the home. With regard to Senator Titus' comment about other groups, he understands that concern. There are two primary areas of complementary organizations: one is groups that try to get children involved in watching the system such as Boys and Girls State and acting out the roles of legislators; and, secondly, like the Close Up Foundation that takes students to Washington, D.C. to view the process. He said that the difference between his program and "We The People" is that group focuses on the constitution. He is looking to promote the participation and citizenship. All of the groups have great value but if there is one that has broader appeal and encourages a broad spectrum of citizenship, giving back to our communities and enabling and empowering youth with tools to actually participate, it is the program he is suggesting and the best he has seen. With respect to the issue that kids can find more on the Internet, he did not disagree. Mr. McCorkle said that he has spoken to

congressmen who have indicated that they have put a block on or do not value the opinion that is given by e-mail because there is no way to validate the source of the opinion.

Senator Porter inquired if lobbyist fees are paid annually or only during the legislative session. Mr. Malkiewich responded that LCB registers lobbyists just for session, therefore, they pay a fee every other year. Further, Senator Porter inquired about the lobbyists who represent small, nonprofit groups for whom the fee might be a challenge. Senator Townsend said that if the lobbyists are nonpaid lobbyists, they would not be affected by this proposed fee. Senator Porter said that he could appreciate having a grant program possibly in the future. Further, he said that this idea has some merit. He inquired about administrative costs and how much is going into the program itself.

Mr. McCorkle said that it is just a pass-through arrangement.

Ms. Buckley asked for clarification on the definition of a nonpaid lobbyist.

Mr. Malkiewich said that another item on the agenda is the adoption of regulations on lobbying and it covers that issue. A nonpaid lobbyist is a person who receives no compensation for appearing in the building. A person who receives compensation even if it is part of a salary that they get whether or not they appear in the building is considered a paid lobbyist.

Senator Townsend said if the definition needs to be changed for the purpose of the proposed additional fee that is a legitimate concern. [The proposed fee request is directed to only paid lobbyists.]

SENATOR PORTER MOVED APPROVAL TO INCREASE THE FEE FOR LOBBYISTS TO FUND THE STUDENT GOVERNMENTAL AFFAIRS PROGRAM AND THAT THE FEE INCREASE WOULD BE FOR THIS YEAR ONLY AND THAT A GRANT PROGRAM BE LOOKED INTO FOR THE FUTURE FOR OTHER PROGRAMS. MOTION SECONDED BY ASSEMBLYWOMAN TIFFANY.

Under discussion, Senator Wiener requested clarification on the time frame and was informed by the chair that the collection of the money is for the upcoming session only and would fund the program for only one year. Senator Titus said that she will vote for the motion because she thinks it is a good program but she also wants to encourage the other programs to come to the legislative body and ask for the same thing and would expect the same generosity to be shown to the other meritorious programs.

Mr. Anderson said given the potential generosity of the commission, one of the documents missing from the materials is a letter to Colonel Crockett, a member of the House of Representatives and the admonition that he not spend public funds to do charitable work or the reference to many other significant historical documents that should be kept in front of the public on a regular basis. He mentioned other worthwhile documents that he was surprised were not included. He indicated that he would probably vote in favor of the motion since it is for the 2001 session only.

Chair O'Connell said that she is surprised that the materials do not cover the part that a lobbyist plays in the system, especially since the lobbyists would be charged for the materials.

Ms. Buckley said that she is willing to support the motion and would like to ask the maker of the motion to include in it wording that ensures the distribution of the book to an equal number of students based upon geography and funds available in Clark County as well as other parts of the state. She cannot accept the notion that eighth graders in Clark County are not ready for the book. Mr. McCorkle said that was the opinion of the curriculum director that it wasn't as appropriate because of the way it was written in Clark County. Ms. Buckley said she understands that but it doesn't sit well with her. Senator Townsend assured Ms. Buckley that there is no effort to create any disproportionate relationship between the north and the south relative to how it is distributed. She suggested that Mr. McCorkle and Senator Townsend could work with the appropriate people in the community partnership office or otherwise. If the program is going to be done, it should be done equally throughout the state.

The chair suggested to Mr. McCorkle that he should check on the new standards as he could see a change because it is now part of the core curriculum. Mr. Anderson clarified that the number of eighth grade students should be about equal to the number of twelfth grade students. Mr. McCorkle said that would require another 100 teachers to be covered which would be another \$25,000 to cover all the eighth grades in Clark County. If it is not enough, he is certain that the nonprofit company would just absorb the difference.

Senator Wiener inquired if Ms. Buckley's concern had been addressed. The chair said that the eighth grade students would have to be included and they would have to go in with the understanding that the estimate is \$60,000 but knowing that the cost would be \$85,000.

CHAIR O'CONNELL CALLED FOR A VOTE AND THE MOTION CARRIED WITH SENATORS O'CONNELL AND RHOADS VOTING NAY.

Senator Townsend expressed his appreciation to the commission members for their generosity and noted that he would be glad to work with Senator Titus on creating a program and perhaps getting some corporations to fund a trust fund of some kind that could be "tapped into."

Senator Townsend made some additional comments with regard to the Public Employees' Benefits Committee regulations which were discussed earlier and placed there for purposes of continuity.

**E. Setting of price of the Legislative Manual and Directory of State and Local Government--Robert E. Erickson, Research Director.**

Mr. Erickson said that the Research Division puts out two publications at the beginning of each session. The Legislative Manual comes in two different forms but he is speaking about the one that is bound in one volume. The portion which appears on blue paper is the Directory of State and Local Governments. The whole manual is \$18 and they are proposing that cost remain the same. He is proposing that the printed version of the directory be changed from \$5 a copy to \$7 a copy. He noted that many of the things are going on line through the LCB web page. After session, he may come back to the commission regarding the CD-Rom version because the division wants to continually update the directory.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE PRICES AS OUTLINED BY MR. ERICKSON. MOTION SECONDED BY SENATOR SCHNEIDER AND CARRIED.

**F. Approval of Presession Orientation Program--Robert E. Erickson, Research Director.**

Mr. Erickson called attention to the material contained in the meeting packet which has a tentative outline for the Presession Orientation Program. He said he wished to point out how it is different from previous programs. He would

like the commission's approval on the way it is structured keeping in mind that there are three new members this session all of whom are in the Assembly. He is not proposing that the subject matter covered be reduced in any way. One meeting would be held the afternoon of January 22, prior to the governor's State of the State Address. They are also proposing that the large legislative reception not be held this year but that a smaller reception be held in

Room 3100 prior to the State of the State Address. This would still allow the executive branch and others to meet the three new legislators. It is proposed that the remainder of the program be handled on the Thursday afternoon and the Friday morning immediately prior to the start of the session.

Mr. Anderson said, "As always, I think that this is a really great program. The only observation I would make is a note that the computer training module does not take place until February 2<sup>nd</sup>. It seems to me that needs to become an earlier kind of question. The sooner that they become familiar and comfortable with using that, the better off we all are. I think that is needed not just for the new freshman members but for those of us who have been here and need to be reminded, particularly since we will be moving to a new laptop with some new problems with it." Mr. Malkiewicz said that he thinks he and Mr. Erickson would agree completely. The proposed schedule is just a rough outline and they welcome any suggestions. He thinks that is an excellent idea especially since all the legislators will be coming to Carson City for the State of the State

Address. It would be a good time for any who have not yet received computer training or need some more training and familiarization with the laptops. It could be moved to the 22<sup>nd</sup>.

ASSEMBLYMAN ANDERSON MOVED TO APPROVE THE TENTATIVE OUTLINE WITH THE CHANGE PROPOSED. MOTION SECONDED BY ASSEMBLYWOMAN TIFFANY AND CARRIED.

#### **G. Proposal for electronic alternative to bill mailing service--Lorne J. Malkiewicz, Director.**

Mr. Malkiewicz said that with the Internet, the bill mailing service is becoming less and less economically viable. One of the things the LCB would like to do to reduce costs is give those persons who have free bill mailing service the option of instead getting the enhanced electronic service which would cost the LCB nothing to provide to them. There may be further changes proposed in the future but for now he just wants to see if people would be interested in doing this and thereby reduce the mailing costs.

SENATOR SCHNEIDER MOVED APPROVAL TO ACCOMMODATE THE PROPOSAL. MOTION SECONDED BY SENATOR RHOADS AND CARRIED.

## **Item V--Informational Items:**

### **A. Legislative Committee Reports.**

Copies of committee reports were contained in the meeting packet for informational purposes. There were no comments on this item.

### **B. Legislators' Travel Reports.**

Copies of legislators' travel reports were contained in the meeting packet for informational purposes. The chair commented on the brevity of Senator Washington's report.

### **C. Progress Reports:**

There were no comments from the members on the following two reports which were provided as informational items.

1. Quarterly Report by State of Nevada, Department of Business and Industry, Office for Hospital Patients.

2. Quarterly Report that assesses the developments in the electric industry in the State of Nevada by the Public Utilities Commission of Nevada, pursuant to Section 53 of Chapter 482, 1997 Statutes of Nevada.



## **Item VI--Public Comment:**

Knight Allen of Las Vegas identified himself as a private citizen. He is before the commission to speak about a situation which he believes is extremely serious and needs the focused attention of the commission now before the Legislature meets. He referred to NRS 125B.070, which is the child support maximum cap. Mr. Knight provided a handout of his detailed comments before the commission. A copy of the handout dated December 11, 2000, is attached as Exhibit M. Mr. Knight read from his prepared comments, thus they are not duplicated within this paragraph. He spoke on the history of the maximum cap, the need for an increase and encouraged the commission members to take responsibility for the passage of legislation increasing the cap. He requested comments from the members.

The chair inquired of Senator Wiener if any of the interim studies on which she served addressed the issue of the child support maximum cap. Senator Wiener said that the committees she was on focused on juvenile justice and school safety.

Mr. Anderson said that he served on interim studies dealing with child welfare and juvenile justice. He confirmed that the issue was one of the trying questions that came before the Assembly Judiciary committee in the previous session. He recalled that it was not the questions of child support payments that was the death of that particular legislation but rather other related questions having to do with divorce proceedings and other issues involved in the overall structure of family courts which had left the bill in a position that the majority of members did not feel that they could pass out of committee. He commented that it was a disappointment to many. Additionally, he said that he would not be surprised to see the legislation return again but it would probably have to come from an individual member rather than the commission. He appreciated Mr. Allen's continued support and admired him for his commitment to it.

Responding to the chair, Mr. Anderson confirmed that the issue was not addressed by either of the interim studies and did not come under the purview of either of those two studies. The figure is how much the judge is entitled to set on a maximum level if someone is in divorce proceedings. He acknowledged that Mr. Allen is correct in recognizing the inflationary factor.

Mr. Allen opined that probably what "hung it up" in 1997 were the changes that the Bar Association wanted to include. He said that in his conversations with the association, they feel strongly that the cap should be going up and they are determined to produce a "clean" bill so that the only subject that legislators will be dealing with is whether or not the children should see any increase that would match the inflation rate. Since no changes are being made in the percentage formula, no one that has not seen a "good, solid increase" in their standard of living over this period of time would be paying a higher support level. Someone who was making minimum wage in 1987 and is still making it today is not going to see an increase. Mr. Allen said that he has not been allowed to attend any Bar Association meetings. He reiterated his concern that the legislation would be lost in the attention focused on other matters such as reapportionment, tax problems and so forth and "these kids are going to go by the wayside again." In conclusion, he said, "Just for the record, I do not collect and I do not pay child support."

Senator Titus said that it is unusual for the commission to suggest a bill such a discussed by Mr. Allen. She did, however, indicate that it is appropriate for the Judiciary Committee to do so. She stated that she and Senator Porter sit on the Senate Judiciary Committee and suggested that Mr. Allen could get the Bar Association to submit the bill to Senator Mark A. James and he could do it as a committee introduction and she could commit that they would be sure that the bill is heard and given some full attention early in the session. Mr. Allen responded that the bill has historically gone to the Assembly. He said that he would be acting as a "middle man" but would be happy to make the suggestion to his contact at the Bar Association.

Senator Titus said that she wished to bring up a matter which did not make it on the agenda because it occurred late. In the last week or so, there has been a lot of news about a report from the Department of Energy which had notations that suggested that certain political positions should be taken. She said that Senator Harry Reid expressed opposition to it and said he was going to conduct a hearing and Governor Kenny C. Guinn expressed opposition and said he wanted to call a summit of leaders to look at it.

Senator Titus said that she was thinking that the Legislature should "weigh in" and also show its support for their actions and let the Department of Energy know that the Legislature does not appreciate this kind of behavior. She wanted to ask the members if they would be willing to send a letter to that effect to the appropriate body.

Mr. Malkiewich explained that a motion could not be taken because it is not on the agenda but suggested that as chair of the Legislative Commission, if she were so inclined, could send a letter worded carefully so that it was clear that the commission did not take the action but, as chair, she was writing to express opposition.

Senator Titus said she agreed with whatever was the appropriate way to address the matter.

Senator Porter asked, "Senator Titus, you are suggesting that we also be involved in that in some way, it's not just our dissatisfaction with what is happening but our involvement?" Senator Titus read excerpts from the various newspaper articles quoting a number of elected officials all of which expressed dissatisfaction with the situation.

Chair O'Connell commented, "Okay, so the letter can reflect the fact that the only reason this issue is not being voted on by the commission is because it is not on the agenda, however, there was discussion and it was the feeling from the commission that the Legislature should certainly be involved, and we can accommodate doing that, Senator Titus."

There being no further public comment, the meeting was adjourned.

Respectfully submitted,

Marilyn K. White

Executive Assistant

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Senator Ann O'Connell, Chair

Nevada Legislative Commission