Minutes of the

LEGISLATIVE COMMISSION

Nevada Legislative Counsel Bureau (LCB)
Legislative Building, Room 4100
Carson City, Nevada

May 24, 2004

The second meeting in 2004 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Monday, May 24, 2004, commencing at 1:45 p.m., in Room 4100 of the Legislative Building, Carson City, Nevada with a simultaneous video conference to Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada.

COMMISSION MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair (in Las Vegas)
Senator Ann O'Connell, Vice Chair (in Las Vegas)
Senator Terry Care (in Las Vegas), alternate for Senator Dina Titus
Senator Maggie Carlton (in Las Vegas)
Senator Mike McGinness (in Carson City)
Senator Valerie Wiener (in Las Vegas)
Assemblyman Bernie Anderson (in Carson City)
Assemblywoman Sharron Angle (in Carson City)
Assemblyman David Brown (in Las Vegas)
Assemblywoman Barbara E. Buckley (in Las Vegas)
Assemblyman John C. Carpenter (in Carson City)
Assemblyman William Horne (in Las Vegas), alternate for
Assemblyman Richard D. Perkins

COMMISSION MEMBERS ABSENT:

Senator Dina Titus
Assemblyman Richard D. Perkins

OTHER LEGISLATORS PRESENT:

Assemblywoman Vonne Chowning (in Las Vegas)

LCB STAFF PRESENT:

Lorne J. Malkiewich, Director (in Carson City)
Brenda J. Erdoes, Legislative Counsel (in Carson City)
Gary L. Ghiggeri, Fiscal Analyst (in Carson City)
Mark W. Stevens, Fiscal Analyst (in Carson City)
Paul V. Townsend, Legislative Auditor (in Carson City)
Donald O. Williams, Research Director (in Carson City)
Brian L. Davie, Legislative Services Officer (in Las Vegas)
Marilyn K. White, Executive Assistant (in Carson City)

The agenda is attached as Exhibit A. A packet containing materials for the meeting was provided to commission members and available to the public in attendance. Attendance records are attached as Exhibit B. The meeting was called to order by Chair Townsend who also announced that certain items would be taken out of agenda order to accommodate the schedules of individuals appearing before the commission. Discussion is placed in agenda order for purposes of continuity.

Item I--Approval of Minutes of Meetings Held October 30, December 3 and December 15, 2003--Senator Randolph J. Townsend, Chair.

SENATOR O'CONNELL MOVED APPROVAL OF THE MINUTES OF THE MEETINGS HELD OCTOBER 30, DECEMBER 3 AND DECEMBER 15, 2003. MOTION SECONDED BY ASSEMBLYMAN BROWN AND CARRIED UNANIMOUSLY.

The chair proceeded to agenda Item III. D.

Item II--Legislative Auditor:

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

Discussion on this item occurred at the conclusion of agenda Item III. E.

Mr. Townsend referred to material in the meeting packet which included a memorandum from the chair of the Audit Subcommittee summarizing three audits that were presented on February 19, 2004. The first was the Integrated Financial System (IFS) Controls audit, which is the IFS system that replaced the state's financial and human resources system at a cost of $50 million. This represented a significant shift in the way the state's control system operates. Previously, agencies just submitted their transactions to a central location at the Department of Administration. They were reviewed in a pre-audit and determined if they were appropriate transactions. Now, agencies have an opportunity to input the transactions directly on line and it is much more efficient. However, it does place a great deal more responsibility on the agencies. The audit examined whether appropriate controls were in place and being followed by the agencies. There was a positive outcome and it was concluded that the controls associated with IFS provided reasonable assurance that financial and payroll transactions were processed as intended. It was, however, noted that certain aspects of the control environment could be strengthened and those are noted in the packet material. The Department of Administration accepted all 10 recommendations that were made in the audit.

The second audit was of the Commission on Economic Development and it was found that the commission's system of internal control needs improvement to ensure activities are carried out in accordance with laws, regulations and policies. The commission did not use appropriate solicitation methods for three of the five contracts tested and the value of the contracts ranged from $10,000 to $494,000. Because the agency had other ongoing contracts with two of the contractors, and misunderstood sole source criteria for the third contract, the agency did not solicit bids and therefore contracts were awarded without competition. There were several other problems with contracts such as they did not have adequate insurance coverage, contracts were not in the state's name and properly approved, or in the proper form. The commission provided little control over two outside bank accounts for the Industry Appreciation Lunch program. The agency had spent $122,000 from the accounts; however, they did not retain basic accounting documents including a receipt log, receipt book, check registers or bank reconciliations. In fiscal year 2003, the responsibility for this program ended and the accounts were closed. The commission inappropriately balanced forward $75,000 over two fiscal years and this money should have reverted to the General Fund,

and also to the University and Community College System of Nevada and the Commission on Tourism. Fourteen recommendations were made and one of those involved requested training.

The last audit presented was of the Office of Veterans' Services. It was found that it frequently did not comply with state laws and regulations or its policies and procedures related to financial and administrative practices. It was noted that the office had not reconciled the wards' accounts to the state accounting system. Wards are veterans who have been judged to be incapable of handling their own financial affairs and, therefore, the Office of Veterans' Services has been appointed as a guardian. Auditors identified over $100,000 in errors had been posted to the wards' accounts during a period of July 2002 to March 2003. When the errors are corrected the state accounting system balance will actually be $38,000 in excess of the total wards' accounts balances. There is actually more money than there should be and the office is unsure of the source of the difference. Auditors worked closely with the office to try to determine the source. However, due to incomplete records, auditors were not able to determine the origin of the errors and they will have to work with the Attorney General's Office, the Treasurer and Controller to determine the proper disposition of the funds. When the finding was presented to the subcommittee, the chair indicated that the matter needed to be taken care of immediately. It could not wait for the 60-day plan or the six-month report. He instructed the LCB audit staff to work directly with the Office of Veterans' Services and that has been done. The office has hired a new accountant and the LCB auditors have worked closely with them and the accounts are balanced currently up through last month and auditors will continue to monitor the situation. There were a number of additional findings relating to financial administration and the office accepted all 13 recommendations.

The chair of the Audit Subcommittee recommends acceptance of the three audit reports.

ASSEMBLYMAN BROWN MOVED ACCEPTANCE OF THE AUDIT REPORTS. MOTION SECONDED BY SENATOR WIENER AND CARRIED UNANIMOUSLY.

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

Mr. Townsend referred to the meeting packet which contained a memorandum from the Audit Subcommittee on the six-month status reports and the chair recommends that the commission accept the report.

ASSEMBLYMAN ANDERSON MOVED ACCEPTANCE OF THE SIX-MONTH STATUS REPORT FROM THE AUDIT SUBCOMMITTEE. MOTION SECONDED BY ASSEMBLYMAN HORNE AND CARRIED UNANIMOUSLY.

C. Report on audit follow-up survey of other states--Paul V. Townsend, Legislative Auditor.

Mr. Townsend said that he participated in a survey with the National State Auditors Association and they found that Nevada has the best follow-up process in the country. He referred to material in the meeting packet containing a memorandum dated May 12, 2004, and the results of the Survey of States. He said that members can compare Nevada with the other states. Nevada is one of the few states that has legislative committee hearings during the audit follow-up process, and the legislature should be very proud of the amount of oversight provided for audit recommendations.

The chair directed attention to agenda Item III. I.

D. Report from Department of Administration concerning training of state agencies and enforcement of audit recommendations--John P. Comeaux, Director, Department of Administration.

This agenda item was discussed at the conclusion of agenda Item IV. A.

Bill Chisel, Chief of the Division of Internal Audits, Department of Administration, said that he is present to respond to the issue regarding training and enforcement of audit recommendations. A handout of a memorandum dated May 24, 2004, was provided and a copy is attached as Exhibit C.

Chair Townsend extended his apologies for the late handling of this item and his appreciation for Mr. Chisel's patience.

Mr. Chisel said that the Division of Internal Audits is composed of two areas – one which is performance based and the other which is financial. The performance-based area is addressed by the Internal Audit section which employs 12 auditors. They visit agencies and look at their programs and operations and recommend ways they can operate more efficiently and effectively. He gave an example where the section identified in one department where it could reduce its overtime and save millions of dollars a year. It has also identified with one agency where it could reduce its administrative costs and pass down more funding to needy families. The audits to date have identified ways agencies can save millions of dollars and also improve their programs. The other section looks at financial issues which involves reviewing internal controls over expenditures, revenues, accounts receivable, payroll and fixed assets. There are two sections within the division that look at that – one is Post Review that reports to the Board of Examiners and has five employees who review agencies' expenditures and ensure they are in compliance with state guidelines. They look at expenditures and such things as making sure there is segregation of duties and travel claims are properly signed. Last year, Post Review sampled from all executive branch agencies some expenditures and reported results to the Board of Examiners. This year, Post Review will go back and take a look at some of the higher risk agencies to follow up and expand its scope to look at more than just the expenditures. The division also has a group called Financial Management containing three employees to assist 150 state agencies. They visit and train the agencies, look at internal controls and provide suggestions on how to improve the controls. This section also provides assistance to agencies attempting to implement post review recommendations and the LCB Audit recommendations.

Further, Mr. Chisel said that regarding the training and enforcement of audit recommendations, the training is accomplished by the Financial Management group. They train fiscal managers every five years, any new fiscal managers and anyone requesting training. The training is customized to the requirements of the agency and audit recommendations are reviewed. This year, the group will train approximately 40 percent of the state agencies. With regard to enforcement of audit recommendations, there are two agencies which issue recommendations – the LCB Audit Division and the Division of Internal Audits. The Internal Audit section presents audits to an Executive Branch Audit Committee which consists of the constitutional officers and one outside Certified Public Accountant. Follow up is performed on the status of the recommendations six months after the committee meeting and then reports to the agency head and the audit committee on the status of the recommendations. Annually thereafter, follow up is done on any outstanding recommendations. The process has worked well and has resulted in 67 percent of the recommendations being fully implemented and the remaining being partially implemented or worked on. With regard to the LCB audit follow-up process, the Internal Audit section visits five months after the corrective action plan is issued and follows up to see what the agency's status is on the recommendations and reports to the LCB Audit Division through the Department of Administration. The section also performs follow up and assists the agencies implementing the recommendations. The section is currently working with the Veterans' Nursing Home and the Commission on Economic Development to implement some of the LCB audit recommendations.

Chair Townsend thanked Mr. Chisel for his presentation and noted that the legislature has traditionally had a problem with understanding the follow up and necessary training that goes along with it. He said he knows

the executive branch people are doing the best they can but if the legislature does not assist when it finds a problem then “shame on us, not on you.”

Senator Wiener asked for clarification if 67 percent of recommendations are fully implemented and 30 percent are partially implemented what happened to the remaining 3 percent. Mr. Chisel responded, “No action at this point.”

Responding to the chair, Mr. Malkiewich said that this agenda item was indicated as an “action item” in case the commission members wished to do something with it but he did not think a motion was necessary to just accept the report.

The chair directed attention to agenda Item III. E.

Item III--Progress Reports and Appointments:

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

Ms. Erdoes said she has five cases on which to update the commission members. The first one is Secretary of State v. Nevada Legislature. On April 2nd, the Attorney General filed a petition for writ of mandamus with the Supreme Court on behalf of the Secretary of State. The petition seeks a writ directing the Nevada Legislature to fulfill its constitutional obligations in compliance of the separation of powers clause and the qualifications clause. On April 5th, the Supreme Court ordered the legislature to file an answer. That was done on May 4th and, on May 10th, the court entered an order granting the Secretary of State ten days to reply and also scheduled oral arguments for May 27th. Staff is currently preparing for the oral arguments.

The second case is Guinn v. Nevada Legislature. It was also captioned at one point, Angle v. Guinn. She said that this is the state court version of the two-thirds case on which a decision was rendered by the Supreme Court on July 10, 2003. There was a rehearing and another decision on September 17, 2003. There was a writ of certiorari to the U.S. Supreme Court filed on January 20th and the Legal Division filed a response to that petition on February 20th and on March 22nd, the U.S. Supreme Court denied the petition for writ so this case is completely finished.

The third case is Amodei v. Nevada State Senate which was formerly captioned Angle v. Nevada Legislature. That is the federal court version of the two-thirds case. On
April 15, there were oral arguments at Stanford University and on May 12, the Ninth Circuit issued a memorandum order affirming the federal court’s dismissal of the case. The appellants in this case have until May 27 to seek a panel rehearing or rehearing of the full Ninth Circuit or they can chose instead before August 13 to file for another writ

of certiorari before the U.S. Supreme Court. She is just waiting to see what happens on this case. When the time lines run out, this case will also be finished.

The last two cases are the two Public Agency Compensation Trust (PACT) cases. One is v. Perry and the other is v. Hadlock. These are the two cases on which the commission asked the Legal Division to file amicus briefs. At the last meeting, the one for Perry had been filed but the one for Hadlock had not been ready for filing. That brief has now been filed. The next step will be for oral arguments to be scheduled and then a decision will be received from the court and those will be finished as well. The chair said a question had been asked about the essence of the two cases. Ms. Erdoes said the issue was the constitutionality of the presumptions in NRS 617.457. They are workers’ compensation statutes where the legislature passed a presumption of eligibility for benefits for certain police and firemen and the PACT group has challenged the

constitutionality and her division has filed an amicus brief to defend the constitutionality of those statutes.

The chair asked Ms. Erdoes to ensure that her entire staff knows how much the commission appreciates the work that has been done. He said counsel and her staff are doing a remarkable amount of work and the quality of the work speaks for itself and he appreciates all that has been done.

The chair directed attention to agenda Item IV. A.

B. Appointment of member to Commission on Ethics--Lorne J. Malkiewich, Director.

Discussion on this item was addressed at the conclusion of agenda Item IV. G.

Mr. Malkiewich explained that James Kosinski's term on the Commission on Ethics is expiring and he has requested to be reappointed. Material is contained in the meeting packet for this item.

ASSEMBLYMAN ANDERSON MOVED TO REAPPOINT JAMES KOSINSKI TO THE COMMISSION ON ETHICS. MOTION SECONDED BY SENATOR CARLTON AND CARRIED UNANIMOUSLY.

The chair returned to agenda Item III. A. for discussion.

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

This item was addressed at the conclusion of agenda Item III. D.

Mr. Malkiewich referred to material in the meeting packet for this item which was a memorandum from Ms. Domenici to him concerning appointments. He said there is one additional member being appointed and that is Donald Kirkwood who is being appointed by Senator Maurice Washington.

SENATOR O'CONNELL MOVED APPROVAL OF THE APPOINTMENT OF DONALD KIRKWOOD BY SENATOR WASHINGTON. MOTION SECONDED BY SENATOR WIENER AND CARRIED UNANIMOUSLY.

The chair asked Ms. Domenici to notify Mr. Kirkwood of his appointment.

Mr. Anderson said that he understands the appointments for the Forum are by senators but "it would be nice if the Assembly got to hear a little more about it from time to time and we need to go back and revisit that so that we do know that they are there so it is not just one house and not the other." The chair said that Mr. Anderson's point is well taken and he thinks the legislature should consider the better relationship for those senators who have assembly persons in the district. He recalled that it formerly was easier when they were co-terminus and now some have two assembly members and others have five. He agreed that it should be taken up at the next session where the assembly has equal "input" as the senate does.

Senator Wiener said that she thought the senators had to have agreement from the assembly members within their district. She said that she remembers contacting the assembly members in her district for her appointments. Thelma Clark said that the law says that senators are supposed to contact the assembly members in their district to discuss the matter before making their appointments. Ms. Clark said that she would like to change the law to say that the senators must appoint by December 1st or March when the legislature is in session.

The chair proceeded to agenda Item IV. H. to accommodate the schedule of the presenter.

D. Request from Nevada Silver Haired Legislative Forum for additional funding--Thelma Clark, Forum President.

This item was addressed after agenda Item I.

The chair referred to a letter dated May 14, 2004, in the meeting packet. The reason this request is not before the Interim Finance Committee is because it was not an appropriation. He asked Mr. Malkiewich to state, if the request is granted, how it will be funded so that commission members are fully aware of the options.

Mr. Malkiewich said that if the request is approved, it would be paid out of the Legislative Fund as part of the budget of the Legislative Commission. The chair asked that given the current status of that fund, does it put the commission in any jeopardy relative to any meetings necessary to continue with the commission's responsibilities.
Mr. Malkiewich responded that he did not think it would. The Legislative Commission budget is the one where the staff person that goes through September 15th was added and they are asking to extend through the session. That budget is within the Legislative Commission and there are other items within that budget, not just meetings of the Legislative Commission. Therefore, he believes there is enough money in the fund.

Ms. Clark referred to the letter in the meeting packet which requests funding from the Legislative Commission for travel, per diem and salary for staff for the Forum.
Ms. Clark said that the Forum is the only senior group in the State of Nevada that has statutory authority and was created by the legislature to identify and act upon issues about senior citizens' needs. The lack of funds have kept the group from fulfilling its role in the communities in Nevada at the legislature the last three sessions. The Forum is mandated to have meetings in three different areas of the state and that takes money because there are 26 members. Additionally, a report is to be completed and provided for legislative action at the next session. She said that the report is required by July 1, 2004. Further, she said that NRS 427A.380 was amended during the last regular legislative session through the passage of Assembly Bill 349 which revises provisions concerning the Forum including expanding the ability of the Forum to have public hearings when it sees a need during the legislative session. Some of the members could not attend the Forum if it did not pay the per diem and the travel, especially the travel because there are members from all over the state. In order to accomplish its mandates, the Forum is requesting $20,000 for the Forum's travel budget and it is requesting to retain the staff person through the 2005 legislative session. The group needs someone to track all the bills and notify members of the hearings because none of the members can stay in Carson City to track all the bills. The group will have a committee meeting in Las Vegas to decide whether it will support a bill. Meeting notices and minutes will also be needed for the meetings of the following subcommittees appointed by the Forum: Human Resources, Commerce and Labor and Transportation. Staff would be needed to call members the day the hearings are scheduled so the committees can meet and decide which bills to support. In order to do this, the Forum is requesting $27,500 for the staff position. Ms. Clark thanked the members for their consideration of the request. She noted that very few donations have been received. She commented that there are some vacancies in the membership and requested assistance in urging senators who have not made their appointments to do so. Contained in the handout are an overview and time line, travel itemizations, travel projections and salary projections for the staff person.

The full text of Ms. Clark's remarks and handout materials are attached as Exhibit D.

Senator O'Connell referred to the sentence that stated, "The travel projections are based on two members traveling three days a week from February 2005 through June 2005." She asked if that refers to traveling to the legislature. Ms. Clark responded that it is for going to Carson City and back to their homes. She noted

that last session there were 53 senior bills before the legislature. Meetings should be held to determine whether the Forum should support them because they do not wish to support “bad” bills.

Further, Senator O’Connell inquired if the group thought about sending electronic mail (e-mail) to legislators instead of traveling to Carson City to let them know their opinions. Ms. Clark said that she is not very successful when attending a meeting where part of the committee is in one location and the rest in another location. She also did not think e-mail is very successful.

Senator O’Connell asked if the $27,500 for support staff is broken down into hours. Lona Domenici, Research Analyst/Secretary, responded that there is a breakout in the handout under salary projections.

Chair Townsend inquired if this amount is a supplement. Ms. Domenici explained that the original contract was through December 2004. She said that Ms. Clark has requested that the position be extended through June 2005 to assist with the session. She confirmed that the request is to add an additional one-half year to the position.

The chair explained to the members that the request is for an additional one-half year of Ms. Domenici’s time to extend her responsibilities to the Forum through the end of the legislative session. He said that is more definable and easier to understand than the $20,000. He asked for clarification on the request for travel and if it means two members traveling to Carson City for three days per week. Ms. Clark responded in the affirmative. Mr. Malkiewich concurred.

Chair Townsend said that there are two questions and Senator O’Connell touched on one of them. He said, “You are currently sitting in a room that we constructed for southern Nevadans to be able to communicate with the legislature directly so that they didn’t have to travel and go to Reno and have to rent a car and come back to
Carson City, which is an all-day practice as you are well aware. Did that come up in your discussions – that maybe a northern Nevada member would be physically there and a southern Nevada member could be here testifying on these bills that you have.”
Ms. Clark responded that of their northern Nevada members, one lives in Fallon and one in Elko and she did not know where the other two lived. The chair noted that the member he nominated lives in Incline Village. She noted that another member lives in Carson City but most of the time is in Las Vegas.

Senator O’Connell noted that two senators who have not nominated members are in the northern part of the state. She wondered if their appointment could help with some of the attendance. She also requested an explanation of the salary request, inquiring if it is a full time job. Ms. Domenici explained that it is a full time position and it requires her to be in attendance at the meetings of the forum. She is in a dual position in that she not only does the Research Analyst position but also the Secretary position. This is the structure currently in place. When the Research Division handled this in prior session, they calculated that it took about one and one-quarter people to do the work she is currently doing. Senator O’Connell inquired if the work was narrowed to only the Forum or does she do work outside that responsibility. Ms. Domenici responded that she only does work for the Forum.

Senator O’Connell asked if the issues of the Forum any different than those of the AARP. Ms. Clark replied that a lot of the issues are different. She said that the AARP has specifications “in a big book” that they can only support certain things. It is a national priority with them. She stated, “They have this big book with the priorities in it and they can’t testify on anything that isn’t in that book.” Senator O’Connell commented, “So everything is narrowed to national issues rather than local issues.”
Ms. Clark responded in the affirmative. Ms. Clark said, “We’re strictly Nevada issues.”

Senator McGinness commented that Ms. Clark said that the legislation had to be in by the first of July, but meetings are projected for July, September, November, January and February. He wondered what would be covered during those meetings after the legislation has been requested. Ms. Clark responded, “We need to, we haven’t done it in the past but we need to, meet and keep everybody on the Legislative Commission informed on what bills are in and we need to meet to decide whether the majority want to support a bill or reject a bill. We need to meet after June to get ready for the next session. We didn’t have time this year. We didn’t have time to bring in different people to do some testimony on what was needed for seniors. We only had time to review a few things. We had two or three people at every hearing from February through July. We can’t have a meeting in July because our bills have to be in July 1st. February, March, April, May and June is all we have and we can’t hear anybody’s problems in June because we have to spend that time getting our legislation ready, if any.”

Further, Senator McGinness asked about the three days a week February through June noting that if the commission approved the request, “we would be approving an appropriation to have you lobby us on bills. So we would be paying to have ourselves lobbied, basically, is the focus on it.” Ms. Clark said that the Forum was created to bring the issues to the legislature. Senator McGinness asked if the lobbying efforts would be limited to only those bills that are promulgated by the Forum. Ms. Clark responded, “Yes.”

Senator Wiener questioned the time of February through June 2005, noting that the legislature is finished by the first part of June and asked if the rest of the month is factored into the $20,000. Ms. Clark said that the Forum needs to have a meeting every month to keep the people interested, to keep everybody together and to have hearings. She has tried to have each person appointed have a separate hearing in the appointing senator’s district but they did not want to do that. Therefore, they will have to ask people to testify before them on the needs of seniors which is why they need to have a meeting every month. She commented that at the meeting the previous month, the members all wanted to go home at noon. If the members want to leave at noon, they don’t get much done in the morning. Ms. Clark said she is going to bring forward some rules for the conduct of the meetings.

Chair Townsend inquired what is the last cut-off date for making a determination regarding the staff position. Mr. Malkiewich replied, “By the end of the year. Her position goes through December and she’ll be on here until then anyway.” He said that he wished to provide more background and noted that this is an area where there have been funding concerns for a while. A few sessions ago, the statute was changed to provide that the Forum would have services provided to them by the LCB but did not add any staff. As a result, the Research Division covered the Forum during the last interim with several researchers and secretaries handling the Forum. During this interim, since it was determined that there was not a reduction in the number of studies that the Research Division needed to work on, it was thought to just put in an appropriation for the staff position into the Legislative Commission so the support would be there. However, the appropriation just goes through December 2004 and does not include money for travel for the Forum and that is why it is in a position where there is not enough to cover travel expenses and if it is desired that the position continue past December, the commission needs to extend it.

Mr. Anderson recalled than when the Forum was first dealt with, there was concern how it was going to interplay and this was an opportunity for senior citizens to have a voice prior to the legislative session on their particular set of issues. He can see that staff position as being necessary. He inquired if it is possible to have the Forum be funded for an every other month meeting and he sees the point that Senator McGinness was making that the meetings in September and October might not be necessary but since they will already have the bill drafts in and it is unknown what the bills will look like since they are not yet published and in circulation. He said they don’t know what the issues are going to be because “the rest of us don’t know what the issues are going to be.” He questioned if it would be possible to fund the position through the second month of the session, in March, so that they have an opportunity to appear before the finance committees to take up as a regular budget question rather than through this circuitous route. He asked, “Can we fund this in

a reduced fashion and for a shorter period of time?" Mr. Malkiewich said that it can be funded for a shorter period of time. He thought the reason Ms. Clark is asking for funding is so that they can make plans for future meetings but if the commission wants to provide funding for a shorter period and have them return at a future meeting, that is an option.

Chair Townsend said that the $20,000 for Forum travel expenditures for the legislative session need not be acted upon this day. He thinks the commission members might like to have a higher comfort level with the issues on whether something can be done from the Las Vegas location and can the vacancies from northern Nevada be filled. He said he would speak to his representative from Incline Village to see how many days she could be in Carson City. Perhaps things could be resolved to give a more definitive figure to the travel expenditures. He said that second issue has already been articulated and that is the July 1st date for the bill drafts. He said not to let that date get in the way of the work because there are many bill drafts available and one could certainly get in the process. He thought it was more important for the Forum to develop its work and not worry about a time line. "We can get the bills in for you. I would rather make sure you meet and address your issues than actually worry about a time line because if you do submit a bill and you are only getting so many people coming to meetings and you might lose some, it is best to put that date off to a later one. With regard to the staff support, because we deal with the legislative director and the entire counsel bureau, the question would be is Ms. Domenici's position assigned directly to the Forum or is she assigned to the counsel bureau and then you assign her to the Forum." Mr. Malkiewich responded that it is a matter of semantics. The position is within the LCB. She is an employee of the LCB but the position was funded specifically for the purpose of providing staff services to the Forum. All she does is provide secretarial and professional services to the Forum but technically it is within the budget of the LCB.

The chair suggested that since the position is not in jeopardy of having the funding "cut off" until December that the decision also be extended to the next meeting. He said that unless the other commission members are ready to act on the request, he thought a couple of things need to be cleared up. He thinks the July 1 date is not relevant because the bill drafts can be obtained through other means. Additionally, he thinks that there should be dialogue among the Forum members as to who can and cannot be at the session from the northern part of the state and who can and cannot be at the video conference location in southern Nevada. He said that everyone is trying to be sensitive to the expenditure issues. He thought many of the commission members were caught "off guard" with this item. However, he said that the Forum's mission is not going to change if the Legislative Commission does not act on this item this day. Members who have individuals appointed to the Forum will have an opportunity to discuss this with them prior to another meeting. The Legislative Commission has already been stretched because a lot of meetings were called at the beginning of the interim to deal with sensitive regulatory issues and he wants to be prudent. Ms. Clark said that the Forum will have meetings in July, August, September and the rest of the year as far as they can to have more individuals come before it and relate some of the problems. "As of now, we have very few things that we have really come to grab on and we have to decide on June 8th, whether we have a bill or whether we don't. Some of these things that we have already heard that some seniors need may not be able to be put into law."

Senator Wiener noted that each of the Forum members is appointed by a senator and they have a relationship with the people they appoint. As a supplemental comment to that of the chairman, if the deadline were not met, there is an extraordinary asset in the tie that the Forum member has to the senator who is elected to this body. The senator could introduce a bill individually as a bill at the request of the Forum or include it in the legislator's efforts to bring the bill to a committee. She reiterated that there are many ways to accomplish the request if a deadline is missed and the Forum is still seeking out issues to bring forward. She said that it does not die because of the statutory deadline for a bill draft request. She encouraged the Forum members to work "one on one" with their appointing member because that alliance is strong.

The chair suggested that a Forum meeting be held in late November at a convenient time to interview any of

the newly elected individuals with whom you are not familiar so they can be briefed as well as “seated” members. Ms. Clark said that has been her policy for the last three sessions. She also noted that the Forum is required to meet in three different locations and so they held a meeting at the Truckee Meadows College in Reno and the sound system was “terrible.” She could not hear anyone in Las Vegas and they could not hear her in Reno so they did not get much done.

Chair Townsend said that this item would be held for another meeting. He proceeded to agenda Item III. C.

E. Appointment of Legislative Counsel Bureau Biennial Budget Review Committee--Lorne J. Malkiewich, Director.

The agenda item was addressed upon the completion of the discussion of agenda Item II. D.

The chair indicated that the Legislative Counsel Bureau Biennial Budget Review Committee has traditionally consisted of the chairs of the two “money” committees, the chair of the Legislative Commission and members of leadership. During this interim, the chair position would rotate to the chair of the Assembly Ways and Means Committee. The proposed membership is contained in the meeting packet.

> ASSEMBLYMAN ANDERSON MOVED TO APPOINT SENATORS O’CONNELL, RAGGIO, TITUS AND TOWNSEND AND ASSEMBLY MEMBERS ARBERRY, BUCKLEY, HETTRICK AND PERKINS TO THE LEGISLATIVE COUNSEL BUREAU BIENNIAL BUDGET REVIEW COMMITTEE WITH ASSEMBLYMAN ARBERRY SERVING AS CHAIR. MOTION SECONDED BY SENATOR CARLTON AND CARRIED UNANIMOUSLY.

The chair proceeded to agenda Item II. A.

F. Report by Nevada State Board of Medical Examiners concerning issues raised by audit of board and implementation of new legislation--Lorne J. Malkiewich, Director.

Mr. Malkiewich recalled that at the last commission meeting, some questions came up concerning the Nevada State Board of Medical Examiners and the commission asked him to invite the board to appear at this meeting to address those issues which were the implementation of legislation from the past session, the reaction to the audit and the reaction to the comments made concerning the audit by the Clark County Medical Society.

Cheryl Hug-English, M. D., President of the Nevada State Board of Medical Examiners said that she is present to answer any questions the commission members may have of them. A letter dated May 19, 2004, (copy attached as Exhibit E) was submitted which gave an updated version of what has currently been implemented and the status of where the board is on some of the other issues that have not been implemented but will be reviewed at the next board meeting. She said that she is happy to address specific questions or go through the items step by step.

At the chair’s request, Dr. Hug-English proceeded to highlight the progress made in implementing statutory changes made during the past legislative session. She said they include one of the things in Assembly Bill 349 which was to adopt a regulation which encouraged physicians getting Continuing Medical Education (CME) credits in gerontology. The board has handled that issue by providing double credit up to 8 hours of the required CME hours for courses done in gerontology. With regard to Senate
Bill 387, the request was that information be on the website about manufacturers of drugs and the information required by statute is posted currently along with the phone number of the Office of the Inspector General. With respect to Senate Bill 332, the request that there be a waiver of certain licensure requirements if there was a need declared by the governor. She thought this issue has been taken care of by changing

some of the regulations. Specifically, it used to be stated that if you had not taken a general exam within the past 10 years, new licensees had to take the Special Purpose Examination (SPEX). The board has now put in place additional criteria that can be met for new licensees. The SPEX exam was the thing most onerous to new licensees. As an example, if one was a practicing psychiatrist and had been certified in psychiatry to go back and review for a general medicine exam, which the SPEX is, was not very popular. Now, what the board has done is say the SPEX is one option but in addition it will accept current board certification or re-certification in their specialty or subspecialty or they can submit to a peer review by persons in their own specialty. The board has taken away the situations that would require waiver of certain licensure requirements. It has been quite successful.

Continuing, Dr. Hug-English said with respect to Senate Bill 250, the board has started to videoconference all its meetings to Las Vegas. Feedback has been received from licensees as well as medical societies that this has certainly met their need of more visibility and more communication with the board. Also, the board has set up an additional investigative committee due to the fact that the board has an increase in case files. The board has opted to have two investigative committees of the board rather than one. In addition, the website has been updated and is thought to be much more user friendly. There is an alphabetical listing of all licensees who have received discipline from the board. All of the board's forms including applications for licensure or
re-licensure are available, as well as minutes from the last board meeting.

Dr. Hug-English commented regarding the issues from the audit that came forward noting that the audit report recommended implementing a system to assign cases that were of high, medium and low priority and the board has done so. With regard to staff review of complaints, a system is in place with the new executive secretary, new attorney and additional staff hired by the board whereby they are meeting weekly to discuss cases, case loads and priority of investigations. Relative to communication with complainants, a system has been instituted so that the complainant is notified and contacted. Every 45 days and no more than 60 days, the complainant is updated as to where the investigation is currently. If there is a hearing conducted with the investigation, the complainant is invited to attend the hearing. The board has also made an effort to contact all the hospitals and develop a better and personal relationship and open line of communication with them as well as with all the medical societies. The board has consolidated its system of investigations so that any investigation involving one licensee is not duplicated. There was a recommendation of the audit that the board consider not reviewing all court records of malpractice cases. The board, however, feels that it needs to continue to review them so that there is not anything that "falls through the cracks." There have been past instances over the years where things have "fallen through the cracks" or were not brought to the board's attention in a timely fashion. The board is a little leery to let that go. While it does take additional staff time, the board feels that it is worth it to ensure it is keeping updated on every malpractice case.

There were additional recommendations in a "white paper" from the Clark County Medical Society, Dr. Hug-English noted, which the commission members also previously received. Some of the issues, while the board has not taken action specifically, are similar to those previously discussed in that they have been implemented. She said that it needs to be stated that the board needs to be careful in that the Clark County Medical Society and all the medical societies are societies based on the physician licensees. This situation sometimes puts the board a bit at odds because the board's job is to regulate and license. The board needs to be careful to not simply adopt the recommendations on behalf of the physicians but to look at them carefully. One of the things that the medical society said is that the law does not limit the board in disciplining if crimes of moral turpitude have been committed. The board's position is that the last legislative session changes make it extremely difficult, impossible even, to discipline a physician based upon crimes of moral turpitude that do not affect the practice of medicine. In essence, if there is sexual abuse or incest or cases such as that, it would not allow the board to act if it was not affecting the practice of medicine. The board would like the legislature in the next session to "take another look" at that because it really limits the board's ability to go forward on those kinds of cases. The board has already addressed some of the issues of how it

has dealt with them and better relationship with the hospital staff as well as the medical societies. The Clark County Medical Society makes mention that the board fails to post financial information and that is incorrect. That information is reported and is contained on the website. The society made a recommendation that the board have the authority to issue letters of concern or letters of warning. The way that this was drafted in the last legislative session makes it very difficult to act on that because the only way those letters of concern would go out would be through the investigative committee, not through the board. If it went out through the board, it would limit its ability to adjudicate that case if it later came before the full board. If that is the legislature's intent, the language needs to be clarified that it would be the investigative committee. However, the board does have concerns that if it were to implement that, it might create problems for the physician if it really is designed to be just a letter of warning and not a disciplinary action because hospitals are now asking licensees/physicians whether they have received any letters of concern. There is some concern on behalf of the board that perhaps if it went to that kind of letter of concern, how that would be utilized and the penalties that it might impose on that physician.

Mr. Anderson said that he looked through the letter from Dr. Hug-English and he felt that it answered many of the concerns that were raised. He said that his concern rests with the two potential bill drafts the board is thinking of requesting. He asked if the board is appearing before a committee and does it have an available means of obtaining the bill drafts or is it going through the governor's office to bring the drafts about. Tony Clark, Executive Secretary, Nevada State Board of Medical Examiners, said that the board would be going through a legislator.

Mr. Anderson said that he appreciates the response of the board with the communications in particular. He said that recently there has been a great deal of correspondence from White Pine County but he has also heard from a person in
Clark County who also had a medical problem but it was submitted through Medicare and not from the individual. He noticed in the letter the procedures regarding communication with the complainant every 45 days and trying to "keep people in the loop." He greatly appreciates knowing that procedure. He asked how the board would deal with the individual complainant where there is a Medicare question and an agency of government that may have made a complaint to the board as compared to the individual who is harmed and how is the agency made aware. Dr. Hug-English replied if the complaint comes from Medicare or from an insurance company rather than an individual, the feedback would go to that agency but the concerns that have been raised up to this point have been from individuals that felt that they did not get feedback from the board in a timely manner as to what was the status of their complaint. She requested Mr. Clark to address this question further, noting that she did not think there have been many complaints that dealt with agencies such as insurance companies or Medicare not receiving feedback.

Mr. Clark said that situation would provide a problem because the board is responding to a complainant and the complainant in Mr. Anderson's scenario would be Medicare or a hospital or an organization. The board would anticipate that the organization would communicate with its patient and let that patient know what is going on. If the matter progressed to a formal complaint and a hearing and the person who was injured wished to testify, the general counsel would communicate with that person because an investigator would have spoken to him or her to obtain a statement. That testimony would probably then be utilized at the formal hearing.

Further, Mr. Anderson said that since this person might find out, having been informed by their insurance company or whomever, that there is a potential problem in the medical protocol being followed and, therefore, they have submitted a complaint to the board, would they then be obligated to in order to keep themselves "in the loop" have to file a secondary complaint on their own and then would the board not get back to the same scenario that the computer would then fold the complaints into one investigation and that is the only way the person would be able to know what is going on in his case. Mr. Clark replied, "Once the

investigator had spoken with the individual to obtain a statement so that we have the background information that the board needs to act, that person would be advised as to the time of the hearing and they could come forward and attend the hearing if they desired to and if general counsel felt that he needed the testimony before the hearing officer of the individual then that testimony would be requested and the person would have an opportunity to testify. There would not be two complaints against the same licensee. All of those complaints would be formulated into one file so that you would have the Medicare complaint, the hospital complaint and the complaint by the individual patient in the same case file."

Senator Care inquired about the board's response to issues raised by the audit of the Federation of State Medical Boards, item 2 of the letter, noting that he had two questions. He noted that in subparagraph h, it says the Investigations Division has consolidated all malpractice complaints. He noted that the complaints and judgements would be public information and settlement agreements if not filed with the court would not be. He wondered if the public has access to that consolidated information through that division. He wondered if there was anything that would allow the public, given the topical nature of the subject that people could quickly determine how many such cases there are and who the doctors are. Along with that, he inquired why it was that the Federation recommended the board not investigate or stop reviewing court records. He said he agreed with the board that it should continue to perform that review.
Dr. Hug-English said that she thought the reason the Federation had that recommendation was purely manpower hours and the amount of time it takes. She said the board was not aware that the cases in the courts are not itemized into categories so that it is not very easy to determine which ones are malpractice cases. It involves sending someone to go through case by case all the cases for a month and then pull out those that might be malpractice cases. She thought the Federation felt that was fairly inefficient and in other states it is done differently and the cases coming out of the courts are more easily identified to a board. She reiterated that the Nevada board feels strongly that it should continue the procedure of review. She requested Mr. Clark to address the second part of the senator's questions.

Mr. Clark explained that when a complaint has been filed, there has been no discovery and it is difficult to determine whether there is validity to the complaint. The Federation felt that the board should wait until the case got further along and there was either a judgement or settlement or something of that nature so that the case could proceed on that basis rather than the mere filing of a complaint itself. Further responding to Senator Care's question about the consolidated information being retrievable on a website by the general public, Mr. Clark said that it is as long as the case has proceeded to a formal complaint being filed. If it is a matter that is still under investigation by statute that is information that is confidential and it is not placed on the website. Once the matter gets to a formal complaint having been filed against a licensee, that is placed on the website and available to the general public.

There were no additional questions of Dr. Hug-English or Mr. Clark. The chair thanked them for their appearance before the commission.

The chair proceeded to agenda Item III. H.

G. Appointment of Subcommittee to Review Various Issues Relating to the University and Community College System of Nevada--Senator Randolph J. Townsend, Chair.

Discussion of this agenda item took place at the conclusion of a portion of agenda Item IV. A. relating to the Nevada State Board of Pharmacy.

The chair stated that this item was placed on the agenda at his request as a result of the seriousness of an issue regarding the Open Meeting Law and the University and Community College System of Nevada (UCCSN). He said there seem to be some very, very serious legal challenges facing the Board of Regents, its counsel, the new chancellor and individuals seeking to be elected to the Board of Regents. He

recommended that the Legislative Commission retain jurisdiction over the question of the Open Meeting Law for every single agency of state government to ensure that there is no misunderstanding of what it is and how it is implemented. There seems to be some grave misunderstanding by a number of organizations. Simultaneously, a subcommittee composed of legislative members of the Committee to Evaluate Higher Education Programs would be formed to review the Open Meeting Law relative to the UCCSN. He identified the legislative members as Senator Hardy as chair, Senators Care and Cegavske and Assemblymen Conklin, Marvel and Oceguera. The subcommittee could review the matter and all misunderstandings about the Open Meeting Law and report to the Legislative Commission.

The chair invited Senator Care to comment as he is a member of the Committee to Evaluate Higher Education Programs. Senator Care mentioned that Dr. Ronald Remington has filed a lawsuit against the Board of Regents and the Chancellor of the UCCSN. The senator has disclosed at a previous meeting that one of the people implicated in the litigation had sought consultation from one of Senator Care's partners. He said that if the subcommittee would be reviewing the termination and the issues involving that, then he should probably not be named as a subcommittee member. However, if the issue is going to be the Open Meeting Law, he would be willing to serve and he was certain that the other members would also be willing to serve. Additionally, he noted that he has requested a bill draft concerning the status of a position hired by an elected body or person, for example a university president who is hired by a Board of Regents, is a public position to the extent that there is no expectation of privacy. He opined that the doors should remain open when the person's job performance is being evaluated by a public body. He said such a situation would also apply to an undersheriff position. He thought that might solve many problems. There should be no expectation of privacy if someone accepts such a position. He concluded by stating that he agreed with the chair.

Chair Townsend reiterated his recommendation that the six legislative members of the Committee to Evaluate Higher Education Programs be appointed as a subcommittee to review the issue and report to the commission its findings and recommendations which may include proposed legislation.

Mr. Anderson said that he has no objection to a subcommittee and noted that there have been several objections in the past relative to the Open Meeting Law and he appreciates the people serving on the committee and their expertise and he is sure the matter will receive a fair hearing. He said he is envious and would like to be on the subcommittee as he has concerns in the area of the Open Meeting Law and how it is being interpreted on a regular basis. The chair said that he and Mr. Anderson could attend the meeting together and listen to the discussion.

The chair said that he has attended many meetings of the Board of Regents and he will advise them that they are to take up the topic. The Open Meeting Law will be brought to a future commission meeting as he is concerned that there seems to be inconsistent legal counsel to various agencies about the Open Meeting Law. He said as many people know, consistency is an important part of the law.

> SENATOR CARLTON MOVED TO SEND A LETTER TO THE COMMITTEE TO EVALUATE HIGHER EDUCATION PROGRAMS TO APPOINT A SUBCOMMITTEE CONSISTING OF THE LEGISLATIVE MEMBERS TO TAKE UP THE TOPIC OF THE OPEN MEETING LAW. MOTION SECONDED BY SENATOR WIENER.

Under discussion of the motion, Mr. Malkiewich advised that the legislation creating the Committee to Evaluate Higher Education Programs has limited direction to the committee on the issues it can take up which may not include this issue. He suggested creating a subcommittee of the Legislative Commission that happens to consist of those members, then the commission can give it that authority. That way, there could be no question both of the scope of their authority and their ability to pay for the meeting because it would simply be a subcommittee of the commission.

THE MOTION WAS AMENDED BASED UPON DISCUSSION TO APPOINT THE LEGISLATIVE MEMBERS AS A SUBCOMMITTEE OF THE LEGISLATIVE COMMISSION. A VOTE WAS TAKEN AND THE MOTION CARRIED.

The chair proceeded to address agenda Item IV. B.

H. Report on implementation of regulation concerning option of group to leave Public Employees' Benefit Program--Gary H. Wolff, Opt-Out Group.

Gary Wolff, representative of International Brotherhood of Teamsters 14, who represent the Nevada Highway Patrol Association (NHPA), State Peace Officers Council (SPOC) and some other state employees. Mr. Wolff introduced the NHPA and SPOC counsel, Walter R. (Wally) Tarantino. He also introduced Ron Cuzze, President of SPOC, and Adam Segal, the attorney who drafted the regulations, who were attending the meeting in Las Vegas. Mr. Wolff referred to his letter dated May 12, 2004, contained in the meeting packet. He proceeded to give a brief history on the subject. In 1999, Senator O'Connell introduced Senate Bill 316. The bill stated that under certain provisions, groups of 300 could opt-out of the state medical plan. The bill became part of
Senate Bill 544 under a master plan bill that created the new Public Employees' Benefit Program (PEBP). Other than the word "committee" in Senator O'Connell's bill which was changed to "board," the bill was basically intact in S.B. 544. He stated, "Since that time, the troopers, the law enforcement community that's under our representation have been denied the opportunity to leave. For three years, the PEBP Board dragged its feet until under obvious frustration the Nevada State Senate on the third attempt passed Concurrent Resolution No. 40 that declared the board's regulations should not become effective in order to prevent the adoption of regulations that effectively erased the
opt-out law from the books. In other words, three times they came before the commission and three times they were denied with their regulations because they were so restrictive that it would have been impossible for this group to leave. After that, we went on for about another year and we had to file a lawsuit in district court that finally brought everybody back to the table. The teamsters, Adam Segal mainly, adopted the regulations. Those regulations took nine months further to be adopted by the PEBP Board and finally it was adopted. Everybody agreed to the regulations. Since that time, we presented our package for the opt-out group to leave. Here is the funny thing about this – when we presented it, when we brought up the proposal to opt-out, the PEBP Board again got real creative. First of all, they wanted their own consultant to do a study. We agreed to that. So what happened – the law says as long as we don't impact the system by five percent or more, that we're supposed to be consideration to get out. Well, AON came back and said the group is so small that, in fact, it impacts the PEBP at about one half of one percent. Then, the PEBP Board really didn't care for that so then they started getting real creative. They invented a $700,000 cost to PEBP and then they said that an independent study showed them that we would have a significant impact if we leave. This isn't even close to what AON said. Considering at that particular time that PEBP has an $11 million surplus in the bank, the $36 a year to each employee didn't even make any sense. Why would you charge people $36 a year when you have an $11 million surplus. Since that time, I believe it's grown to darn near
$30 million in surplus and that surplus is not being handed on to the employee. I guess I'm here on behalf of these troopers and everybody else to ask you why do we have to go through the legislative process. We pass a law that's beneficial to your troopers – incidentally, Mr. Chairman, and I know this is close to your heart, we are 51 troopers down in this state again. We lose them as fast as we bring them in the front door to Clark County. This opt-out program was a benefit program that could help retain these troopers at no cost to the state. It doesn't impact PEBP. It doesn't impact the rest of the people in the program. It makes no sense what's going on here. Now, to add insult to injury, since this time now the Board has voted to repeal the law. After six years of doing nothing, forcing us to pay tens of thousands of dollars in courts under a law that they should have done by law – the regulations, we had to sue to do that – that was rightfully ours. So I guess the

question we ask the legislature is, you pass a law out here – and as you know I was in the law enforcement field for over 30 years – you pass laws and I enforce them. What part do these committees and boards that seem to thumb their nose at regulations or legislation that you put out – why are we wasting our time – this isn't fair. This bill was a very hard fought bill. It was a very critical time in the state – we were $26 million dollars in the red from the old Committee on Benefits. You eliminated that, you created a new Board and this Board was supposed to do the right thing. Since that time, this has been a nightmare and a frustration to our members and this is a benefit you could give these people. Some of these people could get pay raises and not cost you a dime. I'm asking for some help here. Send a message to these people that they are obligated to obey the law just like every other citizen is. That's about all I have and I am open to questions. Wally Tarantino is here and
Adam Segal who wrote the regulations is much more technically efficient on this than
I am. Thank you."

Senator Carlton said that this issue has been going on as long as she has been serving in the legislature and it has piqued her curiosity again. She asked, "Mr. Wolff, you said there was going to be a $700,000 cost impact. Do you know how the board came up with that number and what was included?" Mr. Wolff responded, "I really don't know. If Adam Segal would step up to the table, he could answer your question. This is some fabrication they came up with. They claim, by a study they did, and we don't know because AON never said anything to the tune of $700,000 and besides that, under PERS, they absorb anything under five percent and that's exactly what this bill was drafted in the beginning. We know you supported this legislation in the beginning because it seemed to be the right thing to do under the circumstances. This is insignificant, even if this $700,000 was true, the surplus they had in the system would easily absorb this." He deferred to Mr. Segal or Mr. Tarantino.

Mr. Tarantino said that he believed that the $700,000 figure, it was not that PEBP would be losing the money, that it would be $700,000 less, but it was a reflection that if the opt-out group of employees were to leave, that was the state subsidy that they would take with them in order to pay for their insurance through a private insurance carrier. He said what is also critical to consider is that even taking the $700,000 figure into consideration is that AON that performed the survey for PEBP, the statute said that the opt-out group could not negatively impact the rest of the state program by five percent or more. If it did, PEBP could reject the application. With the $700,000, AON's report was that it would have a negative impact of one half of one percent on the remaining members. He thought that was more important to consider in view of the statutory framework than the $700,000.

Senator Carlton recalled an earlier remark that there was a surplus. She said that she was under the impression that some of the surplus money was "reserves" that had to be set aside. She requested clarification of the number and if it truly was a surplus.
Mr. Segal said that he is the attorney for the teamsters opt-out group which, to date, has been the only applicant to use the opt-out statute. He also represents the teamsters security fund – the health plan the group was attempting to join. He said while the discussion is of the $700,000, the issue that needs to be articulated today should not necessarily focus on the $700,000. He stated, "What ought to be focused on is that the PEBP has said 'No' to the legislature. The legislature has said groups of 300 or more employees may apply to the board and if they satisfy the board's criteria, will be allowed to leave and choose a different health plan that suits their needs in a better way. For example, the teamsters plan doesn't charge more for families than it does for singles and I believe it has different levels of benefits in certain occasions and lower annual deductibles. These people want a different health plan and the legislature said they can have it if they meet certain criteria. There are mandatory criteria and there are other considerations the board can consider. I'm not going to go through the mandatory considerations but it's undisputed that this application, which I put together in accordance with regulations I helped draft, satisfied all the mandatory criteria. But when it came to the optional considerations, and if I can just interject, keep in mind that the PEBP board is not subject to any form of review by anyone as to any of its decisions and even as to its own internal decision-making process

including for example if somebody were to appeal a denied health claim has no standard of review that guides it. So, its decisions are essentially unreviewable by a private party. Now when we applied and we were denied, the reasons they gave were essentially – well, the reasons shifted around quite a bit – initially we were told that they would have to evaluate whether or not our leaving would have a significant negative impact because that's one of the optional criteria. Well, there is a certain subjectivity in that element because the word is 'significant' negative impact. The question arises well, what is and what isn't significant. The PEBP board hired AON, it's own consultant, to determine that. AON did a very large study and they considered the subsidies that might be lost if the group leaves. And, just elaborate a little bit more, they also considered the fact that the claims experience would be different once our group left. Our group was relatively younger and healthier than the remaining participants on average and they took that into account as well and they said that the result of an increase in premiums to the remaining PEBP members would be essentially 10 cents a day per member. We call that $36 a year or we call it $700,000 plan-wide. When you come down to it, it's 10 cents a day. AON said when it reported on this that even if our group were so healthy they never went to a doctor ever, our group was so small that the impact would never be significant. The board said, as Mr. Wolff points out, the board clearly wasn't happy with that because it's pretty easy to tell when it takes two years and a lawsuit to get regulations adopted. The only application comes in from the people who drafted the regulations and is hand tailored perfectly to meet every requirement yet the board still is looking for ways to deny this that, at the end of the day, they just don't like the law and they don't want anyone to go. So, when their own consultants came back and said, 'we think this is essentially de minimis' they said, 'well, in the future you may have more and more healthy young people joining your group and it may all add up one day to be significant, therefore, we're going to deny this.' When we came back and we pointed out well the ability of additional employees to join our group is in these regulations that you adopted and not required by the statute. We pointed out that in certain respects you're penalizing our group for the way your regulations work. Your regulations say, additional employees can join our group once we're gone. Well, the law never said that. They put that into their regulations and then they used that to say, 'well, in the future this may become significant.' It's important to keep in mind the legislation, the statute, says they will evaluate our application and make a decision on our application, our 337 employees, instead of doing that they speculated on what the future might hold. Now, we did a request for reconsideration and when I pointed this out the response was, 'well, maybe we can argue about what's significant and what's not significant but we don't have enough plan reserves right now – the plan is suffering and we just can't take a $700,000 hit.' Keep in mind that initially they said they were going to pass this on to all the participants at 10 cents a day and now they are saying it's going to be a hit on our reserves. During the hearing on the request for reconsideration, they asked their plan consultants, 'how far in the hole are we on our reserves' and they said, 'well, actually we are $11 million to the positive' and I went back to future hearings and that $11 million was one calendar quarters surplus and it has been running at about that much of a surplus ever since because of other plan changes – raising deductibles and the like. So, this plan, not only did it have decent reserves at that time although I will say I don't think the reserves fully met the funding goal at the time we were first denied, by two or three calendar quarters later they certainly did. It didn't matter and when we explained that and argued about that, they said, 'well, you know the things that were concerns of the legislature back when they passed this law, that's not really a concern anymore, now we are a good plan – we operate well so the law's not needed anymore.' Then, somebody else said, 'by the way, the legislature wants us to expand the insurance pool to spread the risk more and save money' and they kept coming up with other reasons to dance around every time we closed off one of their reasons, they came up with another one. Well, anyone who does group insurance wants to spread the risk over as many people as possible but the Nevada Legislature decided that groups of employees will have choice to a certain extent of their own health plans. That is what the Nevada Legislature intended to happen. If there is some underlying general premise that you should spread the risk and keep everybody sucked into PEBP forever, well that has to give way to the explicit written statute adopted by the legislature. At the end of the day, we can go back and forth about they have this reason and we responded this way and they sent it out to the consultant and the consultant said this – at the end of the day, I do some trial work and one thing we talk about when you can't get a jury to follow the law is that it's de-nullification – they know the law, they just refuse to follow it. This is like

administrative nullification. This board from an administrative standpoint has nullified what the Nevada Legislature adopted. No one can get out. No one can take advantage of the opt-out law and that's the problem that we're trying to bring to your attention today. I'm not an expert on the Legislative Commission and, frankly, I don't know much about your power or how you go about communicating with these boards and what can or cannot be done. Whatever can be done to set things right and let the opt-out statute actually be used and do what it was intended to do, I would urge you to do that. Thank you."

The chair inquired if anyone from the PEBP Board was in attendance. There was not.

Senator Care said that he thought it was "telling" that no one from the board was present today. He said he would like to help as this has been going on for about five years. He thought it was in his first legislative session in 1999 that the matter first arose. Whether one is for the legislation or opposed to it, accepting Mr. Segal's testimony as the facts, there is obviously an injustice here. He said that he supposed that the legislature could entertain legislation that makes specific reference to
Teamsters 14 and bypass the board altogether although he doubted that would happen. He recalled Mr. Segal's comment that there is no mechanism for judicial review for a board decision and asked if that was correct. Mr. Segal responded, "That is correct. If you look at I believe it's chapter 233B the administrative procedures act, don't hold me to the number but I believe that's where it is, when it talks about coverage and which bodies are covered and subject to judicial review, the PEBP board is excepted. When we proposed these regulations, my first draft of the regulations would have added a judicial review for opt-out denials and that was rejected by the board when they adopted the regulations. One thing we pointed out when we did our request for reconsideration was that, I believe it was in the same legislative session when PEBP was established, the board was required by – it's 287.043 – that they were required to adopt specific procedures for the determination of contested claims. Frankly, I think that had to do with medical claim denials, but they were directed to develop some procedures for contested claims before them. They never developed any of those procedures and therefore you don't even know whether you go back to them and say you've abused your discretion or you have violated what the standard might be – your decision was arbitrary, capricious – you don't even know what to articulate to them that they did wrong. There's no standard of review even when you go back to them. In fact, the request for reconsideration that we did get back before them was something I was only able to do because we did get that into the regulations. Part and parcel with that was that if that was again denied that you could go into district court and have them review for abuse of discretion – which is a very high standard that really defers to their discretion but at least you get a neutral tribunal and they would not put that in the regulations and they said, 'by the way, we are not subject to 233B because we're excepted from the administrative procedures act so our decision will be final.'"

Senator Care suggested that the matter be reviewed in the next legislative session because he did not know what else the commission could do except amending existing statute to make an exception and grant a judicial review when there is an opt-out application and it is denied if one could demonstrate abuse of discretion or exercise of no discretion at all apparently in this case. He was unsure if the legislature would have an appetite to do that but as he asks himself what could the legislature do at this point considering the regulations have been adopted he did not know other than his suggestion.

Ms. Buckley described a problem concerning a mobile home park whereby a law was passed and the housing authority of Clark County refused to recognize the law and a resulting lawsuit by the old board against the new board of the mobile home park. She said everything is in limbo because the housing authority says it is not going to recognize the law because it might be unconstitutional. She stated, "Since when does the housing authority get to decide which laws it's going to follow based on what it thinks is constitutional. If that's the standard, hey, I have a few laws maybe that I won't follow." She tried to think what is the remedy. A writ of mandamus could be done and perhaps the board will do that. She has found them pro bono attorneys to represent them in the Federal Court lawsuit and she would have to find the same in that and it is rather difficult. Another thing she was thinking of was to introduce some legislation that says if a

body does not follow the clear will of the legislature that it will be fined $100 or $500 a day. Perhaps the threat of something like that would get the body's attention. "It is very vexing to work very hard on a piece of legislation and then just see it blatantly ignored when we follow laws that we may not have necessarily voted upon. That's not the point," she concluded. She suggested that perhaps the legislative counsel could brainstorm some options because it comes up quite often and it shouldn't.

Mr. Segal indicated another thing along the lines of brainstorming if consideration is being given to "tinkering" with the legislation, one thing during the process that he had wished for that was not on the books was that if certain objective criteria were met by the groups, the departure would be mandatory. It would not remain a discretionary decision with sort of "fluffy" standards that could be interpreted and applied and shifted around. He was sure that was argued about during the consideration of the original legislation, considered and ultimately left to the discretion of the board. He said, "I think we've been a little burned by that and maybe if objective criteria not impacting negatively five percent, taking groups of 'x' number, and so on and so forth. If objective criteria can be met, perhaps the opt-out should be a mandatory right of a group to leave."

Senator O'Connell said that she asked this matter be brought before the commission again because of the fact that it has been brought before the commission on three other occasions and loudly and clearly stated to them, "we want these people to have the option to leave." She commented that if they have decided to do so and met the requirements, they should be able to leave. The senator said that Ms. Buckley is correct in what she is saying because she has run into the same thing with another situation where a local agency has decided to do more strenuous regulations than the state law to prevent people from being able to comply with the law. She stated, "I thought this really needs to be aired and it needs to be looked at. Why do they bother with the legislature and the laws if they are going to go around what we are doing. We are kind of at our wits end, especially in this case, because we've never been able to do anything to satisfy them and besides you having the ability to choose, the underlying result would be that we would keep more of our officers at the state level instead of being the training ground. If you will remember, legislation has even been contemplated that the local agencies would have to pay back the cost of training the officer, which didn't go anywhere. If they see that is a critical issue, then why in the heck won't they allow the people who are paying through the nose to just have their families covered, the option of another choice which would not put that financial burden on them – which is really what this whole thing has been about – the financial burden that the state has put on them because of the lack of efficiency on the part of the agency. It's a sick, sick situation."

Chair Townsend directed that Mr. Segal should work with Senator O'Connell and Ms. Buckley who can agree to the language on a letter that should come from the commission in essence saying, "What part of the law don't you understand. If there is something that we don't understand, please respond immediately and we expect a response before the next Legislative Commission meeting."

Mr. Anderson said, "I support your position relative to the letter but I hope that the senator and assemblywoman recognize that we have been – since Senator O'Connell was, I think, chair of the Legislative Commission when we first took this up and asked me to sit on or chair an investigation of it at that time, we have been on them about this particular issue for well over five years. It seems to me we've got to do something about it because it is a legislative issue, in addition to being a real issue for these people, but I don't want to be redundant about the fact that we were concerned about the health care issue for all of our employees and that's the reason why we've been trying to leave it with some tender hooks to it. We have both a legislative prerogative here that has to be mandated, that has to be followed, and we feel that we are being ignored. I feel very ignored on this issue and I think that this particular group of employees have been clearly ignored in terms of what they came before the 63 of us and were successful in getting accomplished. I hope that whatever letter comes forward does reflect our frustration about dealing with this over a long period of time."

Chair Townsend stated, "It would be helpful, I think it is fair to say that the commission's patience is now

exhausted and that the board respond personally to the next Legislative Commission, that they arrive with counsel in hand and we would ask that they all attend, not the chairman but all of them and that would be in approximately six weeks. Senator O'Connell and Ms. Buckley will review that letter and counsel will authorize it to go out."

Mr. Tarantino thanked the commission for entertaining whatever assistance it can provide to the group. Mr. Wolff also thanked the commission.

Ms. Angle asked is there no one that the PEBP board is accountable to that the commission can appeal the case to and go above the board. The chair said that the governor makes the appointments and he should receive a copy of the letter. Further, Ms. Angle inquired if the governor could instruct the board to let the group opt-out. The chair replied that he did not think so and it should be determined who the board's deputy attorney general is and ensure that person also receives a copy of the letter and is told that it is the commission's top priority for the next meeting and they are expected to attend with a response. Ms. Angle said that she would like to make it very strong that the governor needs to do something about the board, to replace it or something if it will not act within the law.

Ron Cuzze, president of the State Peace Officers Council and also the co-chair of the Nevada State Law Enforcement Coalition referred to correspondence he had given to the chair (the document was not provided to the secretary by the witness for inclusion in the minutes). Mr. Cuzze said, "My officers are leaving too. It's not just Nevada Highway Patrol. It's P & P, Capitol Police, University Police – all the state cops. There's about 12 other law enforcement agencies that I represent. Now, I did a little research on this and I meant exactly what I said in my letter. They are thumbing their nose at you. Well, there's a way to do something about them. As was just brought up, these folks work for the legislative branch of government. They are appointed by the legislative branch of government, excuse me, the executive branch of government. The law was made by the legislative branch and then signed into law by the governor and it is law. In other states there have been situations just like this and what has occurred is that the legislature and the legislative branch of government has actually sued the executive branch of government to make them uphold the law – which is actually backwards from the way it's supposed to be. You make the law, the executive branch is supposed to uphold and enforce the law and because of situations like this in other states, the legislature had to sue the governor and whoever. So, I hope it doesn't have to go that far but, I mean, that's the answer. We still have one suit pending, I believe it's just in abeyance correct?"

Mr. Segal explained, "Well, actually, there is a lawsuit pending but that was a lawsuit over their failure to adopt regulations which did eventually get adopted. That one's not really a viable vehicle to bring this issue to a head."

The chair thanked Mr. Cuzze for his comments, noting that it was a point well taken as it is broader than a single group of officers. In conclusion, Chair Townsend said that the issue was substantially debated in numerous sessions amongst north and south, east and west, Republicans and Democrats, men and women, law enforcement and non law enforcement. He did not remember any stone going unturned. He commented that is the way the process should work. He stated, "When it's done, it's done. I think the point was made, whether you agreed with the legislation or not, you need to move on. It's not fair to these people. They were legally given a promise and they don't have an option and that's been unfortunate. We'll see."

The chair turned the commission's attention to agenda Item IV. A.

I. **Appointment of members to Nevada Commission on Minority Affairs**--Lorne J. Malkiewich, Director.

Discussion of this item occurred after completion of agenda Item II. C.

Mr. Malkiewich referred to the meeting packet for material on this item. It contains information on members that are up for appointment. Half the members were given one year terms and since the commission is just getting started, it is just being asked that the members be reappointed. The one exception is Geoconda Arguello to replace Aurelio Carillo who is unable to serve. The members listed include James Yu, Jennifer Angel, Tony Sanchez and Elena Brady as regular members and Geoconda Arguello, Estella Guttierez, Andres Mendoza and David Osman.

SENATOR CARLTON MOVED TO ACCEPT THE SLATE AS OUTLINED. MOTION SECONDED BY SENATOR CARE AND CARRIED UNANIMOUSLY.

The chair proceeded to address agenda Item IV. I

Item IV--Legislative Commission Policy:

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

The first portion of this item was addressed at the conclusion of the discussion of agenda Item III. H. and the last portion was discussed at the conclusion of agenda Item III. A.

The chair said that there are three regulations under this item regarding the Nevada State Board of Pharmacy of which one seems to be in contention. He was unsure which one it was and deferred to Ms. Erdoes for clarification.

Ms. Erdoes said that she believes it is a regulation that was not yet filed and is, therefore, not on the list to be reviewed. She thought it was a regulation about wholesalers which was in contention. The agency just recently held a hearing on the regulation and it did not arrive in time for the meeting.

The chair asked a person in the audience what he would like the commission to do since it does not have jurisdiction over the regulation as it has not yet been filed with the LCB. He invited the person to appear at the witness table.

Steven A. Gibson, attorney, with Santoro, Driggs, Walch, Kearney, Johnson & Thompson and counsel for Caladon Trading which is represented by Robb Miller, President/Chief Executive Officer said that under statutory provisions he believes that the commission has an ability to advise the board as to the problems with the direction it is heading with respect to the regulations. Mr. Gibson said that they have a situation with the State Board of Pharmacy that is very comparable to the situation with the PEBP previously addressed. He referred to Senate Bill 425 which is the statute the regulations are attempting to implement and noted that the regulations go “far away above and beyond” the side of the intention of the statute. He believes that the statutes under which the commission is governed, that it has the ability to expedite the process and “nip a problem in the bud” and indicate to the board, “we need to go in a different direction here.” Handouts were provided and are attached as Exhibits F and G.

The chair said that the problem was well stated but he wished to ask the legislative counsel if the commission does not yet have jurisdiction over the regulation, does she have enough insight to be able to tell whether the board is within its authority or not. Ms. Erdoes said, “Mr. Chairman, I believe that this is one of those regulations where my office would not find that they are outside their authority. It would be a recommendation to you from the wholesalers industry, as I understand it, to find that they are not complying with legislative intent. In other words, it is the other side of the coin here. Rather than my office finding that they have not complied with their statutory authority.” The chair said that his question is that if the board has not filed it, how

is it known whether it is inside or outside of the legislation. Ms. Erdoes said that she can only go by what the board has submitted to the LCB as a proposed regulation. “You are absolutely right though. We do not know what they will adopt.” The chair interrupted asking if someone from the board was present. He said the reason he asks is that this appears to have created some controversy and he thinks one of the responsibilities of the commission is that he does not want the regulation to fall into the 35-day period where it is automatically adopted because the commission did not review it. He said, “That’s fine for those things that are inside and they don’t seem to be a problem but when there is a problem and, obviously, you’ve identified one.” He said that he does not want to call a commission meeting for one regulation and he mentioned the commission’s subcommittee – the Committee to Review Regulations.

Keith Macdonald, Executive Secretary, Nevada State Board of Pharmacy said that the board announced the regulations, they were contested and the chairman developed a committee composed of Pharma representatives, the National Association of Chain Drug Store representatives and the National Association of Wholesale Distributors attended the hearings held on the 19th. The regulation has not been written. It is being worked on and has been worked on by a committee of five. He said that Mr. Gibson, because of his dilatory activity before the board, was not chosen by the chairman to participate in the committee. The committee is working very diligently to make the regulation correct and Ms. Erdoes can review it to ensure that it is within the law. Mr. Macdonald asked the commission members to keep in mind that Mr. Gibson and Mr. Miller have sued him and Mr. Louis Ling in four federal courts and two state courts to compete with their activity of trying to pass regulations to stop the distribution of counterfeit and contraband drugs.

The chair asked if Mr. Macdonald had any idea of when the regulation would be presented to Ms. Erdoes for review. Mr. Macdonald responded that he did not because the writing of the regulation has to be sent back to the members of the committee and there is a report to the Nevada State Board of Pharmacy on the 2nd and 3rd that the committee met and what the intent of the committee was and then the committee will write the information to the regulation. The committee will complete it, approve it and then it will go to the Legislative Counsel.

The chair asked Ms. Erdoes how long it would take to review so that it could be taken to the Committee to Review Regulations. Ms. Erdoes said that the time depends on the difference of the regulation. If her staff ends up having to treat it as a “revised proposed” regulation, which is the way it now sounds, if it is completely rewritten then staff will take another 30 days and treat it as a “proposed” regulation and send it back to the Nevada State Board of Pharmacy for them to adopt. She estimated 65 days because once the regulation returns to her office, then there is the 35-day period to wait before it is filed for adoption. Responding to the chair, Ms. Erdoes said with the chair’s direction, she would ensure that either the Legislative Commission or the Committee to Review Regulations would take up the regulation.

Mr. Anderson said that there are several things he was going to ask to be held and three of them are from the Nevada State Board of Pharmacy and are of a technical nature. He said that if he could ask some questions of Mr. Macdonald now then he would not have to ask that those regulations be held later on. The chair agreed to allow Mr. Anderson to ask the questions but then directed his attention to Mr. Gibson.

The chair said that since the commission does not have jurisdiction over the matter discussed by Mr. Gibson and although it can give guidance, he does not have any intention of retrying this issue here. He said the time is getting late and the commission still has many items on its agenda. Since the process allows for review after the regulation is received, that would be the appropriate time.

Mr. Gibson said that he appreciates that notion. However, he would like to say for the record in response to what Mr. Macdonald indicated, that his client is not suing
Mr. Macdonald because they want to disrupt the regulatory environment. His client is suing Mr. Macdonald

because Mr. Macdonald engaged in conduct in communicating with another private industry with respect to indicating that his client may be illegitimate or unlawful and those suits were designed to stop that kind of conduct. He said that he was before the commission a year ago with respect to the “ten percent rule” that was struck down at a regulatory level. The regulations being looked at currently are attempting to, in his view, re-effect the result of the prescriptions on trade that were part of the “ten percent rule.” He said that he would be happy, if it is timely, to revisit the issues again. He said that Mr. Macdonald’s notion that they were somehow dilatory is also inappropriate. They have been as diligent as they possibly could have been with respect to these issues. He said that they wanted to be part of the committee and because of the lawsuit, inexplicably, they were not permitted to be part of the committee discussion.

Mr. Gibson stated, “We think it would be very valuable if you could offer guidance now to say, ‘we’re willing to work with these folks and we’ve attempted to work with them in the past with respect to these issues.’ If you could give them some guidance to say they may want to work with us rather than against us, we would be very appreciative.”

Chair Townsend responded to Mr. Gibson, “I can’t instruct anybody and the commission can’t instruct anybody to do that. All we can do is encourage that everybody have the same opportunity to participate. That’s the key thing we can do. Then, if the reg does not come out to your satisfaction for whatever reason, the legislature through either the committee on regs or the commission itself, does have the authority to review that or reject it. It has to be, obviously, rejected on the basis that it did not meet legislative intent or is outside of it. I think they are well aware of it, we’ve sent back a handful of regulations that we thought were outside of it. We’re not afraid to do that but the flip side of it, then we really don’t have much authority but to accept it. I don’t want to over-promise or under-promise one or the other.”

Senator Care said that he is not interested in the merits of the proposed regulation but he is intrigued when he sees a lawsuit against, for example, a deputy attorney general in his individual capacity for tortuous interference and trade disparagement. He asked
Mr. Gibson where he is in discovery in the consolidated cases. Mr. Gibson responded, “We are about to complete discovery. Discovery has been requested to be extended by counsel for Mr. Ling and Mr. Macdonald and that discovery period, I believe, will end
June 2nd.” Senator Care asked if he could get a copy of Mr. Ling’s deposition. He said that he is not making any judgement but this is unusual and he has never seen this before. Mr. Gibson responded, Yes, it is unusual only in the fact that they have a fact pattern whereby after not enforcing the ten percent rule, Mr. Ling and Mr. Macdonald communicated with Cardinal Health and sent them a list of seven wholesalers licensed by the state that they indicated at a minimum that Cardinal Health ought to do due diligence on these wholesalers in doing business with them any more. Subsequent to that, Cardinal Health stopped doing business with companies employing people in this state, doing business without any investigation or violation whatsoever being made against these folks. He said, “That’s the gravamen of this lawsuit and, frankly, is a concern that we have that transcends these regulations and then speaks to these regulations . . . We believe that these regulations are going to enact that animus against this industry which is illegitimate.“

At the conclusion of the above discussion, the chair turned attention to agenda Item III. G. The following discussion occurred after agenda Item III. A.

Mr. Anderson said that he has concerns about R150-03, R030-04 and a general question that the State Board of Pharmacy representative can answer relative to all three of the board’s regulations in terms of the way it did its report.

Mr. Anderson said the question he had relative to R150-03 deals with the response to questions 6 and 9 in

the report provided. It says the estimated cost to the agency for enforcement of the adoption says that there is no additional cost to the agency for enforcement of the adoption of regulation. Yet, in question 9, he sees that the response increased one-time enrollment fees from $60 to $100 and the fee is designed to reimburse the State Treasurer's Office for staff costs associated with viewing and reviewing the application. He said it seems there is a conflict that it says there is no additional cost and yet a $40 increase is being asked. He said he is not questioning the need for the regulation or its intent or purpose but why it went from $60 to $100 when it said there is no increased cost to the agency.

Kathryn Besser, Assistant State Treasurer, apologized and said that she does not have an answer to Mr. Anderson's question. She said that the office found out about the meeting on Thursday and the person who handles these types of issues had a conflict and is out of town today. Ms. Besser said she would obtain the information as quickly as she can. Mr. Anderson asked about the timeliness of the regulation and the question of enforcement of it that the commission should be concerned about. He said the

Nevada Higher Education Prepaid Tuition Program is something that he is concerned about and it is a great service that is being offered.

Ms. Angle said the whole project is to help parents save money toward tuition and when fees are increased, it has a chilling effect. She would like to echo the concern that the fee increases be kept to a minimum so that people can take advantage of the program.

The chair asked if number 9 could be rejected and the rest of the regulation kept.
Ms. Erdoes responded that the choice of the commission is to either approve the regulation or object to it on the basis that the informational statement has a conflict in it and for that reason, the commission is uncomfortable with the regulation itself. The chair said that he recommended that the regulation be rejected since there is a conflict in it and there is a fee increase for which there is no explanation and let the agency return to the commission. It could be reviewed by the Committee to Review Regulations.

> ASSEMBLYMAN ANDERSON MOVED TO OBJECT TO REGULATION R150-03 FROM THE OFFICE OF THE STATE TREASURER. MOTION SECONDED BY SENATOR CARLTON AND CARRIED UNANIMOUSLY.

The chair proceeded to the next regulation R231-03 from the Board of Dental Examiners of Nevada. Senator Carlton said that she wholeheartedly supports the regulation as it does exactly what the members would like the dental board to start doing in looking at special endorsements of certain licenses. She thinks allowing dental hygienists in the public health arena to be able to start performing some of these duties will benefit the whole state and she applauds them on their efforts in putting the regulation together. The chair thanked the senator for her efforts in the matter and indicated he would take a motion later after additional regulations had been reviewed.

The chair proceeded to regulation R004-04 from the Public Utilities Commission of Nevada (PUCN) which makes changes to the resource planning reporting.
Don Soderberg, Chairman of the PUCN, and Paul Anderson, a Policy Advisor who was the principal drafter of the regulation appeared at the witness table. Mr. Soderberg said the regulation rewrite initially started during the last legislative session and was brought forward because many parties felt that there was an update that was necessary. There were some things progressively that needed to be done and which were done in other states but not in Nevada. The rule-making proceeding evolved to a point where there is a greater level of certainty in the regulatory process so that utilities that are regulated by the PUCN know where they stand one way or another on certain transactions and that the commission would give them certain flexibility to do things they had not been doing before in order to promote renewable energy and to do some things that actually lower the cost of their fuel. He believes the regulation encompasses those ideas

and it was passed unanimously by the PUCN and it hopes to implement in time for Sierra Pacific Power Company to file its resource plan which comes up this summer. The PUCN understands that there are some other things it needs to be doing and those are valid issues to be discussed at the next legislative session. He does not believe that the regulations are in lieu of any other statutory changes that it may want to review. The resource planning statute is 20 years old and the energy business has changed dramatically in that time. It is probably a very good idea to take a look at those statutes but in the mean time they need to have the ability to do some new things and the ability to try out some things. The PUCN could then report to the legislature at the next legislative session what it thought were good things and what were not after they had been put into practice. The chair asked for any comments on R030-04 or R004-04.

Mr. Anderson said that he has some concerns or questions about R030-04, R039-04, R041-04.

Ms. Angle said that she would like to hold R042-04 for further discussion.

The chair asked if there were representatives present on regulations R047-04 or R048-04. Ms. Erdoes said that staff did not ask for someone to be present. Responding to the chair, Ms. Erdoes said that she is not aware of any problems with the two regulations and no one has asked for someone to be present for questions.

The chair invited Mr. Macdonald to return to the witness table for discussion on regulations R039-04, R041-04 and R042-04. Mr. Anderson said that he is a little concerned about the way the Nevada State Board of Pharmacy responds to the inquiry of how public comment was solicited. It just says “were solicited through public notice” and other agency responses provide dates as to when and who was contacted and specifics that he can reassure himself that timely notice went out and it includes numbers of persons who attended each hearing and testified. He said if the commission is to carry out its legislative oversight, which he considers a very important part of its responsibility, he needs the reassurance. Especially given the number of questions about the Open Meeting Law that are heard often after the regulations are put forward. He said that he does not doubt the hearings have been held but he does not see it and he has difficulty fulfilling his legislative responsibility in approving such a regulation.

Mr. Macdonald apologized that the forms have been filled out carelessly. In response, he said that the board does follow the Open Meeting Law very carefully and conducts hearings and workshops before the hearings. He said that the board will be certain to put the dates, number of people in attendance and any comments in the future. He said the board also has a mailing list of all persons who have requested the board’s regulations be distributed to them as well as the minutes of its meetings. They distribute to those people in addition to all industry people who are involved in the regulations.

Mr. Anderson said that his concern was just a general observation and his concerns about R042-04 have already been taken care of when he read the regulation.

Ms. Angle said that she has no questions on the Nevada State Board of Pharmacy regulations.

The chair proceeded to regulation R047-04. Mr. Malkiewich said that staff was not notified that there were concerns about this regulation therefore it did not request attendance by someone from the Office of the Secretary of State.

Ms. Angle said that her concerns on R047-04 are about the fee increase mentioned in paragraph 9. Mr. Ghiggeri explained that part of the money – the $16 million that is deposited in the general fund is part of the budget balancing from the special session. Part of the money will flow into the general fund and a portion of that money will flow into the Secretary of State’s budget for operating costs. It is part of expedite fees. There were no additional questions on this regulation.

The chair returned to regulation R030-04 for a question from Mr. Anderson.
Mr. Anderson said that his question deals with the federal pipeline issue. He said that it is a major concern since the “tank farm” in northern Nevada is in his Assembly district. Given the high cost of gasoline that everyone is very sensitive to, he is concerned when he sees the response in question 6 that “At this time, the Commission cannot quantify what, if any, estimated cost it will incur to enforce the adopted regulation.” He sees that is a standard answer that the PUCN seems to always put on this particular response. He is concerned about the problems the PUCN has in dealing with the pipeline questions as a whole and he doubts if “we are getting good enforcement” relative to some of the problems with the pipeline itself. It appears the PUCN is saying “well, the feds are doing it so we have to do it too.” He wants an assurance that is not the case since he has a “lingering doubt about the feds ability to really care about Nevada.”
Mr. Soderberg responded that the rule-making docket was an attempt to “fold in” new federal regulations into the state regulations. The PUCN does work “hand-in-hand” with the Office of Pipeline Safety to implement its regulations and the PUCN’s regulations that are tied to them. With regard to Mr. Anderson’s reference to problems, he said that he is “not aware that we’ve had problems.” He knows that the pipeline safety group has received 100 percent ratings over the last few years from the Office of Pipeline Safety. At this point, the biggest problem is that they still have a very small organization doing that although the number of pipe miles has increased significantly. He said, “I guess I’m at a loss to answer the question directly because I’m not aware of what problems are out there at this time.”

Mr. Anderson said that what is now the marina in Sparks had a major problem about six or eight years ago with seepage that had to be monitored and one of the big questions was whether there was a break in the line. He noted that the pipeline safety office had been moved around a bit and when he saw that federal regulations were being adopted, he wanted to make sure that “we are not losing track” of the fact that by just adopting federal regulations we may not be pursuing the best interests of the State of Nevada and he is concerned about the public in the state. Mr. Soderberg responded that he believes Mr. Anderson is referencing a petroleum pipeline situation and they are not encompassed in these regulations as the PUCN does not inspect petroleum pipelines. Mr. Anderson apologized for the confusion.

> SENATOR CARLTON MOVED TO ACCEPT REGULATIONS R231-03, R004-04, R030-04, R039-04, R041-04, R042-04, R047-04 AND R048-04. MOTION SECONDED BY SENATOR WIENER AND CARRIED WITH SENATOR CARE ABSTAINING ON REGULATIONS R004-04 AND R030-04.

The chair directed discussion to agenda Item II. D. at the conclusion of the above item.

B. Review and revision of practice concerning lists of Legislators’ Addresses and Telephone Numbers--Lorne J. Malkiewich, Director.

Discussion of this item occurred at the conclusion of agenda Item III. G.

Chair Townsend said that every month the list of Legislators’ Addresses and Telephone Numbers is distributed. He said that he has been unsuccessful in convincing certain members of the legislature to provide information on how best to reach them. He said that it is important for committee chairs or people involved in serious issues that they be able to be reached in case a legislator’s constituents call and the legislator is unable to answer the concern but might be able to advise the constituent to contact another legislator who may be able to assist. The problem is many legislators do not list a number where another legislator may be able to contact them. He asked if the director had any ideas on the matter.

Mr. Malkiewich said that there are two issues that have raised by different people at different times. One is cell phone numbers and the other is e-mail addresses outside of session. The LCB currently has a public list and another confidential list that has a very limited distribution. He proposed as a starting point for discussion

that the private list be a little less private but a little more inclusive – that there will be a list for the public that continues as the “blue list” does and if someone wants the public to have their cell phone number or wants to list an e-mail address that could be done. The private list could include cell phone numbers and e-mail addresses other than the legislative one and could be used by staff and legislators so that legislators would have the ability to communicate with one another and staff would have the ability to reach legislators during the interim period.

The chair said that the most important thing, however it is done, would be to ensure that it is updated. If a cell phone number or an e-mail address is changed, the information should be passed along to the LCB Director’s Office. Whether the information is held for private use or provided to the Legislative Police for emergency purposes, that information should be updated. He strongly encouraged legislators to be “findable” so that they could communicate with one another.

The chair proceeded to the following agenda Item IV. C.

C. Adoption of Policy concerning Formation of Subcommittees by Statutory and Interim Committees--Lorne J. Malkiewich, Director.

Chair Townsend explained that this agenda item came as a result of a question, legitimately broached, about whether there is a policy for an interim chair to create a subcommittee using non-committee members. The answer was, “No.” In the past, the chairs have been trusted to select the best people for their subcommittees whether they were committee members or not.

Responding to the chair, Mr. Malkiewich said that the meeting packet contains a proposed policy. He recalled that at the last meeting, the members were not comfortable with the proposal that came before the commission as it was a little restrictive. The new proposal allows the chair of a committee to appoint a subcommittee in two circumstances – one where there is not a quorum present when posted and the meeting begins as a subcommittee until a quorum arrives. The subcommittee must be dissolved once the quorum arrives. That subcommittee only reports to the appointing committee. In the second situation, which is a big change from the prior procedure, is to hold one or more meetings to provide recommendations to the committee on one or more topics. Members may be members of the committee, legislators other than members of the committee or any other person. In that case, the chair of the committee is being given broad authority to appoint subcommittees, the key being subsection 2 that the subcommittee just reports to the appointing committee and final action must be taken by the appointing committee and does not increase the number of bill draft requests that the appointing committee is authorized to request.

The chair added that the policy does not increase the amount of money or meetings that is required by the committee. Mr. Malkiewich said that he did not put that in the policy because he thought it was implicit in the fact that the budget was not increased. He noted that any committee that requires more money needs to come before the commission and request it. If a subcommittee is created and does not have more money, then the committee lives within its budget.

Mr. Anderson referred to the wording “or another person” in the proposed policy and inquired if a non-legislative member is appointed, would that person be a non-voting member. The chair opined that there is no authority for a chair to grant voting power to a non-legislator even in a recommendation based subcommittee and asked if that would be fair to say. Mr. Malkiewich said he is unsure about that but that it might be within the discretion of the chair. He said there is one subcommittee which includes a non-legislator as a member. Generally, if a non-legislator is appointed it is because the scope of the study is

such that it is affecting the non-legislative member. The chair could designate the person as a non-voting member at the time of the appointment. He indicated that he could not say as a blanket statement that the person could not be appointed as a voting member if the chair desired to do so.

The chair recalled that over time interim committees have been appointed that have non-legislators as members. He identified tax committees and various technical working groups as containing non-legislative members and it is the reason the wording is contained in the proposed policy. He said that he is comfortable with the wording either way but it could be removed if the other members are uncomfortable with it. If the wording is removed, the non-legislator members of a committee could not be appointed to a subcommittee.

Mr. Horne inquired about the impetus of the change because it appears to him that the policy is just broadening and giving more flexibility to committee chairs. The chair responded that during this interim, a subcommittee was created by an interim committee that included a member of the legislature that did not sit on the interim committee. There were people that approached him and inquired if that could be done. He responded that he did not know but did not know why it could not be done. He said he trusts the chairs to select the best people. Unlike the Senate, the Assembly has too few slots and too many people and the Senate has to “beg” for people to serve on interim committees. In the situation in question, the committee went outside the committee membership and selected a person. This brought up the question as to whether that could be done. Since there was no policy, it was thought that one should be formalized based upon what had been the practice traditionally. The point is to formalize some flexibility for the chairs to decide on what to do.

Mr. Brown said he understands the distinction between the two houses but he has some trepidation on the “any other person” language. In instances where the subcommittee is created because there is not sufficient numbers for a quorum then a chair would not be reaching outside the committee and he has no problem with that. However, if a formal subcommittee is to be appointed for a particular subject matter then he would like to see the subcommittee be approved by the Legislative Commission. He understands that creates an additional step but he has concern about giving “free rein” without some oversight by the commission.

Chair Townsend said that he respects Mr. Brown’s position and thought it was a good one but the problem is, it still has to come back to the full committee and the full committee always has a veto authority over a subcommittee. He said it would “bog it down” in his opinion. He said he would not want to remove the language “any other person” because that means the Legislative Commission would have to hold more meetings.

Ms. Angle said that she does not have a problem with the language “or any other person” but she would like to see the appointee in an ex officio capacity because she does not think they should be voting as they do not represent a constituency within the legislature. For a legislative committee, an appointee should be elected. The chair said that was a good point. He asked if the “any other person” language was removed, since if someone was ex officio they could sit in the audience anyway, would that solve her concern. She responded in the affirmative.

Senator Carlton stated she would like to see the language remain. She said that anytime a committee could get someone willing to sit in and share their expertise and knowledge whether it is at the county or city level or school board or school district level, and be willing to be part of a subcommittee to solve problems, she would not want to remove something that would limit the ability of that person to participate and act fully within the committee. She thought that it would be to the chair’s advantage to give guidelines to a subcommittee and ask them to return with a consensus – not necessarily a vote yes or no but a consensus – resolution. This usually is what happens with a subcommittee in that they get everyone together and try to

return to the full committee with a package and then it is up to the full committee to decide what recommendations to consider. It will still be filtered through the full committee.

The chair said that while this matter is important thing for internal use, it is not a crisis proportion this evening and some of the members are missing. He suggested holding the proposal until the next meeting and attempt to proceed through the remainder of the agenda.

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

Mr. Malkiewich referred to a handout provided to members. The handout is attached as Exhibit H and begins with Note to Voters and includes streamlined sales tax, note to voters, the question concerning Assembly Bill 514, the fiscal note on A.B. 514 and Assembly Joint Resolution 3 of the 71st Session. He acknowledged the work on the project by staff members Michael Stewart, Diane Thornton, Rick Combs, Kim Guinasso, Don Williams and Brenda Erdoes. Drafts were prepared, distributed, responses received, revisions made and another distribution made. He said he would like to review the four documents, take any questions and any public testimony on each of them and approve them one at a time or as a group. On the Note to Voters, the biggest question concerned the second paragraph under the Streamlined Sales Tax Project and it was rewritten in cooperation with the Department of Taxation. The Department of Taxation's version was accepted without change. The chair asked if there were any questions or public comment in Carson City or Las Vegas and there were none.
Mr. Malkiewich said the other part of the Note to Voters is the language used in the past on Sales and Use Tax Act. He did not think there was much concern about the Note to Voters.

The second issue, A.B. 514, did not receive comments and the explanation was simplified and shortened. On the arguments for passage and against passage, some testimony was received. Some of the changes were incorporated and others were not felt to be appropriate because while making the language simpler they would not fully convey the arguments for and against. Some minor modifications were made and there may be some people who want to suggest further changes to the arguments. The chair called for any comments on the questions concerning the sales tax exemption or the changing of the constitution's reference concerning those adjudicated mentally

incompetent unless restored to legal capacity. There were no comments in Carson City or Las Vegas.

Mr. Malkiewich said there was no comment on the fiscal note for A.B. 514. There was quite a bit of rewriting on the argument for passage on A.J.R. 3. He said the American Civil Liberties Union proposed some additional arguments in the argument against passage and the proponent of the measure on argument for passage proposed additional changes. Staff revised it quite a bit and tried to take into account the input of the people who had an interest in those questions. He said if there are any changes or any testimony concerning any of the measures, he would try to explain the committee's thinking in arriving at the final language. There were no questions or comments in Carson City or Las Vegas.

SENATOR CARLTON MOVED APPROVAL OF THE LANGUAGE FOR THE BALLOT QUESTIONS. MOTION SECONDED BY ASSEMBLYMAN BROWN AND CARRIED UNANIMOUSLY.

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

Mr. Malkiewich referred to material in the meeting packet for this item containing a memorandum citing the provision in the general appropriations act that allows movement of money between divisions and from year to year. The first one is just in case one of the budgets is overdrawn by a little bit. There is over one-half million to $1 million in savings from the fiscal year but he wants to make sure that if any of the individual

budgets are overdrawn, there is money to transfer into them. With regard to carrying money forward from year to year, the projects are described on the second page. In general, the reason there are a number of these this time is because appropriations which in the past may have been done as “one-shots” with a June 30, 2005, reversion, since there was no “one-shot” money it all got built into the 2004 budget. Any project that takes more than a year – generally construction projects or those lasting throughout the interim – staff needed to carry forward the remaining money from 2004 to 2005. He said he would be glad to answer any questions. There were no questions but the chair requested that if any particular budget item goes over budget and the director has to “tap” into it, to notify the commission.

ASSEMBLYMAN ANDERSON MOVED TO APPROVE THE TRANSFER OF APPROPRIATED SUMS. MOTION SECONDED BY SENATOR CARE AND CARRIED UNANIMOUSLY.

F. Approval of Early Session Hires for 2005 Legislative Session--Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to material contained in the meeting packet for this item containing the proposals for early session hires. There are a few in the Legal Division and in Information Systems. The two provisions in the Legal Division were put in because two long-time employees are retiring and session hires will work along side them until their retirement to get the benefit of their vast experience. The document specialists will be brought in to start working on the bill draft requests beginning July 1. The position in Information Systems is to assist with the workload in session preparation. The positions will be included in the overall session hire budget which will be taken to the budget subcommittee and brought back to a future meeting of the commission. Since these positions need to be hired July 1, he had to bring them before the commission at this time.

ASSEMBLYMAN HORNE MOVED APPROVAL OF THE EARLY SESSION HIRES. MOTION SECONDED BY SENATOR CARE AND CARRIED UNANIMOUSLY.

G. Extension of Deadline for submitting Bill Draft Requests for Committee to Evaluate Higher Education Programs--Mark W. Stevens, Fiscal Analyst

Mr. Malkiewich explained that Mr. Stevens had to leave the meeting and he would handle this agenda item. The Committee to Evaluate Higher Education Programs will be meeting two more times – once in June and July 7. They will not miss the July 1 deadline by much but they are asking that the deadline be extended to July 15th. The chair said that he did not think anyone had a problem but would not wish to “nail it down” to July 15th since they may have just been assigned an additional responsibility. Mr. Malkiewich explained that since the subcommittee was made a subcommittee of the commission, it would not be subject to the July 1 deadline.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE EXTENSION OF DEADLINE FOR SUBMITTING BILL DRAFT REQUESTS FOR THE COMMITTEE TO EVALUATE HIGHER EDUCATION PROGRAMS. MOTION SECONDED BY ASSEMBLYMAN BROWN AND CARRIED UNANIMOUSLY.

The chair returned to agenda Item III B. for discussion.

H. Report of Interim Study of Allocation of Limousines and Recommendation to

Transportation Services Authority concerning Whether to Establish a System of Allocations of Limousines--Assemblywoman Vonne Chowning, Chair of Interim Study.

Discussion on this item occurred after agenda Item III. C.

Ms. Chowning said that the issue of regulation of limousines has been discussed during legislative sessions since 1999. After the 2003 session, it was decided that a committee should be formed to further discuss the matter of whether an allocation system should be put in place for limousines. For many years, a system has been in place regulating taxicabs. However, since they are not regulated, the limousines have continued to grow and grow and the revenues have not made such a rapid increase and have declined. In some cases, limousine operators have voluntarily decided to "let their licenses go" because they just "can't make it economically." There are situations where a taxicab operator quotes a fare, which is regulated, and a limousine operator can say "but I'll beat that by such and such." She said that situation is not a fair appearance that tourists should carry home with them.

Ms. Chowning called attention to the report of the study contained in the meeting packet and acknowledged the other members of the study. She said that after three meetings were held, members arrived at several recommendations. An independent study was conducted and it did confirm that an allocation system is to be recommended. The committee agreed to recommend to the Transportation Services Authority (TSA) that it should establish by regulation a system of allocation for carriers holding certificates for charter service by limousine. The committee also determined that the budgetary needs of the TSA are not being met at a level that ensures optimum regulation. The industry overwhelmingly in its testimony agreed that an increase from $100 to $600 annual limousine license fee would be agreed upon. She said that members of the industry are present in the audience and she is sure they would testify if asked to do so. This recommendation would need to be addressed with legislation during the 2005 legislative session. The committee also recommends that the TSA identify an appropriate funding source in the amount of $50,000 for it to conduct a study to establish the criteria for the allocation system. She said the TSA are not experts in this regard and would like to have some guidelines. The $50,000 for the study would need to be found somewhere and would then be repaid when the fees are put into place. Another recommendation to the TSA was to continue the "slowdown" in the granting of licenses. She said that the legislation agreed that each company should have one chance for an application and only two maximum vehicles would be granted. It was felt that while the allocation system is being put in place, that should continue. She said that the legislation needs to be clarified as to who will be affected.

Senator Wiener asked for clarification on Ms. Chowning's statement that there were companies that voluntarily gave up their certificates because they could not "make it." She inquired how many companies or operators of limousines there were.
Ms. Chowning responded that there were approximately four operators. There have been some enforcement activities continued and approximately 14 vehicles have been impounded. She stated, "When people can't make it economically, what suffers is insurance – they don't tend to keep up their insurance and also the vehicle's maintenance is not continued properly."

Further, Senator Wiener inquired how many operators are providing limousine service. Ms. Chowning said that the number of vehicles has gone from 800 to over 1,000 and she believes it is approximately 20 companies. She deferred to Keith Sackelhide, Attorney and Docket Manager for the TSA for any clarification or verification of figures. Mr. Sackelhide stated that there are approximately 35 companies providing transportation by limousines statewide and 24 of those are in Clark County.

Additionally, Senator Wiener asked how many total limousines are there separately in the southern and northern parts of the state. Mr. Sackelhide replied that there are just under 1,100 in Clark County and statewide there are 1,300. He said with regard to earlier comments, the number of companies that have done

voluntary cancellation of their operating certificates has been four in the past two months and approximately nine over the last year. In addition, the TSA has proceeded with orders to show cause against 12 companies.

Ms. Angle inquired if there had been any complaints from the northern part of the state that problems were occurring or is this mostly a southern Nevada problem.
Mr. Sackelhide responded that, for the most part, it is a southern Nevada issue. The issue in the north is more akin to illegal operators coming across the border at the lake areas. A high percentage of limousine impounds have been in northern Nevada with the operators coming across the California border. If there is a "glut" in the market, it is pretty much limited to Clark County. Ms. Angle said that she noticed that most of the members on the study were from southern Nevada so there was not a representative voice from the north for the limousine industry. She wondered if the recommendation would be a bill making the legislation for only the southern part of the state.

Ms. Chowning said that she was sorry that she did not make it clear in her opening statement that the recommendation will only apply to Clark County. Since the six years of testimony has overwhelmingly shown that the problems have been cited to be primarily in Clark County, it was not the wish of the 2003 legislature nor the study committee to impact the rest of the state – it will only be recommended for Clark County.

Senator Care inquired about the reason for the four companies who voluntarily surrendered their certificates and opined that it would seem to him, without knowing more, that it might just be a function of the marketplace. He said he was trying to make a distinction between regulation of certain conduct as opposed to allocation.
Mr. Sackelhide said that the four companies mentioned abandoned their certificates for economic reasons – basically, they were not able to compete in the market. In addition, the orders to show cause he alluded to earlier whereby the TSA rescinded the certificates of operators were also for that same purpose. Many companies in a difficult marketplace allow essential elements in their operations to lapse. Many carriers chose to allow their liability insurance policies to lapse and many companies were not properly maintaining their vehicles. As a result, the TSA enforcement activities identified those companies. Following the appropriate investigation hearing, the commission revoked the operating certificates for those 12 companies.

Mr. Anderson said that he has no problem adopting the recommendations but an audit will be occurring in this particular area and without that audit report he is a little concerned how this is all "falling out." The quality assurance is of some concern to him.

Mr. Davie said that he understands that an audit is being performed by the Legislative Auditor but the subcommittee did not have any details.

Mr. Townsend said that his office is currently performing an audit of the TSA and as part of the audit, they have been monitoring the progress of the subcommittee. The audit will focus on a lot of the operational aspects of the TSA and it should be able to go hand-in-hand with the results of the subcommittee.

Marc Risman, an attorney from Nevada, said that he represents several clients in the limousine industry primarily some of the smaller carriers. When he previously addressed the subcommittee, the members took heed and included in their report the great concern about the smaller operators who are good corporate citizens, who do not engage in some of the conduct that is cited in the report, and that when the allocation system "comes into play" that those newer companies that are providing outstanding service to citizens and tourists be considered properly, enabling them to catch up with some of the larger carriers. In the statistics provided by Mr. Sackelhide where there are approximately 1,100 limousines and 24 licensees, probably

more than 70 to 80 percent of the limousines are held by four of those 24 carriers. The rest have between two and
20 limousines as opposed to the larger ones that have several hundred in their fleet. He thinks the subcommittee addressed that concern in its report and recommendations for allocations. Where it was not addressed, and where he would ask the commission to take into consideration, was in the proposed moratorium that would last from this
July 1st through at least the end of the year. The industry has already been in a moratorium period for the last 12 months where no operator could expand its fleet. While that has not hurt the larger, unlimited carriers, it has hurt some of the smaller carriers who have provided the good service, are ready to expand, have the financial viability and have a client base that they can properly serve without any of the misconduct that has been cited. He said that he has had the pleasure and benefit of learning from recent pioneers in the business community, that if you are a good business citizen, treat customers well and become a part of the community that this state gives one an opportunity to grow appropriately. He asked that during the moratorium period, the commission consider an additional measure where if a licensee has under 20 vehicles allowed to its current allocation, that they be allowed to expand by up to 25 percent or no more than four vehicles during that period if they meet all the other criteria of having no violations, being in full compliance and having the financial and economic wherewithal and insurance underwriting to so do so.

Senator Care said that is precisely his concern. By way of background, in a previous legislative session, there was a bill that would have regulated limousines and the
"hang-up" as he recalled, was a requirement on English proficiency. If the wording had been acceptable to enough people, he opined that it would have passed. He thinks everyone understands that limousines need to be regulated. He did not care whether it was currently $100 and it needs to be $600 to "beef up" the enforcement staff, it is something that probably should be done. He said, "Here is my problem with an allocation system. As a preliminary matter, I read the working paper here and I see all this about conduct but I don't see anything that says if you have an allocation system, this kind of conduct will go away. I don't know that that's necessarily a given." The senator provided an example by stating, "What if the Bill Gates of limousines comes along and he has a better mousetrap and he's ready to go and he knows or suspects the appetite is out there for the public to use this fleet of limousines, how does he do that. If you have an allocation system isn't there a danger to basically – 30 percent over here, 23 percent for this one, I don't know whatever – that in essence becomes frozen for all time. So, how does an upstart company or an existing small company that provides an excellent service ever expand its fleet, allocation system or not, I guess if there isn't he just takes his own risk which is normally what we'd do anyway. That's precisely my problem. I don't know if we can have an allocation system that says well, it's going to be an allocation system for you big guys but we'll have a different standard for the small fleets or you just don't have an allocation system at all. We don't require casinos or restaurants who also depend on tourists to have an allocation system. If you've got a better restaurant, you survive and the other guy falls away or maybe there's a big enough room for both of you. I don't know. I'm just voicing a concern here, Mr. Chairman, it's not really a question. But I will say, I didn't see the connection in the study between conduct and allocation. I don't know that these problems wouldn't continue to arise even if you had an allocation system. Thank you."

Senator Carlton said that she does not have a question but just wanted to expand on what Senator Care brought up – exactly what she had spoken about in the last meeting. She felt that a lot of the problems brought to the subcommittee could be handled through the existing regulations. With sufficient funding and enforcement officers, a lot of those issues could be dealt with and she did not see the nexus between conduct and allocation as Senator Care expressed. She said that she was the one "no " vote. She does support more money for the TSA and no loud voices have been heard saying they could not afford the fees, because they want the fees to go in and to be able to deal with good regulation and have the enforcement officers on the street.

Senator O'Connell said that she would like to ask a question because the same thing was heard in the Senate Taxation Committee regarding taxicabs. She asked
Ms. Chowning, "Did I hear you right in your testimony that taxicabs are allocated so that we only allow a percentage of growth in each division and so the big guys are going to always stay the big guys and the little guys are always going to stay the little guys?" Ms. Chowning responded, "Senator O'Connell that has been an allocation for many more years than I have been a member of the legislature. I mean that allocation has been put in place and so everyone is allowed to grow at the same percentage, if you will. That has been successfully in place for many, many years and I'm so sorry that I don't remember the amount of years – since the early 70's. And so, the Taxicab Authority budget is presented to the legislature every two years but, yes, and it's entirely funded by the industry, by trip charges. See, that's another thing then, with this allocation system the budget would be funded by the industry through the license fee."
Senator O'Connell guessed that it must have been a percentage that they asked be increased that the committee must have been looking at.

Senator Wiener said that she has heard the word percentage mentioned a couple of times and she thought that the allocation would be the same number of medallions per company so it would not reflect the same percentage in each company. As an example, if the increase was three medallions per company, percentage-wise that makes a larger percentage increase for the "little guy" than for a large fleet. She asked if she was correct.

Brent Bell of Whittlesea Bell Transportation explained that it is called "equal allocation." He noted that one of the things that was argued years ago was whether it should be equal allocation or pro-rata allocation. He said that pro-rata was never successful and it has always been equal allocation. So, a large company would grow at the same rate as a small company. When there is an increase in taxicabs, they will all share in the increase in the same percentage. He stated, "If a company has 300 cabs and another one has 100 cabs, there can only be an allocation that is equal – the large company would get the same amount of taxicabs that the smaller company would. That's the way the system is in place as we speak today. We refer to it as equal allocation."

Chair Townsend said that it sounds like Mr. Bell is asking for something that the subcommittee did not address. He said that he is looking at the three recommendations but he is hearing something that is outside of the recommendation.

Mr. Risman said that his suggestion is outside – it is within the scope of what they considered however it did not address that concern during the next six months moratorium period. What he is asking the commission to do is – the reasons behind the moratorium are the allocation of time from TSA staff. His comment is that if you have a company that is "at its seams" because it has a small limit, under 20, and in all other aspects can continue to grow in a reasonable method but during the next six months that they be allowed to grow up to 25 percent but no number greater than 20 vehicles if the economic conditions in that company so justify it. He thinks one of the things that may happen particularly with a new resort "coming on" and an anticipated increase in tourism due to that event as well as the steady rise being seen as the country recovers from 9/11 and gets back into the flow of things. There may be more air traffic into the community and less ground traffic with the price of gasoline, and some of the smaller companies could increase their fleet by one or two vehicles and still be well under 20, not engage in misconduct, be financially responsible, afford the insurance and just be a little more competitive with the companies that have several hundred limousines.

Chair Townsend said that the issue that Mr. Risman has brought forward was not included and he asked if it was debated and what was the conclusion of the subcommittee. Ms. Chowning said that the issue was brought up and discussed. The feeling which concluded in the recommendation of the subcommittee was that it would not provide a seamless flow in the regulation process if they continue to allow some companies to grow and some not to grow. It was felt that to continue the level playing field for all the companies was the

fairest system and that is why the subcommittee decided on the recommendation. She reminded those present that the allocation system is going to be studied and achieved through regulation. How that is going to be will be based on public hearings. To allow some companies, because of their good business behavior, to be able to grow more than other companies – while that is a wonderful concept and we want good business behavior – that was discussed and a recommendation was made to the TSA to put that in its system of regulation. Incentives are good so that businesses will be rewarded for their good behavior. In conclusion, Ms. Chowning stated, "It was brought up, we said 'no' and this gentleman is bringing it up again and asking you to make that decision." Chair Townsend thanked
Ms. Chowning for clarifying the situation.

Ms. Buckley said that she thinks this issue is important and "we had a great subcommittee" and she would move that the recommendations be accepted as it is not the commission's place to "second guess" it – that's the legislature's place where there will be a full opportunity again to review the matter.

ASSEMBLYWOMAN BUCKLEY MOVED TO ACCEPT THE RECOMMENDATIONS OF THE SUBCOMMITTEE. MOTION SECONDED BY ASSEMBLYMAN ANDERSON.

Under discussion, Senator Care said that he wants to be precise about what it is that is being voted on and whether it is putting in place an allocation system that the legislature would be able to follow up on or put into place. He said that it is unclear to him. He asked, "Are we now saying to the TSA to go ahead and develop regulations and then they would come back here and that would be revisited by the Legislative Commission?"

Mr. Davie stated, "In Assembly Bill 518, the charge of the Legislative Commission is to, based on the information gathered in the study, to provide the TSA with the recommendation the commission has as to whether they should establish by regulation a system of allocations for limousines. In your packet, just after the first few pages, is a time line of projected activities and if the Legislative Commission goes along with the subcommittee's recommendations, then the next thing that will take place is by
June 15th the TSA is required to publically announce whether they will adopt a system of allocations for limousines. To do that, because they don't have the funding at this point, they would have to do something to continue their current system, which is why the subcommittee recommended that the TSA seek the funding to develop the criteria for an allocation system which hopefully would include the criteria that have been discussed here today in how to develop a good allocation system. That criteria study would take place over the next few months. They could do this under a system of the moratorium that they have been operating under the past year and then develop the regulations based on that criteria study. The next big event would be the next session of the legislature where there would be a bill draft from this subcommittee asking for the increase in the annual license fee to actually fund the regulation of the allocation system. Hopefully by then, all the TSA's work would be done with the regulations, or criteria study, there would be a system in place. Assembly Bill 518 gives the TSA the authority to adopt an allocation system by regulation so they would have that authority but, again, they cannot really do anything with that until they have the funding mechanism to do it.

That is why the time line is developed like this and why the subcommittee made the recommendations that they did to allow time for those regulations to be developed."

Mr. Anderson explained that he seconded the motion so that the members might be able to "get going" on this item. He said that he has a couple of questions that need answers for him to achieve a certain comfort level. He stated that it was indicated that the allocation applies to southern Nevada, however, the new fees being proposed would be statewide and therefore will or will not effect limousines in northern Nevada. He assumes that would be a result of legislation passed during the 2005 session. The second question is in

regard to Mr. Bell's comparison to taxicabs and limousines not being a part of the study. He asked if it can be assumed that if one is a large taxicab medallion holder that one is likewise a limousine holder and it is a parallel if not a
one-in-the-same industry.

Mr. Bell responded that there are some taxicab operators that also operate limousines but that is not the case for the entire industry. It is the case in his company's situation. Further, he said that some of the smaller operators are some of the operators that are also struggling to survive. When there is an increased influx of vehicles into the market that are not regulated, the small operators are just as disadvantaged as the large operators.

Mr. Davie said that under Assembly Bill 518, the study was required to consider whether an allocation system is appropriate in a county whose population is 400,000 or more so the study was entirely focused on the allocation of limousines in Clark County. He reiterated that there is an existing fee of $100 on all limousines and the subcommittee recommended that it be increased to $600 annual fee for each limousine. The subcommittee is also asking to clarify in the bill that the license fee would apply to charter service by limousine as defined by the Nevada Administrative Code. That would ensure that the funding is applied to limousines that are licensed and given a certificate through the TSA. The legislature could make sure that when the bill is passed that those fees are limited to the companies in Clark County.

The chair asked what could be done to assure Mr. Anderson that that does not "creep" outside the TSA's responsibility. Mr. Davie said that recommendation three on the summary of recommendations could be changed to have the legislation drafted to clarify that the annual limousine license fee applies to a charter service by limousine in a county whose population is 400,000 or more. Mr. Anderson said that answers his concern.

Ms. Angle said she wants to reiterate her concern about the north/south split noting that Washoe County is fast approaching 400,000 in population. She wants to make the legislation clear that it does not apply to northern Nevada even if it exceeds the 400,000 population cap.

Ms. Buckley expressed appreciation for the clarification. She commented, "I don't think I've ever seen a bill phrased exactly this way where we make the recommendation but the recommendation can only be contingent upon a fee increase that has to be, of course, considered by the whole body. What happens if the entire body does not approve the fee increase that you believe would be necessary for the allocation system? What would happen then?" Mr. Davie responded, "I believe if the fees aren't increased, then the TSA would not have the ability to enforce an allocation system so they would not be able to enforce any kind of regulations and things would just go back to the way they were before."

Further, Ms. Buckley stated, "It feels a little strange and it makes me kind of uncomfortable to approve half but not all of it together. Obviously, the fee increase would have to go through the money committees and it may be too high. It has to have the benefit of full hearings, it may be fine but the money committee's first instinct, of course, is to poke, prod, ask questions and so it just seems funny to do half now and half later. I don't know what the chair's intent is but I'd be happy to pull my motion as well if you think it needs more discussion or time."

Chair Townsend said that the question he has is a direct result of what Ms. Buckley has questioned – does the TSA start the process without the fees? Mr. Sackelhide said the TSA would begin the process. There are several steps in the process. The first would be to continue the existing moratorium for a period of time. It would be necessary to avoid an influx of new applications into the authority. The second step would be to have a study done and that study would be performed by an independent body to establish the criteria for an allocation system. Once the study is completed, the TSA Board of Commissioners would then develop an

allocation system. The time line accurately reflects the process and length of time it would take from this board's first approval to the final completion of the allocation system. It would take approximately one year. The chair questioned how the process could take so long. Mr. Sackelhide responded that the study could take up to three or four months. Upon further questioning by the chair, he explained that the system is very different between taxicabs and limousines. There are many more factors involved in assessing a limousine market and a taxicab market. For example, all taxicabs have meters and all taxicab companies charge exactly the same rates and fees. With limousines, fees range from as little as $36 for a sedan to $150 for a large, super-stretch limousine. They are all factors used to identify the market – what it is and all the different aspects that would identify the need for the limousines. The chair commented that the free enterprise system does not work very well with regulatory uncertainty and a year "limbo" is called uncertain.

Continuing, Mr. Sackelhide said that one factor is approval of the increase fees by the legislature which will not be in session for another eight months. Even if it was an initial item on its agenda, the TSA could not begin implementing the system until the $500 additional fee has been imposed. The TSA is in a situation where the initial time between now and the beginning of the next legislative session would be to do the study, set up the system and once it is set up, then the TSA would be waiting for the increase in fees should the legislature decide to increase the fees from $100 to $600.

Responding to the chair about what would happen with a sudden tremendous influx of tourists, Mr. Sackelhide indicated that operations would continue under the current provisions without an allocation system in place. He said that the Board of Commissioners of the TSA is always there to respond to any unusual demand or increased demand. The ability to address those problems is built into the statutes and regulations and the board would address the issues properly.

The chair said that since this is a southern Nevada issue, he would take guidance from the members from that part of the state. He said that he would trust the subcommittee that has been meeting on the matter and he is sure that there are other opportunities to accommodate the concerns. He said that his only concern is to move it along and make a decision.

Mr. Bell said that he wished to address the question with respect to the demand and increase. He commented that his company deals with that matter each and every day. A convention is currently "in town" and his company "is maxed to the limits" but next week things will slow down substantially and there will be 150 limousines sitting in the parking lot doing nothing. Peak demands are just part of Las Vegas and is all taken into account with the 1,100 limousines currently. He said, "One of the reasons why we pushed so hard for this legislation is because the market was flooded with cars. There are too many cars and that's when the fighting and the paying off and all the conduct issues began. The connection between the conduct and the regulation is economics. If there is too many limousines on the road, that's when the poor conduct begins." He stated that he was at all three subcommittee meetings. When the report was presented by Dr. Schwer of the University of Nevada, Las Vegas, he said that allocation was not perfect and that is something that will be dealt with in workshops before the TSA in the upcoming months. While allocation is not perfect, Dr. Schwer said that it was a much better system than the one in place currently. Mr. Bell said that various limousine operators spoke up at the last subcommittee meeting, as he did, testifying that they were in favor of the allocation system. He concurred with Mr. Sackelhide's comment that limousines are a "different animal" and consideration should be given to comments such as those made earlier by Mr. Risman to ensure that the system is fair and allows people to grow. He said that a moratorium needs to be in place because you cannot study something that is constantly moving. Responding to the chair, Mr. Bell commented that his company also has limousines in northern Nevada and they do not want a fee increase or allocation system in that area.

Alan Waxler from the Waxler Group Charter Services said that he is "one of the people stuck in between the kitchen and dining room." He has to "pass off" a tremendous amount of business to his competitors. The

people mentioned by Mr. Bell are the ones that have unlimited licenses and plenty of vehicles. He said that he does not have any of his vehicles standing in front of hotels trying to pick up business. All of his business is prearranged and corporate. He works with convention business and corporations that use Las Vegas and bring 2,000 to 5,000 people into town. He said that is his core competency. He is unable to grow his business as he thinks he should be able to as an American. He realizes things have been in place and the TSA does a great job to keep control of everything and keep the "riffraff" out and that is very important. He said he has the wherewithal to grow his business but he is not allowed to. He said that while everyone is talking about 1,100 limousines, a good portion of those are just sedans. He thinks there is room for growth as the town is growing and every one of the hotels is building another facility and more rooms. He said he has a 14 car limit and it is "very hard to make it go and I do a lot of business out at Lake Las Vegas and they have a need for transportation to bridge the gap between the Strip. They have a hard time getting taxis out there and it's really difficult for me to grow my business."

Senator Wiener commented that a new company could not start up during a moratorium. She inquired if it includes the in-house limousines that are operated by the hotel properties. Mr. Sackelhide responded, "No. Those limousines operated by casinos or other entities that operate as a free shuttle are not in any way affected by the legislation or the moratorium." He said that he would not have any idea about the number of those. The TSA has recently begun a series of workshops to identify the free shuttle market in Clark County. At a workshop about one and a half months ago, they identified approximately 60 wedding chapel vehicles that were being operated within the county alone. Another series of workshops will begin this month geared more towards the resort industry to bring those in and identify that market. Senator Wiener requested that the commission be kept updated on the progress because that affects the issues being discussed.

Mr. Bell said that during the moratorium, if a new limousine operator files an application and proves that they can operate, they would be granted vehicles at the current limit of two so it is not completely "frozen off" If another application came in, was filed and proved the wherewithal, they also would be able to have two cars. The industry still is growing a little bit even during the moratorium.

Ms. Buckley asked if there was any opposition during the three hearings about establishing an allocation system and did anyone testify against it. Mr. Bell replied, "The only opposition that we heard was on the very final day and that was, I believe,
Mr. Waxler's attorney and Mr. Risman brought up some very good points when he was discussing his opposition and I think Senator Hardy articulated it best because
Mr. Risman was discussing some of the things about his client and his ability to grow if he was a better operator or provided better service. I think Senator Hardy said, 'I understand that but there is no way to work with this moving target.' That was one of the things that was discussed and I believe Senator Hardy gave direct information to the Transportation Service Authority chairman Sandra Avants that those types of things were to be considered in the allocation system and that's another reason why it's going to take a little bit longer because Mr. Waxler's comments should be considered. There has to be some way to allow for some growth for a good corporate citizen like
Mr. Waxler. That was something that the TSA was going to take advice to and work towards."

Further, Ms. Buckley asked if Mr. Risman and Mr. Waxler opposed the allocation system or the moratorium or both. Mr. Risman responded, "It's the moratorium. When we discussed the allocation system, we said, 'please consider the smaller operator.' One of the senators earlier noted that if one company starts out with 1,000 limousines and another with 10 and you increase each one by one, there is still a huge discrepancy between the number one and the number twenty company even though the proportions are different if you go from 1,001 and the other one goes from 10 to 11, you still have one elephant and one mouse."

Ms. Buckley inquired if the allocation system somehow took into account that situation, would that alleviate some concern. Mr. Risman replied, "Absolutely. We were not opposed to an allocation system itself. Our

primary concern is given the time that's been requested for the new moratorium, which is an extension of an existing moratorium, it means the companies that did not have unlimited licenses that were granted limited licenses two years ago with the expectation that they could grow in time, now will have been frozen for an artificial period of some 24 months which was not contemplated by the TSA when they imposed those original limitations on their license."

Continuing, Ms. Buckley said that she remembered reading a story about a person who bought one limo and there was a "big deal" about how they said they were being "forced out" because of the way the regulatory system was. She asked what is going to happen to a person in that circumstance if it goes to an allocation system and what in this system helps that or does it. Mr. Risman said, "We would like to see a system that allows the smaller company to grow according to its economic ability, its ability to maintain insurance, its ability to hire good drivers who have safe driving records, who can implement certain safety procedures, where the mechanics and things that are required to properly operate and serve the public can be met by the smaller company. We would hope that the allocation system allows those smaller companies to reach their potential and have a chance to play catch up rather than always be 40 yards behind the big boys. That's part of what we would like to see from an allocation system but that's maybe putting the cart a little bit before the horse at this time. How it's implemented and what's done we'll have an opportunity to discuss later before the legislature or at the workshops that Brent mentioned. My biggest concern is if this thing's going to take a year as Senator Townsend raised his concerns, then the companies that were projected even by the TSA to be allowed to grow after a certain period of time are going to be artificially frozen and remain behind the eight ball for an additional 24 month period, than either economic times, their own economy or the TSA originally envisioned."

Ms. Buckley inquired if this item moves forward today, does the allocation system get put in a regulation and does the regulation return to the commission or is it not done through regulation. The chair asked the director to respond to the question.

Mr. Malkiewich said that, under the statute, the Legislative Commission is to make a recommendation to the TSA and by June 15th, it is to announce whether it is going to establish by regulation a system of allocation of limousines. Therefore, he believes it would be done by regulation. He confirmed that it would come back to the commission if it chooses to go forward.

ASSEMBLYWOMAN BUCKLEY WITHDREW HER MOTION BECAUSE THE WAY IT WAS WORDED WAS NOT IN CONFORMANCE WITH THE UNIQUE STRUCTURE IN PLACE THIS DAY.

Chair Townsend reviewed the time line as follows: On or before June 15th, the TSA shall publically announce whether it will establish by regulation a system of allocation and on July 1st, the temporary prohibition (the existing moratorium) on certain applications will expire. He said that the TSA would need to adopt regulations before July 1st to maintain the prohibitions and allocations. Additionally, by December 31st, the TSA would need to seek qualified specialists. Mr. Sackelhide said that implementing the system is contingent upon the TSA receiving the additional $500 assessment per vehicle.

The chair proposed the following scenario where the commission would give the TSA certain time lines, respecting the authority and obtaining input from the committee, whereby if there is an allocation system decided by the TSA that it would proceed immediately and hire the person within budgetary limitations and then raise the money later and repay itself. Mr. Sackelhide said, "That's exactly how we envision it happening. When I spoke before about the allocation system taking up to a year, it's to implement the system not to design the system and have the system in place and ready. The system will be designed, in place and ready for the legislature to act upon assessing the additional $500. The additional $500 per vehicle is to allow the TSA to, in the future, continue to monitor the system, put the additional enforcement staff in place to

ensure compliance with all regulations. The legislative subcommittee was tasked to do a number of things. One of the things they were tasked to do was to determine whether or not an allocation system was appropriate. The other issue which is also tied in to all of this is to determine what the optimum regulation of limousines would be in Clark County and statewide. All of this is involved in the same package. With regard to implementing the allocation system, hiring the appropriate person to conduct the study, all of this would be done and the process would begin immediately."

Chair Townsend stated, "I heard every single thing you said and I respect it all but I don't think you get it. You can figure this out by September 1. We aren't curing cancer here. We're finding a system. If the TSA decides they want to have an allocation system, they hire a person, they say 'let's go to work, it's not 8 to 5, here's a flat fee, get it done and we need it done by this date' and you're in business. Now, you are saying unless I misunderstood you, well we can't regulate that until we have the money. If you're going to go to $600, that creates a lot more money than $50,000. That's to hire additional compliance officers. You're going to have to go on a trust-me basis until then." Mr Sackelhide responded, "If I may back up, perhaps I mis-spoke. The system would begin immediately. We would conduct the study. Once the study was conducted, then we would begin the series of public workshops that are required to promulgate any regulation. Upon the TSA commissioners having those workshops and then they would, obviously, at that point they would either approve or disapprove or implement or choose not to implement the system. Basically, when I spoke about the system taking up to a year to implement, I mis-spoke. The system will be in place. I see it being in place by January 1st and perhaps earlier."

The chair continued, "I'm trying to respect the committee system and the expertise the committee possesses in making this recommendation. What I'm trying to do is say I want to squeeze the time line they recommended. That requires your cooperation. I don't know where they're going to go, I don't know what the hearings are going to be like, I don't whether there is going to be additional growth for smaller individuals who have been wonderful corporate citizens, I've no clue where they're going but nothing can take this long. It just can't. This is a function, do we want to get it done." Further, the chair emphasized, "You've got to get moving here. They aren't here for you or your agency. They're trying to serve the public here. Can't we move this – can't we take the date and move it up? I don't know why it would take a year to do anything. . . These are competitors, they're investors, they are risk capital takers and they are trying to meet a demand in southern Nevada and they are trying to do it decently and that's part of what's going on. It's like the state's in the way of that going on."

Bruce Breslow, Commissioner, TSA, stated, "Whatever guidelines and whatever time frames the legislature puts on us, our agency will react to. The only big question is, 'Does the market warrant an allocation system.' If your committee says 'yes,' we will develop a system with whatever time frames you deem fit."

Senator Wiener stated, "I kind of heard it in two parts – the allocation and the raising the fees which would take the legislature to do that. Let's say the allocation effort is resolved in an expeditious manner. Based on the current fee until the legislature acts which seems to be part of the hanging up process that I'm hearing in your time line, until that fee is passed and signed into law or whatever, which could be done quickly depending upon how it's processed through or it could be the last day of session, would it possibly change the allocation system, can that hold its own until that fee is reflected in legislative activity? Can it go forward without the new fee structure? Can it hold until the legislature acts on that?" Mr. Sackelhide responded, "Can developing the system go forward immediately and be expedited, of course. The only concern I'm expressing on behalf of the TSA is the monies identified in the $500 amount per vehicle went to the hiring of certain personnel. That personnel was the personnel that was going to basically monitor and run the system."

The chair framed the situation as follows: "We have a report by Ms. Chowning, the Allocation of Limousines under the requirement of section 10, Assembly Bill 518. As a result, the subcommittee recommended that the Legislative Commission should:

(1) advise the TSA to work with the Executive Budget Office and the Fiscal Analysis Division of the LCB, to identify an appropriate funding source in the amount of $50,000 and that the TSA to conduct a study to establish the criteria for an allocation system for the regulation of limousines in a county whose population is 400,000 or more; (2) advise the TSA to adopt regulations to maintain the current allocation system under A.B. 518 and encourage the TSA to use the time between July 1 and the beginning of the '05 session to conduct a criteria study and develop regulations to fully implement the allocation system if and when the annual license fee is increased; (3) have legislation drafted to clarify that the annual license fee applies to a charter service by limousine as defined under NAC 706. What I offered was simply if there was a motion to accept this recommendation that we simply squeeze the time line or you don't have to accept this one way or the other. This is really southern Nevada's issue."

The chair announced that since there is no motion, he would move on to the next item. He thanked those in attendance for their appearance before the commission.

Ms. Chowning said the subject is a very difficult issue and one that she has "wrestled with" for six years. She understands the frustration in having to deal with the issue in a half-hour time period or even two hours. However, it is not that difficult to accept the report and hopefully everyone will recognize that the recommendations came from year after year of testimony from the business owners themselves. This is not something that legislators are trying to come up with or "hammer" business members over the head with – these are recommendations that come from the business owners themselves. She thanked the commission members for listening and stated that she hoped that the matter could move forward because she believes the ones that will suffer if it does not will be the tourists that visit Clark County.

Senator Wiener asked what happens if the Legislative Commission does not act.
Ms. Chowning responded, "By not acting, then it continues the problem – no background checks for drivers, no fare stipulation, not getting arms around the problem – it just continues. The abuses continue, the problem for the tourists when they arrive say at the airport or anywhere, they get into vehicle. They do not realize that the regulations are not in place. They don't know that that driver hasn't been investigated. They have no idea. They depend on the state to protect them, but in reality they're not being protected but they have no idea. So it will continue for maybe eight years. It will just put it off. It puts the problem off to the next legislative session and if the next legislative session decides that 'yes' an allocation system is pertinent, then the adoption of the regulations goes on, as we just heard, for another five or six months or however

long it takes for it. We are sitting here in May of 2004, a true relief to the problem in reality would not happen then until probably May of 2006."

Senator Wiener recalled the concerns expressed by witnesses relative to "largeness" and "smallness" of those participating in the industry. She asked if that is something, based upon the hearings of the TSA on the regulatory side, that would be addressed to "hash" out the distinctions brought forward by the witnesses as their concerns. If this is moved forward, does that dialogue continue until it can be reconciled at the regulatory level. Ms. Chowning responded, "Absolutely. That is what the TSA has pledged and everyone has pledged that these hearings will be open, fair, all dialogue and recommendations will be recommended from the business owners themselves – from the industry that's being affected by this. But if we don't give the 'go ahead' here, it will never get started and it will be two more years."

SENATOR WIENER MOVED TO ACCEPT THE SUBCOMMITTEE REPORT.

Prior to a second on the motion, the chair asked Mr. Sackelhide if there was a reason background checks could not be done now and a regulation drafted and moved along. Mr. Sackelhide responded that background checks are currently done on new applicants but they are not done on drivers. Responding to the chair, he confirmed there is nothing preventing the agency from drafting a regulation and holding hearings.

The only constraint is the appropriate funding – the funding to hire the staff to accomplish the task.

Senator O'Connell asked why the applicant could not be charged for the background check. Mr. Sackelhide responded that it is his understanding that to do that a statute is needed to allow it. The TSA does not have the statutory authority to impose any fine on any carriers or any fee on any carriers without the statutory authority.

Responding to the chair, Mr. Sackelhide said that he would assume that the TSA's representative from the Office of the Attorney General would strongly encourage it to do nothing that is in violation of the law. He reiterated that he thought it would be in violation of the law to proceed with charging fees for background checks on drivers.

Senator Care recalled that a bill was almost passed during the 2001 Legislative Session that would have allowed the TSA to do a number of things. He thought that the
"hang-up" was how to precisely phrase the statute for that portion of the bill that went to proficiency or degree of proficiency in the use of the English language. He opined that if that had not occurred, the TSA would have had all the instruments it needs to regulate and do something about the conduct issues that came before the subcommittee.

Senator Care said that he wished to acknowledge all the hard work of Chairwoman Chowning on the interim study committee. Even though he has a philosophical problem with allocation in a free market, he does not think that he and Ms. Chowning have ever disagreed on a transportation issue except maybe too many license plates.

Mr. Sackelhide said that he wished to make one recommendation with regard to the committee's report - he believes the only thing that is a "hang-up" between what the chair of the commission and the chairwoman wish to accomplish is the language with regard to the implementation of the allocation system being contingent upon the funding. If there was a friendly recommendation or agreement to change that one provision of the recommendation, he believes what Chair Townsend seeks to accomplish could be done.

Senator O'Connell said she believes that a company has to carry liability insurance on its drivers. Mr. Sackelhide confirmed that it is required on the vehicles and the drivers. She asked if that does not given them any protection on who they hire. Mr. Sackelhide replied that it does give them some protection as far as who they hire but they do not have to go through an extensive background investigation as taxi drivers do in Clark County.

Mr. Malkiewich clarified that section 11, subsection 1 says "on or before May 28, 2004, the Legislative Commission shall, based upon information gathered during the study described in section 10 of this act, provides to the TSA the recommendation the commission has to whether the authority should establish by regulation a system of allocations for limousines." The commission has a duty to make some recommendation – either to establish a system of allocations or not to establish a system of allocations. He also noted that there is a witness at the table in Carson City who wishes to testify.

Bob Fairman of Carson City said that there is a fee in northern Nevada that limousine drivers pay to Washoe County to obtain their driving permit for limousines. The fee is $50 and a background check is done.

Ms. Buckley said she thinks that everyone apologizes for "dragging this out." The legislation is unusual in the way it is drafted. This matter is something that is usually discussed in Transportation Committee meetings and floor debates. To have it left up to the Legislative Commission whether to adopt an allocation system is unusual. She guessed that it may have been done as a way to move it along and have an interim study on the matter. It is understandable since it has been considered so much. She said that it takes her "off guard"

because it is a decision for the whole legislature. It could explain the silence of a number of members since it has come up so quickly and is being done in a bit of an unusual manner and trying to "get up to speed" quickly enough as to what could be done from a regulatory point of view in terms of abuses versus an allocation system. Obviously, the committee got to do a great deal of thought and work on it but it caught some members unaware as they thought it would just be a recommendation forwarded back to the legislature. She said that she was not aware that the commission would be making the final decision on an allocation system today.

Chair Townsend asked if there is any flexibility for the commission to waive the
May 28th date. Mr. Malkiewich said that he did not see anything that allows for an exception but there is also nothing that specifies the consequence – subsection 2 says the authority shall consider the recommendation of the commission and if it determines, based on information gathered during the study that it would be advisable, the authority may adopt regulations establishing the system. The consequence of the commission's failure to provide a recommendation – he was unsure whether it means that it stops and the authority cannot go forward or if it means that the authority just has no guidance from the commission on whether to go forward. The Legislative Counsel is looking at the issue right now and he will ask her as to the consequence of the commission not making a recommendation.

The chair asked if more time is needed for review and expressed concern about the commission making an inappropriate decision based on a lack of knowledge.
Mr. Malkiewich commented that the only other concern he has is subsection 3 that requires the authority to publically announce whether it will establish a system of regulation by June 15, 2004. Even without the commission's recommendation to the authority, he is unsure that that deadline could be waived for the TSA.

Mr. Anderson said that the matter of allocation of limousines is a continuing issue and the growth from four services eight or ten years ago to 28 demonstrates there is a need for the TSA to do something in this area. He noted that while there is concern in the south, there will still be some control as the regulations will have to be adopted through the commission. The legislation will have to come through in the final analysis of the allocation of the fees. Therefore, he does not feel that the commission is abandoning the legislative power that is in front of it by adopting the recommendations.

Chair Townsend asked Mr. Malkiewich if it is his understanding that if the TSA announces publicly on or before June 15, 2004, that they will go to an allocation system that once the regulations are drafted they will come before the commission.
Mr. Malkiewich responded, "Yes, Mr. Chairman, that regulation would be subject to review by the Legislative Commission."

Mr. Breslow said that he just wanted to remind the members that the full legislature did vote on A.B. 518 and said as part of the legislation that there will be an interim committee to study whether or not there should be an allocation system. As part of that, the committee met several times and there was an independent study that was paid for by the industry and done by the university to determine for that committee and give them some guidance on whether or not an allocation system was needed and whether the market was saturated and so forth. Based on that information and the public testimony, that committee is making a recommendation to the commission.
Mr. Breslow said, "Our agency is willing to go in any direction that the legislature tells us to but quite frankly, and to just throw it on the table, we've been trying and working every legislative session to get something out of committee. Whether it's a personality difference or a word on dress code or English language, nothing's happened and the industry has gone from four to six companies to 28 companies to 32 companies and limousines from 400 to over 1,000. The only question is, 'do you want an allocation system.' The public process and the hearings that will go forward and the public testimony will debate all of the issues that were

debated today on what kind of system it would be and that still has to come back before you as part of the legislative regulation process. So, if we don't begin something today, we go back exactly to where we were two years ago, four years ago and six years ago. But that's up to you. As an agency, we are just looking for some guidance and some direction."

SENATOR WIENER RESTATED HER MOTION TO MOVE TO ACCEPT THE SUBCOMMITTEE'S REPORT. MOTION SECONDED BY ASSEMBLYMAN HORNE.

Under discussion, Mr. Brown said that the typical course is that the studies go out and then come back to the legislature as a whole with some recommendation. He thinks that it is somewhat of an abdication from the legislature to the authority on this particular issue of allocation. While it does come before the commission, he feels that it is an issue for the legislature as a whole and would not be able to support the motion.

The chair said that it should be on the record relative to the TSA that if the motion passes and it moves forward how quickly it would be out to get a consultant.
Mr. Sackelhide stated, "We've already begun that process." Responding to the chair, Mr. Sackelhide further stated, "We've already identified four entities, colleges, who have the expertise to conduct such a study. Those include UNLV, their study with Professor Schwer, and I believe there are two other universities – the University of Tennessee and the University of Texas – who have systems like this. We would obviously put this matter out to bid."

Chair Townsend asked Mr. Malkiewich if the contract is one that the Board of Examiners has to review. Mr. Malkiewich responded in the affirmative.

THE CHAIR CALLED FOR A VOTE. MOTION FAILED WITH SENATORS CARE, CARLTON, O'CONNELL AND TOWNSEND AND ASSEMBLYWOMAN ANGLE AND ASSEMBLYMEN BROWN AND CARPENTER VOTING NAY.

Mr. Malkiewich asked that since the statute says that the commission shall make a recommendation considering establishing a system of allocation could a motion be made not to establish a system of allocation. He stated his concern about the failure of anything to pass and the direction it gives to the TSA.

SENATOR O'CONNELL MOVED THAT THE COMMISSION RECOMMEND TO THE TSA NOT TO ESTABLISH A SYSTEM OF ALLOCATIONS. MOTION SECONDED BY SENATOR CARLTON AND CARRIED WITH SENATOR WIENER AND ASSEMBLYMEN ANDERSON AND HORNE VOTING NAY. ASSEMBLYWOMAN BUCKLEY WAS OUT OF THE ROOM DURING THE VOTE.

At the conclusion of the above action, the chair proceeded to Agenda Item III. F.

I. Request from Interim Study Concerning the Feasibility of Long-Range Mass Transit Within State and to Urban Areas of Neighboring States for additional funding--Lorne J. Malkiewich, Director.

This item was addressed at the conclusion of agenda Item III. I.

Mr. Malkiewich referred to material in the meeting packet containing a letter dated
May 14, 2004, requesting additional funding for the interim study. However, he said that he has spoken to committee staff and they are unsure whether more money will be needed. The committee has approximately $6,000 remaining in their budget so it should have enough to cover the request but he recommended approving approximately $1,000 to be used if necessary.

SENATOR CARLTON MOVED APPROVAL OF UP TO $1,000 IN ADDITIONAL FUNDING FOR THE INTERIM STUDY CONCERNING THE FEASIBILITY OF LONG-RANGE MASS TRANSIT WITHIN STATE AND TO URBAN AREAS OF NEIGHBORING STATES. MOTION SECONDED BY SENATOR WIENER AND CARRIED UNANIMOUSLY.

J. Addition of Rule 52.7, concerning unlawful or improper actions involving records of criminal history as grounds for disciplinary action, to the Rules and Policies of the Legislative Counsel Bureau--Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to the meeting packet for material on this agenda item. This item was a result of an audit. The LCB has access to the Criminal Justice Repository through the Legislative Police. The audit indicated that one of the things that was missing was specific disciplinary provision in case of improper use of the database. The addition of the rule is to put the LCB in compliance with the requirements of the audit so that it can continue to use the system as needed.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE ADDITION OF RULE 52.7. MOTION SECONDED BY SENATOR CARLTON.

Under discussion of the motion, Senator Care asked if it is a misdemeanor for the first or second offense or does the grade of the offense go up depending on the number of offenses. Mr. Malkiewich explained that the policy is discussing an employee of the LCB who has inappropriately accessed a record of criminal history or something like that and someone who has violated the policy in that manner. Someone is not supposed to do a check on their neighbor or something like that. There are very strict limitations on what the system can be used for. If someone inappropriately did something for their first or second offense, they would be given one of the disciplinary actions depending on the severity. The exception being in paragraph b. where the offense is committee for profit is dismissal. It is a serious offense and would justify dismissal in the first case. Any third offense would require dismissal.

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

Item V--Informational Items:

The chair called attention to the following informational items and asked if there were any questions or comments. There were none.

A. Legislative Committee Reports.

B. Legislators' Travel Reports.

C. Miscellaneous Reports from State Agencies and Others:

1. Quarterly Report on disciplinary action by Board of Examiners for Alcohol, Drug and Gambling Counselors.
2. Quarterly Report on disciplinary action by Board of Examiners for Long Term Care Administrators.
3. Quarterly Report on disciplinary action by Board of Examiners for Social Workers.
4. Quarterly Report on disciplinary action by Board of Homeopathic Medical Examiners.
5. Quarterly Reports on disciplinary action by Board of Podiatry.
6. Quarterly Report on disciplinary action by Board of Psychological Examiners.
7. Quarterly Report on disciplinary action by Board of Veterinary Medical Examiners.

8. Quarterly Report on disciplinary action by Chiropractic Physicians' Board of Nevada.

9. Quarterly Report on disciplinary action by Health Division Bureau of Licensure and Certification, Department of Human Resources.

10. Quarterly Reports on disciplinary action by Nevada Board of Dispensing Opticians.

11. Quarterly Report on disciplinary action by Nevada State Barber's Health and Sanitation Board.

12. Quarterly Report on disciplinary action by Nevada State Board of Accountancy.

13. Quarterly Reports on disciplinary action by Nevada State Board of Dental Examiners.

14. Quarterly Reports on disciplinary action by Nevada State Board of Hearing Aid Specialists.

15. Quarterly Report on disciplinary action by Nevada State Board of Landscape Architecture.

16. Quarterly Reports on disciplinary action by Nevada State Board of Medical Examiners.

17. Quarterly Reports on disciplinary action by Nevada State Board of Nursing.

18. Quarterly Report on disciplinary action by Nevada State Board of Optometry.

19. Quarterly Reports on disciplinary action by Nevada State Board of Oriental Medicine.

20. Quarterly Report on disciplinary action by Nevada State Board of Pharmacy.

21. Quarterly Reports on disciplinary action by Nevada State Board of Physical Therapy Examiners.

22. Quarterly Report on disciplinary action by Nevada State Contractors Board.

23. Quarterly Report on disciplinary action by Private Investigator's Licensing Board.

24. Quarterly Reports on disciplinary action by Real Estate Division, Department of Business and Industry.

25. Quarterly Reports on disciplinary action by State Board of Cosmetology.

26. Quarterly Report on disciplinary action by State Board of Professional Engineers and Land Surveyors.

27. Quarterly Report on activities concerning proposed transactions between an eligible customer and a provider of new electric resources from the Public Utilities Commission of Nevada.

Item VI--Public Comment:

There being no pubic comment in Carson City or Las Vegas, the meeting was adjourned.

Respectfully submitted,

Marilyn K. White
Executive Assistant

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Senator Randolph J. Townsend, Chair
Nevada Legislative Commission