

Minutes of the
LEGISLATIVE COMMISSION
Nevada Legislative Counsel Bureau (LCB)
Legislative Building, Room 4100
Carson City, Nevada
August 25, 2004

The third meeting in 2004 of the Legislative Commission, created pursuant to Nevada Revised Statutes (NRS) 218.660, was held on Wednesday, August 25, 2004, commencing at 8:08 a.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 Carson City)
Senator Ann O'Connell, Vice Chair (in Las Vegas)
Senator Terry Care (in Las Vegas), alternate for Senator Valerie Wiener
Senator Maggie Carlton (in Las Vegas)
Senator Mike McGinness (in Carson City)
Senator Dina Titus (in Las Vegas)
Assemblyman Bernie Anderson (in Carson City)
Assemblywoman Sharron Angle (in Carson City)
Assemblyman David Brown (in Carson City)
Assemblyman John C. Carpenter (in Carson City)
Assemblyman William Horne (in Las Vegas), alternate for
Assemblyman Richard D. Perkins
Assemblywoman Peggy Pierce (in Las Vegas), alternate for
Assemblywoman Barbara E. Buckley

COMMISSION MEMBERS ABSENT:

Senator Valerie Wiener
Assemblywoman Barbara E. Buckley
Assemblyman Richard D. Perkins

OTHER LEGISLATORS PRESENT:

Assemblyman Ron Knecht
Assemblyman Harry Mortenson

LCB STAFF PRESENT IN CARSON CITY:

Lorne J. Malkiewich, Director
Brenda J. Erdoes, Legislative Counsel
Gary L. Ghiggeri, Fiscal Analyst
Mark W. Stevens, Fiscal Analyst
Paul V. Townsend, Legislative Auditor
Donald O. Williams, Research Director
Mark Krmpotic, Senior Program Analyst
Marsheilah D. Lyons, Senior Research Analyst
Fred Rembold, Chief of Legislative Police
Marilyn K. White, Executive Assistant

The agenda is attached as Exhibit A. A packet containing materials for the meeting was provided to commission members and available to the public in attendance. Attendance rosters are attached as Exhibit B. The meeting was called to order by Chair Townsend. Prior to discussion on agenda items, Mr. Malkiewich announced that the photographer who will be taking portraits for the 2005 session is present in Carson City for the convenience of legislators attending at that location.

The chair stated that to accommodate individuals testifying on certain agenda items, those items would be taken out of agenda order. For purposes of continuity, testimony will be placed in agenda order within these minutes. The chair proceeded to agenda Items III. C. and D.

Item I--Approval of Minutes of Meeting Held February 28, 2004--Senator Randolph J. Townsend, Chair.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF THE MINUTES OF THE MEETING HELD FEBRUARY 18, 2004. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

Item II--Legislative Auditor:

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

Mr. Townsend referred to material contained in the meeting packet. The letter from the chair of the Audit Subcommittee indicates that on June 24, 2004, three audit reports were presented to the subcommittee. The first one was the University and Community College System of Nevada (UCCSN) statewide programs. The audit was done pursuant to Assembly Bill 148 of the 2003 session which required the Audit Division to audit a number of areas in the University System. The audit is divided into five components and statewide programs represents the first component of the audits. Statewide programs includes some specific programs in budget accounts in the Executive Budget and include Continuing Education, Writing Projects, Center for Basque Studies, Center for Business and Economic Research and a variety of programs. A total of 22 programs receive General Fund appropriations of about \$7.2 million. It was found that the UCCSN needs to improve its oversight of statewide programs to ensure funding requests represent the optimal use of state General Fund resources. Auditors believe that by providing guidance to its institutions, System Administration can help ensure consistent processes are in place for determining if other funding sources are sufficient to meet program missions and the appropriate level of General Fund money to request for each program. It will also help identify the most deserving programs to recommend for support, using General Fund money only for program purposes and developing reliable performance measures that relate to program missions. Additional findings are listed and the UCCSN accepted all five recommendations.

Mr. Townsend said that the audit of the Division of Child and Family Services found that the division has opportunities to increase revenues from Medicaid by several million dollars annually by improving its billing process for childrens' behavioral services. Because of the numerous billing issues, the division did not bill for about \$6.2 million over the past two years. Most of the amount relates to not billing Medicaid for the full cost of services provided. The division can go back two years to obtain additional reimbursements for most of the services. By going back with the retroactive billings, it should be able to collect an additional \$3.1 million that will go directly to the General Fund. It was found that the division also has a opportunity to bill Medicaid for an additional \$1.9 million annually to recover costs of operating its psychiatric hospital, Desert Willow. This combined with billing at full costs in other areas should result in an additional \$2.6 million annually in future years. The division accepted all 10 recommendations. When the audit was presented to the subcommittee, the chair directed staff to correspond with the director of the Department of Human Resources asking him to ensure that the problem does not extend to other divisions. In response, the director noted that the agency has implemented a department-wide procedure to closely scrutinize the rate-setting process and, hopefully, prevent this situation from happening again.

Continuing, Mr. Townsend said that the final audit was the utilization of security over state Internet

sites. It was found that basic Internet security needs improvement to ensure greater protection over information stored by the state. Improvements are needed over devices that manage the flow of information as it moves through the state's network to prevent intrusion. The devices also require regular monitoring to ensure adequate security. Another improvement needed is to prevent sensitive information from being placed on various state web sites which could lead to unauthorized intrusion into the network. In addition, backup and recovery controls need to be strengthened so that data is not lost after a disaster. Also, the state needs to prioritize its approach to implementing security procedures. The Department of Information Technology in its response accepted the 15 recommendations, however, it made its acceptance conditional on receiving four to five additional staff. Mr. Townsend said that auditors believe the recommendations can be implemented with existing resources. When the audit was presented, the chair asked the agency to return to the next meeting to discuss their 60-day plan of corrective action and if it still feels that additional staff are necessary before it can move forward with the recommendations.

Mr. Anderson stated that he is a member of the Advisory Board for the Nevada Task Force for Technological Crime and requested any additional information that was given to the subcommittee relating to the Department of Information Technology audit also be provided to him so that he could follow the issue because he is concerned about what is happening in that area and its impact on homeland security and cybercrime.

ASSEMBLYMAN CARPENTER MOVED TO ACCEPT THE REPORT OF THE AUDIT SUBCOMMITTEE. MOTION SECONDED BY ASSEMBLYMAN ANDERSON 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 material in the meeting packet containing a letter from the chair of the Audit Subcommittee indicating that two six-month reports from the Gaming Control Board and Division of State Parks were reviewed at the meeting on June 24, 2004. He directed attention to Schedule 1 where auditors have updated some of the information on the Division of State Parks. The schedule will indicate that all recommendations on the two reports were implemented. Schedule 2 indicates that four agencies returned from prior meetings and those agencies have made significant progress on recommendations. If the recommendations are not fully implemented, they are very close. Three agencies have one remaining recommendation and auditors will be monitoring those through to their final implementation.

Mr. Anderson said that he is again concerned about the Criminal History Repository shown in Schedule 2. He said that he gets a continual barrage of questions relative to its ability to identify sex crime offenders, their presence in the community, the cost and how far they lag behind in bringing their system into full compliance. It is the only agency in the United States that does this that does not meet federal requirements. He said that he presumes the agency is still being monitored and will return to appear before the Audit Subcommittee. Mr. Townsend said that there is one remaining recommendation which dealt with software capturing information when irresponsible people tried to gain access into the system. The software was tracking that but it was not issuing specific reports and was still being worked on. Regarding the sex crimes information, Mr. Townsend believes that has "come on board" since the time of the audit completion in 2002. It has taken the agency a long time to implement the recommendations but at this point it is very close on the recommendations auditors had. There may be future issues coming up that may need to be reviewed in a future audit.

Mr. Anderson requested Mr. Townsend to provide him with a follow-up report in greater detail relative to the state Criminal History Repository. Mr. Townsend indicated he would provide that information.

ASSEMBLYMAN ANDERSON MOVED ACCEPTANCE OF THE SUMMARY OF

SIX-MONTH STATUS REPORTS. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED.

C. Request for approval of basic audit program (NRS 218.635 and 218.850)--Paul V. Townsend, Legislative Auditor.

Mr. Townsend referred to material in the meeting packet for this item. He said that Schedule 1 lists audits the division has in progress. The UCCSN, Clark County School District and Washoe County School District were all legislative requests and have taken a lot of the division's resources over the past year but staff is in the final stages of the audits and they will be ready by the legislative session. The audit of the Transportation Services Agency was a special request from the Legislative Commission and it will also be completed prior to the start of the session. Schedule 2 lists the audits proposed for the next two calendar years and selection was done on a risk-based approach where staff considered a number of factors including how long it has been since the last audit, the significance of the money flowing through the agency as well as its prior history of audit issues or problems. He requested approval of the audit plan for the next two years.

SENATOR MCGINNESS MOVED APPROVAL OF THE BASIC AUDIT PROGRAM. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED.

Mr. Anderson referred to the plan for the next two years and requested Mr. Townsend to provide him with information on when the last audits were done and, if possible, include that information in the future. Mr. Townsend responded affirmatively.

Chair Townsend expressed appreciation to Mr. Townsend and his staff for their work and acknowledged that some of the legislative mandates for the audits are "pretty tough" given the size and noted that the public is well served by the division.

Item III--Progress Reports and Appointments:

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

Ms. Erdoes said that *Amodei v. Nevada State Senate* has been finally concluded. It is the last remaining case challenging the Nevada Supreme Court's ruling regarding the two-thirds vote requirement that happened during the special session. The Ninth Circuit denied all appeals and the time for appealing to the U. S. Supreme Court has passed. The previous day in the First Judicial District Court, the division successfully represented Senator McGinness in a case challenging his qualification to be a candidate in the 2004 primary election. The court ruled from the bench in that case yesterday holding that because there was no provision included in the constitutional amendment making the term limits provisions that said it was to be applied retroactively, it must be construed to apply only prospectively. The court found that Senator McGinness is qualified to be a candidate in the 2004 primary election. She said that although this case originally started with the Nevada Supreme Court, that would be the proper place to appeal the decision. However, newspaper articles have indicated that the plaintiff is planning to file in Federal District Court instead. Staff will be monitoring that case to see what happens. Continuing, Ms. Erdoes said that in the two Public Agency Compensation Trust cases about workers compensation in which the Legislative Commission asked staff to file amicus briefs, they are still waiting for oral arguments to be scheduled. Staff will determine at that time whether they will participate in the oral arguments. Subsequent to the last meeting of the commission, staff also represented the Legislature in *Shaffer v. Lomax* which was an Eighth Judicial Court case concerning the order of candidates on the ballot. It was dismissed as to the Legislature. She said that at the request of the chair, staff is following the different cases of the challenges to the initiative petitions.

Chair Townsend thanked Ms. Erdoes for her report. Additionally, he mentioned that there is a case, and while it is not relevant to the point the chair wished to make, it was a case between the Attorney General and the Legislative Counsel Bureau. He said that he attended to view the presentation which included the oral arguments. No matter how one feels about the issue, he stated that Ms. Erdoes and

her staff and in particular

Kevin Powers who is a principal litigator handled themselves in a remarkable manner. He said that Mr. Powers never referred to a note, he was able to cite more than one case in each point that was asked by the court, he maintained not only dignity on behalf of the counsel bureau and the legislative branch of government but he maintained his sense of humor as well. He thought Mr. Powers handled himself in a manner in which everyone can be proud. He is to be commended as are all of the legal staff that worked on all of the cases.

The chair turned to agenda Item IV. A.

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

Mr. Malkiewicz referred to the meeting packet containing a memorandum dated July 19, 2004, from Lona Domenici regarding appointments to the Nevada Silver Haired Legislative Forum. The commission is being asked to appoint one member, Dee Wideen from Clark Senate District 9, and to reappoint two other members, Harriet Trudell and Dale Porter, who had missed some meetings. The Forum rules require that they lose their seats but they would like to be reappointed.

SENATOR MCGINNESS MOVED TO APPOINT THE THREE MEMBERS MENTIONED. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED.

C. Response from Public Employees' Benefits Program concerning implementation of regulation regarding option of groups to leave program--

Terry Johnson, Chairman, Board of the Public Employees' Benefits Program.

Mr. Johnson was present in Las Vegas and was joined by Woody Thorne, Executive Director of the Public Employees' Benefits Program (PEBP) Board and Kateri Cavin, Senior Deputy Attorney General, Office of the Attorney General in Carson City.

Mr. Johnson said he was happy to discuss and entertain questions from commission members concerning the agenda item.

Senator O'Connell asked if the representatives could address the questions in the letter from Mr. Malkiewicz dated August 11, 2004, contained in the meeting packet.

Mr. Johnson acknowledged that he had received the letter and responses have been prepared for the items. He requested Mr. Thorne to address the questions. Mr. Thorne said that the first question concerns the time it took to develop the opt-out regulations and research indicates that the statute creating the board and the provisions for the opt-out regulations was in the 1999 legislative session. The first regulations were LCB File No. R100-00. On November 14, 2000, the PEBP Board held an adoption hearing on those regulations. The regulations were objected to by the Legislative Commission on a couple of occasions. The 2001 session, through S.C.R. 40, declared that the regulations the commission had objected to would become void and S.C.R. 40 was adopted by both houses on May 9, 2001. New regulations were drafted, the board worked with the law firm for the Teamsters in drafting the regulations and they were submitted to the LCB and assigned File No. R097-03 and posted on August 5, 2003. Three workshops were held in July and August with extensive public comment and input from Mr. Adam Segal and Mr. Gary Wolff. The Board adopted the regulations on September 4, 2003, again with public comment. The regulations were submitted and approved by the Legislative Commission and adopted on September 24, 2003.

Senator Carlton asked if anyone had reviewed the particular regulations to which the commission objected because if her memory serves her correctly, the reason why the regulations were objected to

was because they were totally out of line with the intent of the law. It seemed that the regulations were set up at that time to make it more difficult to opt out and it was almost a “stonewalling” in the regulation process. She said that she is concerned about the three years but the biggest part of it is the first set of regulations. A law was passed and regulations were requested to be instituted and they had nothing to do with the actual piece of legislation that was passed. She asked how that ended up happening. She acknowledged that no one sitting in the rooms had anything to do with that as those individuals are no longer involved, but the issue needs to be looked at to ensure that it does not happen again. When the Legislature votes on something, it would like it to be implemented. Mr. Thorne said that as the senator indicated, none of those present were involved during that time period and he is not familiar with the regulations at that time or the reason for the way they were constructed. He said that they have worked with the parties involved since he has been

“on board” and regulations were developed and approved not only by the Board but by the Legislative Commission. They were put into place and the Board has operated under those regulations.

Senator Care said that he does not know whether the commission needs to go through all the questions. He asked, “Is the Board going to allow the Teamsters to opt out or not? If you aren’t, why not, and, if you are, when will you allow it?” Mr. Johnson replied, “Perhaps, I can speak on behalf of the Board here today. The Board gave careful consideration to the application that was presented. The statute provides the Board with some discretion and I think the Board members went through that application. There were a couple of hours of testimony and in exercise of that discretion, denied that application. I don’t know – I can’t tell you what vote may or may not happen in the future. I don’t think it would even be appropriate to say, Senator Care, to your question as to what will happen when. I honestly do not know. I can’t predict that. What I will tell you is that I look back on those proceedings and I think we did come in and I’ve been chairman of that Board for about two years now and I think that we came in and got those regulations enacted and provided for that application to come forward. In looking at the composition of the Board, a total of nine members of the Board from the public and private sector, good and honorable men and women, and I think they gave that application a thorough review and denied the application based on the information that was submitted. I think also, looking back on it, there was a great deal of concern at least shared by a number of the members of the Board, about the effect on the remaining state employees in that program. While I think some would dismiss that effect as minuscule, there was still a fiscal effect on those remaining state employees. I will tell you as a board member, and as chairman of the Board and like the rest of the Board members, I get my fair share of constituent phone calls about health claims being denied and prescriptions not being able to get filled and durable medical equipment not being able to be purchased. I think a large number of the Board members just had some concerns about the effects on the remaining members in that program that are state and otherwise public employees. I’ve talked with the Teamsters and their attorney and I don’t know where we are going to go this fiscal year, whether or not they are going to resubmit the application in this fiscal year or whether this body and the full Legislature will want to revisit the issue by way of some statutory changes next time around but I think the Board members gave the application, both times around, full consideration.”

Senator O’Connell referred to the third question and asked if the Teamsters application met all the mandatory criteria that was set forth by the Legislature. Mr. Johnson said that he did not have the questions or the draft responses that were prepared and thought that Mr. Thorne and Ms. Cavin could speak more to the question. He said that he thought the application, in part, did meet the criteria. There were some areas where there was some discretion bestowed upon the Board and in the exercise of that discretion, a majority of the Board declined the application in the exercise of that discretion. Senator O’Connell said, “I guess I’m having problems with determining what the discretion was that the Board had when we set forth the criteria that was required and if they met that criteria, then I guess we’re all puzzled as to why they haven’t been able to opt out.” She said that if it was less than or five percent impact on the agency the group should have been released. She said that she still does not understand the Board’s decision because she thought the Legislature took that decision out of the Board’s hands when it set forth the criteria. She said that she was sorry to put Mr. Johnson “on the spot” but she did not know who else to ask. Mr. Johnson said that he could not quote the statute verbatim but it provides for the Board to consider an application and to base its

decision with regard to the application based on that criteria but as he recalls and understands the statute it does not say the Board shall grant approval to a program and shall allow for a departure – end of story. It still provides for an application to be submitted to and considered by the Board and it was in consideration of that application that a majority of the Board declined the application.

Senator O’Connell asked the Legislative Counsel for clarification on the statute.

Ms. Erdoes said that she believes the statute referred to by Mr. Johnson says the Board may approve the contract unless the departure of the group from the program would cause an increase of more than five percent. It is discretionary language – it says the Board may approve the contract. Further, Senator O’Connell said it seems to her that the amount was below the five percent if her information is correct. Ms. Erdoes confirmed that the statute does have the five percent in it but says “may approve it unless” so it would say that they have the option of approving it unless it is more than five percent.

Mr. Horne said he was curious about the “minuscule” effect mentioned. He asked if the percentage was below the five percent and, if so, what was the percent. Also, if it was below five percent and it was still denied, what threshold is the Board applying.

Mr. Thorne replied that the decision letter dated December 15th, confirms that in the optional criteria whether the cumulative impact of a group leaving the program on the cost of premiums or contributions for the remaining participants in the program is so detrimental as to cause a significant negative impact on the program . . . the Board determined that the estimated \$700,000 cost to the program, which is approximately one-half percent and \$3 per month or \$36 per year for each of the remaining participants and the expected cost increase in future years would cause a significant impact on the program. He noted that while it is approximately one-half percent impact on the program, it is an additional \$3 per month out of the pockets of close to 20,000 active state employees and retirees in return for a group of 300 to leave the program.

Further, Mr. Horne asked for additional clarification noting that theoretically it could go to one-quarter percent and extrapolate further and still have a significant negative impact and it seems like the Board would never be able to let anyone opt out. Mr. Thorne explained that one-half percent and \$700,000 was for the next plan year where the group would leave. He said that is not a one-time expense as it would continue into the future. The \$700,000 cost is in the next plan year and that is what the Board evaluated it on as far as addressing the percentage rule. The statute says that if it is five percent or more then the Board may not let them go. Except for that, the Board has discretion in making the determination of whether to let the group leave.

The chair asked Ms. Erdoes to quote from the statutes so there is no misunderstanding. Ms. Erdoes said, “The rest of that section says that except as otherwise provided in this section the Board has discretion in determining whether to approve the contract and what I think they are talking about in ‘except as otherwise provided’ is that it says the Board will follow the regulations that they adopt concerning the criteria under which they will approve the contract.”

Mr. Anderson recalled the length of time this subject has been discussed and said he wanted to make sure he was drawing the correct conclusion from Mr. Johnson’s testimony to the propositions of questions 3 and 4, the Teamsters application met all mandatory criteria and the Board found the determination that the Teamster group would not increase premium costs of over five percent. Mr. Anderson said, “Have I correctly interpreted, Mr. Johnson, the position that you believe the Board is that since it is a discretionary function you could stop this regardless.” Mr. Johnson replied, “I believe those figures are correct in terms of the impact not exceeding five percent but as to whether or not it is up to the Board’s discretion to stop it, that indicates to me the line of thinking that the Board abused its discretion. I’m certainly not prepared to say here today that the Board abused its discretion in denying the application but I will say that the Board members felt that they adequately exercised that discretion that was given to them that it was not a mandatory exit – just submit an application and you get to walk out the door – that there’s still a process whereby the Board would consider the application and I think this Board gave hours of consideration, both times around, to the application that was presented. In answer to your question about the five percent impact, it is my understanding that the effect did not exceed five percent but I would not go to the point of saying that the Board felt they

could merely stop it for the sake of stopping it.” Mr. Anderson said that he appreciated the attempt to protect the integrity of the Board in its actions but he is concerned relative to the fact that the legislation itself was concerned that if discretion was going to be given, it would clearly set the top end of what the fiscal impact would be – the five percent rule. It would appear that the legislation anticipated the fact that there might be multiple groups requesting such action and that the cumulative effect could therefor be weighted using the five percent rule if there were more than one application from multiple groups. There is a single group making a single application, that are qualified with the proper number of signatures that the legislation had as the base number. It seemed to him that regardless of what is taking place, it is not going to qualify because there is going to be some sort of impact, even if it is minor, because of the potential for a long range one. He said that testimony has been heard in the past although Mr. Johnson has not articulated it in his discussion today, and it would clearly be that the Board is using the discretionary situation to say it is not letting anybody out of the program. Mr. Anderson said, “That is what causes us all this great level of distress. Mr. Thorne you have had to pick up the pieces of this problem and administer it, do you think that that’s an unfair statement also? I’m anticipating that you’re going to say ‘yes’ but do you believe that there is any way that any group is going to be able to make a successful application in front of your group?” Mr. Thorne responded, “Like the chair, I’m going to have to say I have no way of predicting how the Board will act on future applications. Each application will be looked at based on its merits, its potential impact on the program and whether or not the Board feels that that meets the criteria set out on the regulations. It’s possible for a group that is similar in composition, for example to the remaining group, for them to leave and there would be no impact. But, the group that was applying was younger, healthier, and a greater male to female mix than the remaining group and a lot of that is what contributed to the impact that there was on their leaving the program. If you end up with a group of 300 or more that is similar in demographics, ages, health status, etc., they could leave and it could have a positive impact on the plan.”

Mr. Anderson asked, “Are you telling me that the demographics of the Teamster group are five percent different than the demographics of the overall group, excluding retirees of course. Of the active groups in the health care program, that their group is demographically that dramatically different than the regular group that you are holding – age-wise and health-wise – because they are highway patrolmen?” Mr. Thorne responded, “To provide some examples of the comparisons from the report by AON, and they used predictive modeling based on the actual health status of the individuals who are applying compared to the balance of the group as well as the demographics, the opt-out group is approximately 10 years younger on average than the remaining PEBP group. There are 22 percent more males than the remaining group. The opt-out group is 39 percent healthier than the total group. Of the 30 aggregated condition categories, the ICD9 codes or diagnostic codes that they looked at, the opt-out group had higher incidents in only 7 of the 30 categories.” Further responding to Mr. Anderson,

Mr. Thorne said that AON used the data for the 300 particular members who were applying as part of the opt-out group compared to the remaining plan. It includes both active employees and retirees because there were some actives and retirees in the opt-out group so it is comparing the same, comparable populations in each group – the opt-out group and the remaining group in the plan. The remaining highway patrolmen who were not in the opt-out group would be in the remaining group of the entire plan.

Senator Care commented that while he does not remember how he voted, he does remember the discussion during the 1999 legislative session and it was and is clear to him that the intent was that somehow the Teamsters – highway patrol entity – be allowed to opt out. It seems to him that there is a mind set amongst the Board that Teamsters 14 is not going to be allowed to opt out under any circumstances. He is unsure what the commission could do about it but thinks it is terribly unfortunate and he does not doubt the commission will hear about it again.

Chair Townsend said that the issue is one that brings up the responsibilities of the 63 legislators and the direction they give the Legislative Counsel on how to draft the bills. There were a number of bills in the last session, and have been part of previous sessions, that when you go to regulation it is found that perhaps legislators were not as articulate in giving direction. He thinks it is

important for members with seniority as well as new members. When the Legislature gives a directive, it needs to follow up and make sure that whatever bill comes back is exactly the way they want it done. No matter how you feel about the issue, there seems to be a great deal of misunderstanding about what was thought was done; what was done; what the intent was and, unfortunately, a great many individuals were caught in the middle. The result is when the Legislature convenes there are two key components that need to be addressed and legislators need to spend the next five months to clear it up. If it is important to continue to debate the policy on whether individuals or groups can leave the system, then the law needs to be quite clear on what the standards should be and whether they should be mandatory or discretionary. With regard to all of the public employees, whether they are part of an organized group or not, the issue of health care and legislators' responsibilities to them should be paramount and they are very costly. It is something that should be explained to the public that the state has wonderful employees who work for it and the cost of health care continues to go up. The Legislature has a responsibility to fund that. The Legislature has a responsibility to fund retirement – it has an obligation and a contractual commitment it has made and there will be a need to address it in the "money" committees. There are some challenges ahead and he said he hopes that commission members who sit on the committees who deal with the issues will spend time now on them so that when it is time for the next legislative session there can be more clarity.

Ms. Angle said that she has been listening quietly and it seemed to her that the Legislature has passed a worthless law. She wondered if there is any way that "we can make our intent known legally or do we just have to suffer with what we've got here and work with it in the next legislative session to take out discretionary language because I think that's what this has come down to – if we give discretion, then our law does follow the intent that we purposed it for. I guess I'm wondering what is our recourse now – what can be done."

Chair Townsend stated, "If the question is what we can do, I believe counsel has been quite clear that the law is discretionary and that takes it out of our hands. That leaves it in the hands of the Board. What the participants who are interested in seeing, what I believe originally was Senator O'Connell's intent, I don't know whether the only thing left is court action. I'm not an attorney and I don't play one on T.V. so I don't know what else to tell you unless counsel can tell me there are other options."

Ms. Erdoes said, "I do not believe there are other options, for example, for the commission at this point. I believe you're right. The next phase is either in court or in the next legislative session."

Senator Titus stated that she appreciated the comments about the need for health care and she listened to Ms. Angle and wants to respond. She said, "I do remember how I voted on this. I had great concern about the highway patrolmen pulling out of a health care system that was already under siege and that we're trying to get back up on its feet and provide health care at a reasonable cost for our state employees. It was with this discretion that I can support the bill because I think we have to be very careful that certain groups aren't 'cherry picked' out of the system and we are left with older, more vulnerable people, more liable to have health problems, that the state taxpayer dollars then have to pick up. When we say 'what should we do, this is a worthless bill' we need to speak for ourselves, not for the group because some of us thought that discretion would be a good idea and we should be very careful – we shouldn't just say 'no' – but we should be very careful who we let out, how we let them out, when we let them out. I just want that for the record."

Ms. Angle said, "I'd like to just put in my 'two cents.' I did vote for this bill and the reason that I think that we have a demographic problem is because our highway patrolmen are actually leaving service to go to serve other places because of problems with this whole health care situation. This was one way that we felt that we could keep our highway patrolmen in the highway patrol was to allow them some discretion and where we've made a law that does not really allow them to opt out – that's what I felt was worthless and I did speak for myself because I feel like when we make a law and yet there's no group that can access this law, then what is it worth."

Chair Townsend stated, "Let's go back to the premise and I'm going to remind 63 of us including the chair that we have an obligation on behalf of the public to not hope that Legislative Counsel can get it

right. Our job is to submit clear and concise BDR's or amendments and then review them when they come back so that there is not a misunderstanding. This has happened ever since I have been here and, as I'm looking around I guess I'm the senior guy now, and it's going to happen in the future, but we have an obligation to be much more clear in what we do and not rush things and get more done in the beginning of the session and less at the end when everybody is rushing around trying to accomplish certain things. I'll take my own responsibility for the mistakes I've made but we all have that responsibility. We can sit here all day and argue, point fingers and make speeches but in the end it's the public that serves under these laws and we weren't clear. I know what Senator O'Connell was trying to do and I may be like Senator Care – I thought we did it but if that's not what the law says, it's not what the law says and that's what we're stuck with."

Senator Carlton said she just wanted to say for the record that a letter dated August 12, 2004, was received from the State Peace Officers Council (SPOC) in affiliation with the Teamsters with a response from the Attorney General's Office dated August 23, 2004 (a copy of both letters and accompanying documents are attached as Exhibit C). She said that the letters were on her desk this morning and she just wanted to say how disappointed she is that the matter has had to 'go this far' because a piece of legislation cannot be implemented. Whether individual commission members voted for it or not, it did pass and it should be implemented and regulations should be in place. She is wary of the Legislature getting involved next session in something that SPOC has decided to possibly take to court. She was unsure whether the commission can solve the public policy issues if SPOC does decide to take the matter to court. She said that the commission could still try to fix the problem but she does not want to be hamstrung by the process of litigation which could take years and years to resolve.

Mr. Anderson said that the Board that was put in place with the legislation has a duty and responsibility to ensure that the health care needs of all of the public employees are taken care of. When the discretion was given, he believes that as citizen legislators who are not actuaries, the Legislature was trying to ensure that the Board would take time to review the specifics of the fiscal impact upon the total system was truly weighted. He is somewhat reluctant to take away certain kinds of discretionary powers from commissions that are put in place, particularly this one, because he believes it represents a fair development of the different interest groups that are there. He wants to make sure that that integrity is held. He is disappointed as a member of the Legislature who voted for a bill, what he considered to be an important piece of legislation. He recognized because of the 120-day limit, that legislators would not be able to go into the nuances and the inner workings of the health care system. He said that he still holds out the hope that it would be possible to work out the matter without going through the court system and he encouraged the PEBP Board to do so. He expressed his appreciation to Mr. Johnson and Mr. Thorne for their appearance at the meeting.

Mr. Johnson said, "I want to thank the commission for giving us the opportunity to come here today as well and I will, as well, state for the record too that between now and the start of the legislative session that we'll continue to in good faith look for some ways and some possible avenues to address some of the concerns that have been raised here today and previously and to see what progress can be made in moving forward on this issue that's important to all of us. We have a program that is dramatically more solvent than it was a few years ago. I think staff has done an excellent job in overseeing that program and the Board as well. We're all cognizant of the history of this program as well as of your concerns here raised and I will assure you that we'll take a good look at some things here and some possible avenues. I've met informally with some of the folks and will continue to do so to see what we can do to make some progress here over the next few months. Thank you again."

Ron Cuzze, President of SPOC and Co-chairman of the Nevada State Law Enforcement Officers Coalition, said, "Today you've heard testimony that this is a highway patrol group. It is not a highway patrol group. Over 50 percent of the people who are trying to opt out are from my group, not Nevada Highway Patrol Association. If you look at the rest of the state cops, they are no 'spring chickens.' The State Fire Marshal's office, I believe with the exception of two people, are all over the age of 40. The majority of the Capitol Police officers are all retired from other departments. The majority of the people from Parole and Probation, the biggest group, are all over 35. As far as I'm concerned, the statistics

they are using is nothing but smoke and mirrors. If they look at the whole group, they will see the true age additionally, somebody needs to look at the statistics on how often police officers get hurt. Now maybe they may be a little younger and a little better physical shape, but they suffer an awful lot of injuries. So, I don't think that the Board is looking at the right statistics. Second, in the letter that I provided to the council this morning, I'm sorry that I did not get [at this point the chair interrupted to verify that all members had a copy of the letters mentioned and the response was affirmative] again, I apologize for getting this to you so late. I did not get the response until after 5 o'clock last night. If you look at my original letter in the first paragraph, I am talking about the opt out but that's not what I'm requesting that be investigated. What I'm talking about is what PEBP has done with regard to the single employees of the State of Nevada. I do not believe that the Attorney General that they may [Mr. Cuzze was interrupted by the chair who said that the only thing that the agenda allows members to talk about is the opt-out part.]

Chair Townsend said that Mr. Cuzze has filed a complaint with the Attorney General's office and it has given a response stating that it has been forwarded to others in the office for investigation. The chair stated, "I don't know if there is anything else we can do here today because we're not posted to deal with rates and investigations, we are only posted on opt in, opt out." Mr. Cuzze said that is what he is trying to explain is that this is a separate thing and they are not asking them to look into the 'opt out.' He wanted to clarify a remark that there was possible litigation over the opt-out situation and he wanted to clarify that it is a separate subject and not the 'opt-out' matter. He said that there are a lot of people, not just highway patrol, in several organizations that are looking at what is going on here today. Mr. Cuzze said, "Literally, I have been told by several people if they don't get this they're going to start looking for new jobs and, I believe, that was one of Senator Carlton's concerns. We are losing state cops left and right. I believe the highway patrol is 78 troopers short in the south. Where do they go – to north town, Henderson, other departments that have the Teamsters insurance. So, I believe the intent of this law is very important. I believe that, as I said last time, the Legislature makes laws and the Executive Branch is supposed to enforce the laws. I believe that this is a law that was passed for the good of a group of people and that the PEBP Board is not following the intent and I personally believe that it is a malicious act."

Chair Townsend commented, "We appreciate that. I think we've clearly stated that there is flexibility in the law, they have exercised that flexibility and the only way you can clear that up is through the courts. There is nothing that we can do here until we get to the next legislative session. I think everyone who serves in the Legislature has the highest regard for law enforcement. They give us the quality of life that we all lead in this state and we all enjoy and they put their life on the line every single day no matter what component of law enforcement they are involved in. I think we all respect that, we all appreciate it and we're just faced with a 'Hobson's choice' and it's not an easy one but our hands are tied at this point." Mr. Cuzze replied, "Sir, I understand that and believe me our people appreciate everything that this commission's trying to get done on their behalf."

Chair Townsend said that he was sure that Senator O'Connell and others who have been working on this subject will have a bill that will be quite clear to allow for debate in the next legislative session.

Walter R. Tarantino, Attorney at Law, said that he agreed wholeheartedly with the chair that this is not the time to debate the issue. It is clear what the parties need to do from here and it would neither prove constructive or positive to argue over what is optional criteria versus mandatory. He said that he does have a request to the Legislative Commission that it make a directive or request of the PEBP that they respond to the August 11, 2004, letter in writing and that they provide detailed written responses to the 17 questions that were posed by the Legislative Commission and that once those responses are submitted that they become part of the public record.

Mr. Johnson said that the responses could be reduced to a written form. The chair indicated that he would like a response in writing with specific answers to the questions. Mr. Johnson responded that they could be provided by the end of the week. The chair said that the response would be expected by the following Monday morning to allow for the weekend in case the time is needed. Mr. Johnson and Mr. Thorne confirmed that the response would be provided. [The response was subsequently provided

and was included in the meeting packet for the next commission meeting.]

Gary Wolff of Teamsters Local 14, representing the Nevada Highway Patrol, SPOC and Department of Transportation members that are in the opt-out group, said that he had been involved in the legislation from the beginning. He said, "There is a couple of things that were said here that are absolutely false. Number one, AON never, ever indicated that the impact to the group was affected by age. In fact, AON said the group was so small." At this point, the chair interrupted Mr. Wolff who then concluded his remarks stating, "What was said here today wasn't correct. The fact is that our troopers are leaving in masses and this was one of the issues that was huge on the agenda and other officers are also leaving. There is something that was put into effect because of the fiasco that we had in 1999. The agreement – and I was there, you were there, everybody was there – fix it or let us go. They approved their own regulations which they have not complied with their own regulations. That's the problem and I'll leave it at that but it does have to be fixed legislatively, obviously, but I just want to let you know all these officers and people through their dues have spent tens of thousands of dollars out of their pockets trying to fight something that this Legislature gave to them and thought that was their right to have. Thank you."

Chair Townsend stated, "We appreciate it. We respect that. There are other reasons they're leaving – pay is one of the biggest and that's one of the tragedies. Everyone in this room is very sensitive to the fact, particularly in southern Nevada, a law enforcement officer at the highway patrol can walk across the street and go to work for Metro for a huge amount of money more. If somebody can't figure out that the tax structure in this state is so disproportionate what is necessary to operate the state, then they didn't pay attention 20 years ago and they didn't pay attention last time. It's a sad fact of life but that's what's happening. The good people that we train in the Attorney General's office, law enforcement, across the board walk across the street and get a better job and you can't blame them for taking care of themselves and their families. So, we need to deal with that problem as well as this in the next session and you've got my commitment that I will help where I can."

D. Report of Legislative Commission's Information Technology Subcommittee--Assemblyman Harry Mortenson, Chairman of Subcommittee.

Mr. Mortenson read from the material contained in the meeting packet for this agenda item. He outlined the subcommittee's activities as follows: reviewed and approved the information technology appropriation request for the 2006-2007 fiscal year, reviewed proposed legislator laptop computer replacements to be tested for selection and reviewed and approved proposed fee and service option changes for the online bill tracking subscription service. The \$1,091,235 appropriation request would fund upgrades to the phone system, replacement of old computer servers, fund software and hardware resources in support of WEB and program development and customer support services, provide for technical training and fund other IT-related projects for the Media Services Unit and Legal Division. The request will be transmitted to the LCB's Biennial Budget Review Committee. The subcommittee viewed literature on proposed replacement laptop models and discussed features of particular interest to legislators. Members also discussed cost of replacing power adapters at desks in chambers and committee rooms if a brand of laptop other than IBM is selected. It was determined that additional consideration of requested changes in the online bill tracking service would occur at a future meeting.

Mr. Anderson asked if a final determination has been made on laptops and power adapters. Mr. Mortenson responded that a final decision has not been made. One of the laptops viewed was a Seagate which is very light, very thin and does everything the current IBM laptop does but is better in all respects. The screen is the same size. He said that he personally favors the Seagate.

Mr. Anderson inquired about the length of time to make the decision on which type of laptop will be purchased and did it involve new technology. Mr. Mortenson said that he believed that it is smart to postpone the purchase as long as possible simply because technology changes so fast. They are within the time frame proposed.

Chair Townsend asked what was wrong with the current laptops. Mr. Mortenson said that computer capability of the system in the Legislature is increasing and it is thought that computers are needed to match. Chair Townsend asked if people could be prevented from playing solitaire, reading the sports page and e-mailing lobbyists and each other. He said, "Because if you do, then I'll vote for it. If you can't, then I'm not going to support any upgrade to any of this stuff. Nothing personal but that's a reality." Mr. Mortenson replied, "That's a personal choice." Senator Townsend said, "That's a bad choice but it's a personal choice, now what about the \$382,000 for a phone system upgrade. What's wrong with my phone?" Mr. Mortenson said, "I do not know the answer to that particular one." The chair commented, "Okay. That's fair. That's honest. I just didn't know anything was wrong with my phone. You are asking us to accept this report. You've submitted this to the Biennial Budget Committee?"

Mr. Mortenson responded in the affirmative.

The chair directed attention to agenda Item IV. A.

E. Report of Legislative Commission's Security Subcommittee--
Assemblyman Ron Knecht, Subcommittee Member.

This item was discussed at the conclusion of agenda Item IV. A. 2.

Mr. Knecht appeared at the witness table and was joined by Fred Rembold, Chief of Legislative Police. He referred to a report contained in the meeting packet and proceeded to review the recommendations which included increased staffing, procuring additional equipment, maintaining an open door policy, researching additional measures, pursuing additional homeland security grants and new parking regulations.

Responding to the chair, Chief Rembold said that he anticipated an additional subcommittee meeting prior to the legislative session and expected to have results of the research by that time.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE REPORT OF THE SECURITY
SUBCOMMITTEE. MOTION SECONDED BY ASSEMBLYMAN BROWN AND CARRIED
UNANIMOUSLY.

The chair directed attention agenda Item IV. B.

F. Report of study of Criminal Justice System in Rural Nevada and Transitional Housing for Released Offenders (S.C.R. 32)--Mark Krmpotic, Senior Program Analyst.

Mr. Krmpotic recalled that a study was conducted of the Criminal Justice System in Rural Nevada and the feasibility for implementing a program for transitional housing for offenders released on probation, parole or released after discharge from the Department of Corrections. The committee held five meetings including a work session. The advisory group which was appointed to assist the committee with the portion of the study dealing with the rural criminal justice system met one time. Members of the advisory group presented an overview of a report of the commission on rural courts impaneled by the judicial council of the State of Nevada. The report singled out several issues reviewed by the committee including inadequate safeguards at the White Pine County Court House to securely hear trials of maximum security inmates from Ely State Prison; the lack of juvenile detention facilities within reasonable driving distances of certain rural counties throughout the state; the lack of counseling services for citizens requiring alcohol abuse, drug abuse or domestic violence counseling in rural counties; limited legal assistance for residents of rural Nevada due to the small number of practicing attorneys in rural locations; lack of courtroom security training for bailiffs and deputy sheriffs who provide security to the courts; and the shortage of court interpreters available to the rural courts. The committee also heard testimony from representatives of the Departments of Corrections, Public Safety and Human Resources regarding the feasibility of implementing a transitional housing facility for offenders in Nevada. The committee reviewed issues related to a transitional facility including offender

background, programing services, length of stay, job availability and the operational impact on the Department of Corrections and the Department of Public Safety. The committee adopted seven recommendations at its June 22, 2004, meeting which included five bill draft requests for consideration by the 2005 Legislature. The recommendations addressed construction of a new courthouse facility in White Pine County; establishing regional juvenile detention facilities within reasonable driving distances in rural areas of Nevada; establishing a rural court coordinator position in the Administrative Office of the Courts; providing flexibility in evaluation and counseling requirements to address the lack of treatment providers in rural counties; improving the availability of legal services in rural Nevada through incentive programs to students at the William S. Boyd School of Law; establishing courtroom security training in the Peace Officer Standards and Training Commission academy curriculum; and establishing a transitional housing facility for offenders prior to release and further studying issues related to transitional housing facilities including statutory definitions, the application process and local issues regarding licensing. Mr. Krmpotic said that additional information could be found in the meeting packet.

Senator McGinness expressed his appreciation to Mr. Krmpotic and the staff on this study and especially the advisory group. The advisory group members are listed in the materials for this item in the meeting packet and were a great resource to the committee and commission members will be seeing the committee's recommendations in the next legislative session.

**ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE REPORT OF THE STUDY. MOTION
SECONDED BY SENATOR MCGINNESS AND CARRIED.**

The chair proceeded to agenda Item IV. E.

Item IV--Legislative Commission Policy:

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

Ms. Erdoes said that there are 26 regulations to be considered pursuant to NRS 233B.067 and one regulation for consideration pursuant to NRS 233B.0675.

1. Administrative regulations submitted pursuant to NRS 233B.067.

Ms. Erdoes explained that this item contains regulations coming to the commission for review the first time. They are as follows: one regulation from the Public Utilities Commission of Nevada, one regulation from the Board of Nevada Arts Council, five regulations from the Commission on Professional Standards in Education, one regulation from the Real Estate Commission, one from the State Board of Dental Examiners, two from the Board of Wildlife Commissioners, two from the Department of Education, two from the State Board of Education, one from the State Fire Marshal, three from the State Board of Pharmacy, four from the Commissioner of Mortgage Lending, one from the Commission for Common Interest Communities, one from the Labor Commissioner and one from the Division of Insurance. The only regulation of concern on the list that she knows of is R158-04 which happens to be the one that was added to what was contained in the meeting packet. A revised list of regulations was provided to members and those in attendance and is attached as Exhibit D. The only change between the revised list and the one in the meeting packet is the addition of R158-04. The regulation is split out from R087-04 of the Commissioner of Mortgage Lending and took sections 20 and 21 that were originally in R087-04 and put them in the new regulation R158-04. They are the two sections that were of concern. Regulation R158-04 and a copy of the new version of R087-04 were also provided to members and those in attendance and are attached as Exhibit E. She said the first 25 regulations, excepting R087-04, her office believes are within the authority under which they are adopted and with the concurrence of Senator O'Connell would recommend approval.

Senator Carlton asked that R115-04 be pulled from the group for additional questions. She noted that Mr. Johnson is still present in the audience for questions on that regulation. [Discussion on this regulation occurred at the end of this agenda item.]

Chair Townsend recalled that the commission traditionally deals with the regulations in a group unless there are requests to remove certain ones for additional discussion prior to action. Regulations R115-04, R158-04 and R087-04 were removed from the group.

Senator O'Connell said that there are some people in the audience who are expressing concern about the regulation from the State Fire Marshal. She also noted that there were about 15 or more people who would lose their businesses due to one of the regulations from the Commissioner of Mortgage Lending. The chair pulled out the regulations of the Commissioner of Mortgage Lending, the State Fire Marshal and the Labor Commissioner for further consideration. The regulation of the Real Estate Commission [R050-04] relating to fees for background checks was also pulled at the request of Mr. Carpenter. Regulation R107-04 relating to common-interest communities was pulled at the request of Mr. Anderson.

SENATOR O'CONNELL MOVED APPROVAL OF THE REMAINING REGULATIONS ON THE REVISED LIST. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

Chair Townsend called for discussion on R050-04 from the Real Estate Commission which revises provisions relating to fees for background checks. There was no one present to speak on behalf of the Real Estate Commission. The chair said, "For anyone listening on the Internet, even though you may not be notified, if you have a regulation in front of this commission, it is probably a good career move to have someone here in case there is a decision to ask a question."

Mr. Carpenter said that his question would be if the commission is going to have a background check on everyone, it may hold up the process. He thought background checks are not just automatic when you have to deal with the state, the Federal Bureau of Investigation and others and there needs to be more explanation of the time that it is going to take. He said that he would like to make a motion to hold the regulation for answers to questions he has on it.

Mr. Anderson commented that if a set of questions is being developed, he would like the Real Estate Commission to be more specific as he would presume that real estate brokers that have access to homes would have had background checks. He said that he does not see a problem with it, he just wants to make sure there is a clearer definition as to why they finally decided to do the checks.

Senator McGinness said that he does not have any background on this issue but it looks to him like it says revises provisions relating to the fees, probably relating to an increase because he thinks they are already subject to background checks. Mr. Carpenter said that as he understands it, the Real Estate Commission is increasing the fees so it can do the background checks for everyone rather than the way it has been doing it and he thinks it needs to be reviewed.

ASSEMBLYMAN CARPENTER MOVED TO DEFER R050-04 TO THE NEXT MEETING OF THE LEGISLATIVE COMMISSION. MOTION SECONDED BY ASSEMBLYMAN BROWN.

Under discussion of the motion, Senator Care said he would like to know if it is true that this regulation is creating something not already in the statutes in the way of background checks and asked if research could be done to find out what other states or jurisdictions perform background checks to the extent that is proposed. Senator McGinness said that the Real Estate Commission would be asked to provide information on what other states do.

A VOTE WAS CALLED FOR AND THE MOTION CARRIED UNANIMOUSLY.

Later in the meeting, the commission returned to regulation R050-04 to receive testimony from representatives of the Real Estate Division present in Carson City and took additional action on the

above mentioned regulation. The following discussion took place. The witnesses were Gail J. Anderson and Tami DeVries from the Real Estate Division, Department of Business and Industry. Mr. Carpenter asked if there would be a delay in the issuance of a license if a background check was performed on everyone. He said that after speaking to representatives of the division, he found out that the division would issue a conditional or temporary license so there would not be a delay. If, when the background check came back and something was found that was not favorable, the division could cancel the license and the person could appeal to the Real Estate Commission. He said with that explanation, he would "be fine" with the regulation.

The chair said that he will ask Mr. Malkiewich to notify state agencies that if they have a regulation before the commission, they should probably have someone present either in Carson City or Las Vegas even though they have not received a telephone call to appear.

Senator Carlton said that she has some concerns about conditional licensing because there will be people endorsed by the state that "may not be the safe people that we would like them to be." She inquired how long the conditional license would be in effect. Ms. Anderson said that the conditional license is the current practice and is issued based upon questions on the application. Those questions ask about criminal background and other specific questions of any other kind of discipline. The initial license review of an applicant is based upon the responses on the application. Misrepresentations have occasionally been found and the division immediately moves to take action. She said that she has a meeting the next day with the Internal Audits office who is making a recommendation and the division may be looking at an electronic fingerprint process that would expedite results back to the division sooner than the six weeks it currently takes. She reiterated that the division has issued licenses on "good faith" and then if any discrepancy has been found, it has immediately taken action.

Senator Carlton said that she was not aware of the current practice and she has some concerns about someone representing themselves as a real estate agent saying that they are licensed by the state, being alone with someone who may not know who they are, taking individuals in their car to go look at homes and it does not sound safe to her. She said that in other licensing professions, the background check has to be completed before a provisional license is issued in a public safety area. She is concerned about people being "out there" without their background checks being completed.

Chair Townsend inquired what is the public purpose of giving a provisional license and if the state is low on real estate agents and can they not wait for a license. Ms. Anderson said that the state is not low on real estate licensees but the Real Estate Association would have considerable concern as they are particularly looking at getting people to work in the industry. However, she said that her concern is fulfilling the expectations of the law. She said that the State of California uses an electronic fingerprint process that gives it 48-hour turnaround and feedback which is well within the time that it is taking her division, generally two to four weeks, to process completely an application. It would be best if her division could get the background check prior to issuing a license and that is what it is looking toward but is not what it is currently doing.

The chair said that Senator Carlton's point is very important but if one looks at the market, people cannot buy a home or get their home sold because they are unable to find a licensee. If someone holds themselves out to be a licensee but it is a provisional licensee, that dilutes the equity that full licensees have. Then, there is the security issue as pointed out by Senator Carlton. He reiterated that he does not see the need and asked if it does not take six or eight weeks to go through school in order to qualify to take the test. Ms. Anderson responded that the pre-licensing for real estate licensees or sales agents is 90 hours which, depending on schedules, is usually able to be completed in three weeks. The background checks general take from six to eight weeks. Further, the chair inquired what kind of liability does the division have if it provisionally licenses someone, something happens and then the background check comes back and says they have a criminal history. Ms. Anderson said that she does not have an answer to that question and just since the last legislative session are going to background check

100 percent of applications. That has not been done in the past because it was funded through a General Fund appropriation to run background checks.

Chair Townsend mentioned that Senator Carlton was chair of a subcommittee on all boards and is extremely knowledgeable about their activities. He said he knows

Ms. Anderson is trying to "do the right thing" but he has an uncomfortable level of a provisional license. Senator Carlton reiterated that she has concerns about a person being alone with someone else possibly in a vacant house or in a car driving someplace. She further commented about the time it takes in the casino industry to get someone hired and processed and looking at four to six weeks to ensure that a person is safe to accompany them to view homes would not be too much to ask.

The chair asked if he, as a consumer, calls two individuals how would he know that one has a provisional license and the other is fully licensed. Ms. DeVries said that when she spoke to Mr. Carpenter earlier, she may have used the wrong term saying provisional license as the license would actually be issued and there would be a flag in the system that staff would watch for the background check to come back through and the license could be invalidated if there was some kind of information that did not match up with the information provided on the application. She said that if the regulation is not passed, then the division is not even able to perform a background check on 100 percent of the applicants and instead would revert back to doing background checks on what it has General Fund appropriations for. She said that while the concerns of Senator Carlton are valid and something that the division could work on with the attorney general staff to look into how it might modify its process to address the concerns, by not passing the regulation today it would create a further negative impact on the public safety rather than a positive one.

Mr. Anderson said he believes the 100 percent requirement is an absolute necessity and it stresses him that the license does not show as provisional. He asked for some assurance that the agency will return with a regulation that will take care of the concerns raise by Senator Carlton and the window time period is taken care of so that the public is aware that the person has not passed all of the background check.

Ms. DeVries said that she does not know if a regulation change would be a necessity and it may just need to be a procedural change within the agency but it would need to work with the attorney general staff to ensure that the statutes are followed. It could be done faster than a regulation change.

Mr. Anderson said he would have no problem with adoption of the regulation if he could be assured that documentation would come back to the commission that the agency had inquired of the attorney general's staff. He does recognize that there is a real risk to the public.

Chair Townsend said that since the regulation does not address the temporary or provisional license if the commission is to accept it, that gets the agency to 100 percent background checks. The agency will have to assure the commission that it will figure out a way not to license people, either return to the commission, draft another regulation or return to the Legislature because it is "just bad policy to do these conditional things." He said he would figure out a way to do the background check before issuing the license. Ms. Anderson responded, "Yes, I very much will act upon the recommendations of this committee and what they've asked for."

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF R050-04 WHICH HE PREVIOUSLY MOVED TO DEFER. MOTION SECONDED BY ASSEMBLYMAN BROWN AND CARRIED UNANIMOUSLY.

After the above action which took place later in the meeting, the chair return to agenda Item III. B.

Chair Townsend called for discussion of R062-04 from the State Fire Marshal which makes various changes to chapter 477 of the Nevada Administrative Code. Persons in the audience were invited to proceed to the witness table to express their concerns regarding this regulation.

Summer Dew, private citizen of Las Vegas, said she was present to testify for herself and her sister Taylor Dew to speak against the regulations relating to using fire in entertainment. She said that the regulation states that someone would have to be at least 21 years of age to dance with fire, or as a musician or in any way of entertainment. She said, "That's like saying you can't work on vehicles or construction until you're 21. It helps no one but certainly hurts the small entertainer. In some cases, it can eliminate jobs. Some of the best fire dancers actually started at a very young age. You can't wait until you're 21 to just start working on your craft." She said it is part of their cultural heritage and they have a right to exercise their heritage. The government has no right to stop the Hawaiians from doing fire as it had once stopped them from dancing hula in Hawaii. She commented, "The difference is, we will not give up our cultural, God given, constitutional right as our ancestors once did. We believe this to be discriminatory on both a cultural and age basis. In the name of fighting crime and making us all safe, we will now have to register with the state. No one has been able to explain to me how putting people such as myself and my sister out of work would bring the crime rate down. Indeed, preventing young people from doing productive work may help drive them into less productive or positive activities. Since the taxes were raised, the bureaucracy seems to have a lot more time and resources as well as an insatiable appetite to destroy small businesses, especially small entertainers. Our manager has said that since the last session, he has spent more time fighting government than doing shows. After increasing taxes by hundreds of dollars, I have not seen one government service improved. As far as fighting crime goes, putting my sister and my jobs in jeopardy is not going to reduce crime rates. I would like to give an example here – on July 18, 2004, we had about \$4,000 worth of costumes, a couple of sound equipment sets, CD's, promotional material, et cetera, stolen from our vehicle. We were in a casino parking lot, there were surveillance cameras pointed at the front and back of our truck. Metro refused to come. I went to the Stewart police station and they refused to let me file a report."

Chair Townsend asked about the specifics of Ms. Dew's objection to the regulation and if the reason she is objecting is because individuals who might have the capability to perform with fire are going to be prevented from doing so if they are under 21 years of age. Ms. Dew said that the new taxes and now the regulation are "two big punches right in a row" and have so far not helped their business. She continued, "As far as safety goes in performing fire dances; in the past, commercial property owners were required to contact the fire department. That was reasonable and worked quite well. We do not believe the individual entertainer should have to register. We also consider the requirement to be 21 to be beneficial to no one, yet harmful to a variety of entertainers, unjust, discriminatory in some cases on a cultural basis and age basis, silly, ridiculous, and counter productive. It is truly ironic that since those massive tax increases took place, the bureaucracy in the entertainment capital of the world has become so hostile to entertainers. Thank you for your time."

The chair inquired if there were any representatives of the State Fire Marshal's office present at either location. No representatives were present.

Mr. Anderson asked if Ms. Dew or anyone from her group appeared at any of the public meetings relative to the need for the fire extinguisher systems in addition to section 5.1 of this particular regulation. He asked if she was complaining about the regulations of the fire marshal as a whole or about the specifics of the regulation. Ms. Dew responded, "Of the specifics, when it comes to entertainment." She indicated that no one attended the public hearings and this is the first they have heard about the regulation.

Mr. Anderson commented that there was public notice on the regulation and that would have been the proper place to take up in front of the proper group to hear her concerns. Mr. Anderson said in his reading of the regulation, it appears to be dealing with new construction and aimed predominately at the construction companies and construction industry.

Daniel Dew, Manager of the Magical Hula Girls, said that they are just a small business and do not have an attorney or lobbyist and they had no idea that this was going on. Within all of the language relating to blasting and the types of mattresses they could use in prisons, there were a few paragraphs that related to them. He said it was buried deep within the regulations and they had no idea that they were changing the rules relating to entertainment when they were talking about major pyrotechnics, fire

extinguishers, prisons and so forth. He said somehow they came across it and they came to the meeting as soon as they heard about it. He said he doesn't think that the individual entertainer should be "lumped" into a section where it is talking about major blasting, pyrotechnics, cells of fire extinguisher systems for entire hotels. The small entertainer is incapable of keeping up with all of that.

The chair said he has consulted with staff and the commission can object to that portion of the regulation if it is the commission's desire and let the remaining portion go through and then deal with the portion objected to at a later meeting, much like it did on the mortgage brokers regulation. The chair subsequently corrected his comments to advise that the commission must either reject or defer the regulation if it does not wish to approve it.

SENATOR O'CONNELL MOVED TO DEFER REGULATION R062-04 FROM THE STATE FIRE MARSHAL. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

The chair directed attention to regulation R107-04 relating to common-interest communities and establishes a fee for the examination required to obtain a certificate for the management of a common-interest community.

Mr. Anderson read from the material in the meeting packet which states that the amendment was proposed by the Real Estate Division and there was no opposition but it does not say what is the nature of the change. He said that his big question is, "What is the nature of the change?" He said a big issue that was raised in the past is that in reviewing the meeting packet material, there is not a summary statement where the members would be able to tell. It is very unclear what it is all about.

ASSEMBLYMAN ANDERSON MOVED TO DEFER REGULATION R107-04.

Senator Carlton said that for the last couple of commission meetings, she has requested that the LCB send her a copy of each regulation so that she could review them. She told Mr. Anderson that it has to do with how the examination is given and the score of the examination as far as providing a certificate for a manager of a common-interest community. She said, "If that answers his question, that is fine but if you'd prefer to defer this so that they will come before us and answer Mr. Anderson's question personally, I just thought I would give him that small bit of information if it helps."

Mr. Anderson said it is somewhat helpful and he apologized because he should have asked the question prior to the meeting so that he would have had it in writing. He said that he hesitates to hold up any action on the regulations because he knows that agencies have been waiting to get them in place for some time.

Senator McGinness said that on page three of the regulation, item 9., it talks about the fee and says that they used to charge \$49 for each examination and now it is going to be \$100 and they will use the services of examination servers. It also talks about the fee resulting in an annual revenue of \$15,300. Mr. Anderson expressed his appreciation for the explanation.

ASSEMBLYMAN ANDERSON RETRACTED HIS PREVIOUS MOTION AND MOVED APPROVAL OF REGULATION R107-04. MOTION SECONDED BY SENATOR MCGINNESS.

Under discussion of the motion, Amanda Getzoff, Public Information Officer of the Department of Business and Industry attending in Las Vegas, said she does not know why there is no representation from real estate. She said that the administrator is in Carson City today in a commission hearing and if the members wish to defer the matter until the end of the meeting, she could attempt to have a representative present.

THE CHAIR CALLED FOR A VOTE AND IT CARRIED UNANIMOUSLY.

Chair Townsend directed attention to the regulations from the Commissioner of Mortgage Lending

identified as R086-04, R087-04, R088-04 and R158-04 which was split out from R087-04.

Scott E. Bice, Commissioner, Division of Mortgage Lending, Department of Business and Industry, present in Las Vegas, explained R086-04 covered escrow agencies and agents. As a new division, it is imperative that permanent regulations are placed "on the books." He said that he is not aware of any issues with R086-04. Regulation R087-04 relates to the mortgage broker and is the regulation from which portions were removed and placed in regulation R158-04. The division's position would be that perhaps matters in

R158-04 would be best to be taken up legislatively at the next session. With regard to R087-04, he believes part of the issues hinge upon the division's requirement for principal offices and branch locations to have signage similar to the real estate regulations that have already been passed.

The chair directed attention to regulation R086-04 which makes various changes concerning escrow agents and escrow agencies and asked if there were any questions from commission members. There were none.

The chair then directed attention to regulation R088-04 which makes various changes concerning mortgage bankers and asked for any questions. There were no questions.

Continuing, Chair Townsend called for any discussion or questions on regulation R087-04 which makes various changes concerning mortgage brokers and mortgage agents. Senator O'Connell referred to page three of the informational statement in volume II of the meeting packet and said her concern is the estimated economic effect on the business and discusses the people who are going to be put out of business because they work from their homes. She said she wanted to put on the record that she had a call about the way the hearings were conducted, the lack of notification about the hearing and the ability of persons in attendance to talk about their concerns.

Mr. Bice explained that the agency had extensive meetings with the industry and held not just educational informational workshops but public hearings. One of the hearings was continued and two separate ones were held. He said the agency took in all the comments and made a lot of changes along the way on all the regulations. At one point, the agency was working with the LCB attorneys and some suggested verbiage came out which suggested that it be defined as businesses or locations that are commercially zoned. It has taken a lot of changes and input from the industry participants over time and the agency ended up settling back on the signage requirement so that consumers would know with whom they were dealing. The zoning requirement involving commercial and residential has been removed and the signage requirement included. The position of the agency is that if the counties will issue the business licenses to those individuals out of their residences, the division has no issue with that.

Senator Care said that he received an e-mail yesterday and the people are unknown to him but he did read that there is now a complaint lodged with the Attorney General's office. The subject of signage came up in the e-mail but it occurred to him that if someone is going to operate a business out of their house, it would seem to him that it is a matter best left to local political subdivisions, zoning ordinances and even homeowner's associations. He knows of some homeowner's associations that prohibit businesses being run out of a house. He said that his question is would a sign on the front door of the residence suffice or does it have to be a painting of some sort on a window? He said that it would seem to him that if somebody would go to someone's house to take up the services of a broker they would already know with whom they are dealing. They are not going to be driving down the street and pick out a house with no signage or see a sign and say, "I think I'll go in here and do business with this fellow." In reading the complaint, it got him to thinking what is the necessity of having a sign, especially if you are operating out of your house.

Mr. Bice said, "The division does believe that matters of what you brought up, senator, should be left up to those counties to have their input as to when they will issue business licenses and the requirements for that. The goals of this division are pretty simple – it's to make the industry professional and it's to provide consumers some adequate means to resolve issues and to safeguard

consumer issues here in the state. It's not uncommon in our industry where a borrower may fill out an online application and not know who they are doing business with. It's not uncommon at all that different solicitations, different companies are run differently and we don't believe it's our decision to tell a company how to operate by any means. They do use telemarketers, they do use lead generation services, so in most cases the consumer would not necessarily know where the location of that office would be but I think it's important to have the requirement to know what business that is that they're going to and how to get there and to be able to conduct it in that way."

Senator Care asked what would happen to the small broker who operates out of his house – he has the business license because there is no local ordinance prohibiting he or she from operating the business out of his house and yet that political subdivision has an ordinance prohibiting signs. He said that it would seem to him under the regulations that even though the broker has not run afoul of the local ordinance, none the less he would have to move into a shopping center or business park simply because local ordinances prohibit the sign at the location of his house. Mr. Bice responded that the scenario is correct as most counties have foot traffic ordinances, sign requirements and such things.

Mr. Bice said that the division has approximately 1,325 licensees with the majority of them licensed as 645B or mortgage brokers. From what he can determine, there are between 8 to 15 home-based businesses. Certain individuals have made their positions known. It is not a majority of people but for those people it would potentially, if they cannot put up a sign, impact them. He cited an example down the street from his office where there is a business that would rent an executive suite for \$180 a month and he acknowledged that there would be an impact to those people.

Spencer Judd with Home Funds Mortgage in Las Vegas and Jim Fitzgerald of Carson City were present at the witness table in Carson City. Mr. Judd said that he and Mr. Fitzgerald filed a complaint trying to preempt any application of the proposed regulation because it would put them out of business. He said in his case, Senator Care outlined the situation exactly since he has a business license from the City of Las Vegas. At the request of the chair, Mr. Judd identified the language as being section 11, page 14 of the regulation R087-04 dealing with permanent signage. He said the city has given him a business license and he has a license to operate out of his home. He does business at his home and operates professionally out of there. He takes his laptop and visits the homes of people or he takes an application over the telephone and meets with the people later. His clients do not visit his home and there is no need for them to see it or have a sign out front. He said that the subdivision where he lives is a planned community and does have a strict requirement that no signs are allowed and he would have to move out of his house and find a home where he could put up a sign or move into an executive suite. He said that if he moves into an executive suite, the other requirements require him to move all of his records there. He would have to process applications in his home and have his records at his license location and that really is not an option for him the way that the regulations are written.

Chair Townsend said that he thought Mr. Bice had made a remarkable attempt in the regulations to help the industry do the right thing and be more responsible to the consumer and asked if there is another way to account for the individuals that have received a business license and operate out of their homes other than a sign. He asked, if there is another way to make it more accountable for the public which Mr. Bice, in his experience, thinks is problematic. Mr. Bice said that Mr. Judd hit on another issue that his division has and that is conducting an exam at that license location. The issue for his division also revolves around safety issues, not just of him sending an examiner to someone's home that has implications but also document integrity. There have been numerous cases recently, and he understands whether it is a house or a business, it is of utmost importance to safeguard the privacy of the consumer's information as well. He said that there are plenty of states that have sign requirements and Nevada would not be the only state that would do so. The Real Estate Division has signage requirements and he does not think it is an unreasonable regulation and he does know that it has some implications as Mr. Judd pointed out. Mr. Bice said that he is not sure about the resolution of the issue.

The chair asked that instead of sending an auditor to someone's home where it is a security issue, can the division just ask that the books and records be brought to the division's office. Chair Townsend

stated, "I must be missing something here. I think you've made a good faith effort, I just don't quite get the sign thing." Mr. Bice responded, "Senator, we're just simply trying to increase the professionalism of the industry." Further, Chair Townsend said, "You can get a little carried away with the professionalism thing and I think what you're doing is great, Scott; but, and I don't know how the commissioners feel about this, I just think we're fighting over something that isn't important but that's me."

Mr. Anderson stated, "Mr. Bice, in contemplating this section of the regulation and given the few number of mortgage brokers who fall into the home category of the aggregate number, had you contemplated the fact of 'grandfathering' these people in so that they would not – clearly, the issue is going to be the sign, not whether they meet your inspection requirements or anything else, it's because most home communities have very, very stringent regulations about signage and most communities do too. That becomes the issue rather than the fitness of the mortgage broker which I think is what your commission should be most concerned with is their fitness to do business and their integrity as a business operation and not whether they have a correctly painted and ordered sign. So have you contemplated the question of 'grandfathering'?" Mr. Bice responded that his division thought about that and part of his issues and goals in being a good regulator would be to be consistent and objective in all matters and he thought consistency would dictate the 'grandfathering' of individuals to be not consistent.

Mr. Bice said, "One of the things, in taking over this industry, one of the things that's plagued it is, it was okay for some to do this and not okay for others and that's just not quite up to par either."

Continuing, Mr. Anderson said, "My concern would be you may have a mortgage house that has substantial property holdings in a larger community but may wish to do business in an outlying community in addition and where there is little or no office space available and therefore the only option is to use a broker's home as a temporary place." In the scenario posed, the local community would license that activity but then it comes to the sign question and you are kind of going to get stuck. You are not going to be able to do it. In trying to service the people, you're going to defeat the very purpose that you're supposed to be there for – helping people." Mr. Anderson rephrased the question asking, "Had you contemplated a movement for taking care of those smaller communities that exist as a hub around larger ones." Mr. Bice responded, "That's precisely why we ended up with signage instead of making this a home business issue. It's a signage issue. In those rural areas that allow for that, it's not going to present a problem in there. That's part of the whole issue in thinking in totality of all the issues involved around this. It's not just the home based business issue. In a lot of those rural areas that we did poll, we went to every county, we got the statistics of what they would allow, things like that. So, yes sir, we did take that into account."

Mr. Brown said that he had a comment and then a question on another section. He said that he was a simple person and he has a silly notion that home business is a little bit of Americana. While it is being said that it is 'signage' and trying to remove it from the home based issue, he thinks they are inextricable and he has problems with the signage issue. He thinks maybe there is a correlation to professionalism but he does not think that home business dictates professionalism and he thinks it stands in the way of individuals pursuing their American dream. Also, he has a question on section 17 which deals with the audit charges and he sees that there is a change from a set hourly rate for attorney supervision to an equivalent to the estimated or actual fee charged to the division and he was wondering what the reason was for moving from that. He said that he personally favors a set rate. He said that he has some experience with other agencies that have a set rate and it is a little bit more but he deems it a bit of a privilege to do some work for the state and the pay is not going to be questionable. He expressed concern about "gouging" but he does not object to changing the \$125 per hour. He asked if there was any discussion about setting a rate and then revisiting it in the future. Mr. Bice replied, "The reason it was rewritten that way is A.B. 490 that created this division also set forth the requirement to bill out each licensee for our attorney general expense so we don't contract with outside attorneys, we have our own deputy attorney general in full plus half positions that we get billed for and we, in turn, bill out the industry for it. That was the purpose for that is we do not contract out with it, we simply levy the industry based upon that charge and that was the reason that I changed the language on that." Mr. Brown said that he did not have a problem with that and inquired if there is a

rate that is published. Mr. Bice commented that he receives a quarterly report and he is not sure he understands it yet. Mr. Brown thanked Mr. Bice noting that he would take it up with the attorney general's office.

Mr. Horne referred to section 7, part 5 in the rating of the mortgage brokers and said that he found it curious in the rating scale of 1 to 5 with the rating of 5 being the worst. In reading it, he said that he did not see much distinction between a 5 and a 4. He read the language and said that if there was a mortgage broker operating at a level 5, it would seem to be something more than discretionary would be in order. Mr. Bice said that there has always been a rating scale of 1 to 5, it just has not been published and now it is published. He said with regard to the 4 and 5 levels, it revolves around the egregiousness of the activity or actions and the harm to individual people. He cited an example of where his division recently went out to an association that it had rated a 4 and taken administrative action but there were no consumers harmed in those actions, they simply did not comply with the rules and regulations in the statutes. They did have various infractions that were pretty severe so they were "hit" with administrative action but it did not go towards revocation. If the division rated someone a 5, it would

immediately start revocation of the license. He agreed that there is a degree of "splitting hairs" but it revolves around the egregiousness of the action and the outcome to the public or investors involved.

Senator O'Connell inquired why there is a change from the word "shall" to "will" on page 21 of the regulation and what significance does it have. Ms. Erdoes explained that it is a "clean up" change that her office would have made on the basis that the regulation is adopted by the division and so the proper term is "will." It is a promise being made by the division. If "shall" were left in, it would be giving the duty to the division but it would be the division adopting a regulation giving a duty to itself. It has no actual substantive change.

Mr. Carpenter said, in getting back to the signage problem, he does not see whether the broker has a sign or not has anything to do with the integrity of the mortgage broker. He does not think that the signage requirement should be used to "put people out of business."

Chair Townsend stated, "Obviously, there are some individuals here that have some concern and I don't want any of the licensees, public or legislators to misunderstand Scott's efforts. This is an industry that has faced its challenges and he was brought in to deal with those challenges. He's really to be commended. He has worked with the industry. Not all of them are happy but that's just the way life is. He's done the best he can and it's still about protecting the public. As a result, what if we took a motion that would defer this to next time on the basis that we would accept everything in here except the signage thing. If I were to accept it as an objection to this and you could refile it without that portion and maybe you could put in there that those who operate from their homes are mandatorily required when they are audited to come to his office. That way you don't have a security issue to protect your investigators and auditors. I don't know what the commission feels, it's up to them, they can pass it the way it is, or reject it the way it is, I'm just trying to offer a solution."

Mr. Anderson said that he is satisfied with the explanation of the director relative to the fact that realtors have to meet a similar requirement and that the Real Estate Division apparently has no problem in meeting the requirements for realtors. There are many more realtors than mortgage brokers. He said that he has less concerns than he did initially although he does find it somewhat discriminatory against somebody who is going to operate a home business. He did realize that even with computers, the safety question of documentation is always a great concern. He indicated that he is willing to accept the regulation as presented. He recognizes that it is a first step and therefore troubling to the industry because it is a first step.

Senator O'Connell declared for the record before she voted that her son is a loan officer and he has nothing to do with her income but she wanted to make the declaration.

SENATOR O'CONNELL MOVED TO OBJECT TO THE REGULATION SPECIFICALLY SECTION 11 THAT ADDRESSES THE SIGNAGE ISSUE FOR THE CONCERN OF PREVENTING PEOPLE FROM DOING BUSINESS IN THEIR HOMES. MOTION SECONDED BY ASSEMBLYMAN HORNE.

Under discussion Mr. Brown requested that if there are other references to signage that it be consistent throughout the document.

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

The chair directed attention to regulation R158-04. Mr. Bice confirmed that it is his intention to withdraw the components of the regulation and offer them for consideration during the upcoming legislative session.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF R086-04 AND R087-04. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

Chair Townsend returned to regulation R115-04 from the Labor Commissioner which establishes rules related to employment, payment of employees and claims for wages, and makes various other changes to chapter 68 of the Nevada Administrative Code.

Senator Carlton said that her questions concern page 5 regarding the electronic payment system. She asked if Mr. Johnson could review a few details. She commented that when people find out that their paychecks are going to get changed, they get a little apprehensive. She recalled that a lot of nerves had to be calmed with direct deposit and she thinks the same thing needs to be done with the electronic payment system.

Mr. Johnson said the section governing the electronic payment system was generated as a result of a number of advisory opinion requests his office received from companies throughout the country on whether this system would be permissible under Nevada law. In reviewing the statute on payment of wages, it was determined that an electronic payment system would be permissible and it set about to establish some criteria so long as an employee can receive immediate payment in full and they at least get a transaction free. A lot of employers will pay their employees using a debit card and that employee should be able to take that debit card, walk into their bank or the employer's bank and present it for full payment of whatever their paycheck is without charge to that employee. If the employee elects to, under whatever provisions the employer enacts, use it at an ATM system by withdrawing a portion of the pay, leaving the remainder and then use it later to purchase groceries just like an ATM card. If the employer implements a fee schedule to correspond with that, so long as there is a written consent and disclosure to the employee, it would be permissible as well. The employee gets the chance to withdraw their entire paycheck with one free transaction. He said a person should not necessarily have to pay to receive their wages. If the person elects to go to a paycheck cashing business, casino or elsewhere, that is their choice. He commented that this situation is one that is increasing in frequency throughout the country. He said that the State of Delaware has either adopted or is close to adopting regulations but he does not know of any other state that has moved forward in this fashion in adopting regulations. There are a lot of benefits to employers and employees particularly in the era of identity theft. At least for the time being, crooks will be lagging behind in comparison to the traditional paper checks. Also, there may be employees who may not credit worthy enough to have a credit card or bankable enough to have a bank account with a traditional banking institution and this arrangement would give the employee a chance to use their paycheck debit card to make purchases and avoid having to go to some place that charges exorbitant fees to cash their check. There is a lot of flexibility in the arrangement and Mr. Johnson wanted to set up some criteria governing the system.

Senator Carlton said that Mr. Johnson mentioned a "one time free" withdrawal so there would be fees associated with it if it was used at a grocery store or other business. She asked if it is known who would set the fees and what the cap would be. Mr. Johnson responded that it would be between the employer and employee and there is a provision that provides that any other fees or charges are prominently disclosed to and subject to the written consent of the employee to reduce that element of

surprise to the employee. In fairness to the employer, if the employee receives the “one shot option” to go and withdraw their entire paycheck and elects to do it instead on an incremental basis, the employer or banking institution should not finance free of any fees or charges those activities. As long as there is a written consent and an acknowledgment, everyone is on the “same page” and disclosures have been made, and an employee chooses to not withdraw the full amount free of charge and instead elects to use it as an ATM card, in all likelihood there will be charges established by the banking institution and/or the employer.

Further, Senator Carlton inquired about the provision of a written pay stub documenting what was deposited into the account. Mr. Johnson said that the regulation does not negate the employer’s responsibility to provide its employees with any deductions that were made, hours worked, gross salary, taxes paid and so forth – those requirements are still required under the statutes. The regulation does not in any way even attempt to encroach upon that responsibility of the employer.

Senator Carlton asked if the employer would be the only one to deposit into the account or would the employee have the option to be able to deposit money into the account. Mr. Johnson responded that is something that would depend upon the employer and the employee because there may be a situation where the employee and the employer use the same bank and there might be some latitude whereby they could transfer funds or cross the account. There are a number of possibilities and the criteria is intended to be broad enough to give employers and employees the flexibility to stipulate to whatever agreements they put in writing and agree to and select the plan that best meets their needs.

Senator Carlton said that she does have some concerns and the one thing she keeps hearing Mr. Johnson say is “the agreement between the employer and the employee.” She stated that a number of times, the employee really does not agree with how the employer is doing it but they are apprehensive to say something because it is their employer and they do have control over their paychecks. She is worried about how the procedure will work and the recourse an employee would have if they showed up with the ATM card at 4 p.m. on Friday, the people in the employment office at work were gone, the card did not work and how the employee would get his money for the weekend. At least with a direct deposit, the employee would have some type of proof to show the bank and it has something it can track. With an ATM card as proposed, she was unsure if there was a problem what recourse the employee would have.

Mr. Johnson replied, “I would love to tell you that we’ve got a regulation for every possible problem that could emerge out there but we have instances where employers give people traditional paychecks and at 4 o’clock that check is not redeemable for cash.” He acknowledged that the senator’s concerns were well founded but he thinks some provisions have been incorporated that speak to his agency’s interest in protecting the welfare and rights of the employees such as there be no other requirements or restrictions that a reasonable person would find to be an unreasonable burden or inconvenience and the use of the electronic payment system is optional at the election of the employee. He has tried to create a scenario whereby employers who wish to pursue this area can explore the different possibilities but the employee needs to be in the position to speak to how their wages are going to be disposed of in terms of compliance with the law.

Senator Carlton said that she has seen the acts of some employers who say “if you sign up for this program, your name is now in a drawing for a trip to Cancun” and she would not like to see a situation where they try to inspire employees to do something without being fully educated about it, just to win a prize. She has had people come to her and say they did not realize what they were getting into when they signed and then it had to be straightened out. Mr. Johnson replied, “That’s why those disclosures are addressed and the written consent of the employee is something that, I’ll state for the record, is of high importance to us.”

SENATOR CARLTON MOVED TO ACCEPT REGULATION R115-04. MOTION SECONDED BY ASSEMBLYMAN BROWN AND CARRIED UNANIMOUSLY.

2. Administrative regulation resubmitted pursuant to NRS 233B.0675.

Ms. Erdoes said there is a revised version of R150-03 which makes various changes to provisions concerning the Nevada Higher Education Prepaid Tuition Program. This regulation had an information statement that indicated there would be no additional cost for the regulation, in section 6, as a result of adopting the regulation and then also had a provision that said the increase in fee was to cover the increased cost of staff. She noted that someone is present to explain why the information statement has not been changed and the two provisions do not conflict.

Janice Wright, representing the Office of the State Treasurer, said that the Nevada Prepaid Tuition Program started in 1998. A board of trustees sets all the policy issues and is composed of five individuals – the state budget director, the chancellor of the university system, the state treasurer, and two individuals appointed by the governor. The members determined that there would be a one-time application fee of \$60 to be paid to the treasurer's office to help offset a partial portion of the cost of each application. The \$60 amount has never been increased and was set seven fiscal years ago. It is the first time that the board has come forward with a regulation to increase the fee to \$100. The increase is anticipated to generate \$16,000 and is only a partial portion of the amount actually incurred in costs. The program does not receive General Fund monies and is self-supporting and lives off the fees and earnings in the trust fund. The increase in fee would not be assessed against any individual who is currently in the program. The increase in fee by those people has already been paid and was \$60 when they signed up. This would be a one-time application fee increase for prospective purchasers who would have adequate notices of the increases prior to signing up. It is a voluntary program. It has been very successful in the state and there is currently in excess of 10,500 students who are either paying into the program, or their parents are, or are utilizing the benefits.

Mr. Anderson said that he was concerned about the inconsistencies in the statements and summaries he received and that was the reason he asked for the regulation to be held. He said that he noted in a comparison with other states that there is a dramatic difference with Nevada at \$116.32 as compared to Michigan with a \$85 cost. He requested further explanation. Ms. Wright explained that the Virginia plan has had a one-time application fee of \$85 since the inception of the program in 1996. The Virginia plan also has additional revenue coming in. She emphasized that it is just the application fee and not the cost of the contract. While that state has looked at being able to increase the fee at any point in time, it has decided that it was sufficient just to help it offset some of its costs. That plan also has the general obligation guarantee of the state. Virginia has now decided it will not open in a new open enrollment period. A number of states that are charging zero or lower than the \$100 the board is proposing are now closing the program. The board believes the Nevada Pre-paid Tuition Program is a healthy program and is not anticipating closing the program. The board opens an open enrollment period every year, typically around "back to school" time, and wants to continue to do that to provide additional ways to pay for it. The board does understand that there are lower costs charged by other states. There are also higher costs that are anticipated being charged by other states. The board believes Nevada is "right in the middle."

Further, Mr. Anderson asked, "And so we will still operate at a net loss of \$16.32."

Ms. Wright replied, "We make this up through the fees that come in and the earnings on the trust fund, and the market conditions have been considerably better, though not this last quarter. The last three years of market conditions have been very trying for the trust fund but we are improving our performance and we are doing better and we will make it up." Mr. Anderson stated that it is a laudable program and he would hate for it to be abandoned. He said he felt that there were some inconsistencies and he would rather make sure that as many of the dollars were going into the possibility of investment to keep it as a solvent body.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT REGULATION R150-03. MOTION SECONDED BY ASSEMBLYMAN HORNE AND CARRIED UNANIMOUSLY.

The chair directed attention to agenda Item III. E.

B. Reconsideration of action on Report of Interim Study of Allocation of Limousines and Recommendation to Transportation Services Authority concerning Whether to Establish a System of

Allocations of Limousines--Lorne J. Malkiewich, Director.

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

The chair called attention to a letter dated August 23, 2004, to commission members from Speaker of the Assembly Richard Perkins that was provided as a handout (copy attached as Exhibit F). The letter urged reconsideration of the action taken at the May 24, 2004, meeting and recommends that the Transportation Services Authority establish by regulation a system of allocation of limousines.

Mr. Malkiewich referred to material in the meeting packet for this item which included a request from Speaker Perkins to have this item reconsidered at this meeting. Also included were two letters from Mr. Malkiewich to the Transportation Services Authority (TSA). The letter dated June 4, 2004, advised that the reconsideration request would be on the agenda for the next meeting. The letter dated June 9, 2004, discussed the fact that the TSA had a June 15 deadline to act and that it was understood the dilemma it was in for the reconsideration not being addressed until a couple of months later and they would need to act prior to that time. He believed that the TSA did take action to go forward and it is now waiting to hear what action will be taken by the commission. He noted that representatives of the TSA are present in Las Vegas if members have any questions.

Senator Care said the statute says that the "Legislative Commission on or before May 28th" and the commission on May 24th recommended that there not be an allocation system and May 28th has "come and gone." Further, there was an additional deadline of June 15th that the TSA had to publicly announce whether it will establish. He said that it seemed to him that the TSA could have ignored, if it wished, what the commission had done on May 24th and made its announcement anyway. Assuming that the TSA did not make that announcement and it could not have come up with an allocation system, he was unsure how the commission could reconsider the matter given the deadlines in the statutes.

Mr. Malkiewich said it is his understanding that the TSA did make an announcement that it would establish by regulation a system of allocation of limousines. As the senator indicated, Mr. Malkiewich said that the commission just makes recommendation to the TSA and it is free to make its decision regardless of the commission's recommendation. Just as the subcommittee's recommendation to the commission was not binding, the commission's recommendation to the TSA is not binding. The TSA has the authority to establish the system. The commission's action is just whether or not it reconsider the recommendation it made to the TSA. If that is the case, a motion would be needed to reconsider and then a motion to make the recommendation that it does establish a system of allocation.

Senator Care inquired what is the significance of the May 28, 2004, deadline in the statutes. Ms. Erdoes said that the best answer she could give was that it was a requirement that the Legislative Commission had to meet. It did meet that requirement and there is a general parliamentary rule that says a legislative committee may reconsider anything that is still within its possession and that is the question before the commission today whether this issue is still within the province of the Legislative Commission because it took the action within the time that was required by statute. She said the time is past that and the best advice she can give is that she does not believe, after checking all the factors, if the commission chooses to go forward and reconsider this matter and make this decision, that act would be void because of the parliamentary rule. Bodies like the Legislative Commission are allowed to make those choices on their own and if a majority of the commission chooses to reconsider, it is Ms. Erdoes' belief that the action would be valid. Senator Care said that he respectfully disagrees with the interpretation because he would like to think that the deadlines in statutes actually have some significance. He said that he did vote against the allocation system.

Chair Townsend explained that the purpose of bringing the TSA members forward before there is the possibility of a motion to reconsider was to get questions answered first as that may change peoples' minds on how they vote. He said members who represent Clark County where this issue has its impact

can “weigh in now or forever hold your peace.” Senator Care commented that he would wait until after the TSA members have spoken. Chair Townsend indicated that he was unsure whether the TSA representatives needed to speak but that would depend on whether commission members have questions and want to reconsider the issue.

Mr. Anderson requested clarification on whether the group has an opportunity to speak or is it the perception of the chair that commission members would ask questions to elicit support for a motion to reconsider. He said that he is not of the opinion that the commission should be reconsidering. The chair said that the purpose of bringing the TSA members and any industry members forward is so that the commission members, some of whom were not present when the previous action was taken, can ask as many questions as they desire. Debate would then stop and then a motion could be made to reconsider or not.

Responding to questions of Mr. Horne, Mr. Malkiewicz explained that Assembly Bill 518 directed the Legislative Commission to conduct a study relating to the allocation of limousines. The commission was required on or before April 30, 2004, to submit the results of its study to the TSA and report to the next session of the Legislature. This has been done and a report has been submitted to the TSA. A report was also prepared that will go to the next session of the Legislature. The commission then was required, based upon information gathered in the report, to make a recommendation to the TSA on whether to establish a system of allocation. The subcommittee report recommended that it be done and the Legislative Commission, at its meeting on May 24, 2004, reached the opposite conclusion. The commission recommended that a system of allocation not be established and passed that recommendation on to the TSA. The TSA was not bound by that and knowing that the chair of the commission had already agreed to reconsider the issue at the next meeting at the request of Speaker Perkins, the TSA on or before June 15, 2004, announced that it would establish a system of allocation. The matter will return to the next legislative session because part of the requirement of getting it done is a fee increase that would take a statutory change. There will be some consideration during the next legislative session before it would go into place. The TSA would not have the funds to carry out the allocation system without legislative approval in the next legislative session.

Mr. Horne asked why the recommendation was to do the allocation system. While the chair of the subcommittee was not in attendance, there were three representatives from the TSA present in Las Vegas.

Kimberly Rushton, commissioner with the TSA said that the basis of the decision of the TSA was made consistent with the promulgation of Assembly Bill 518 and that was to make a determination on or before June 15, 2004, as to whether it would undertake a study to determine whether or not a system of allocation should be put in place with respect to limousine carriers in southern Nevada. The decision was made by the TSA on June 15, 2004, as it was obligated to do pursuant to the legislative mandate. It was contingent upon three things. The first is the approval of the Legislative Commission to go forward with the recommendation of the subcommittee as well as the second step of securing the monetary funds by the Legislature in order to allow the TSA to go forward with the study. The third step was having the fee increase. She said that steps two and three are consistent with one another in that the TSA intends to appear before the Interim Finance Committee in September 2004 and request a contingency fund amount in the amount of \$50,000 in order for the TSA to pay an outside expert to come in and provide it with objective standards to undertake the study. The basis for that is to allow the TSA to determine the strengths and weaknesses of the industry as it currently exists while protecting entry into the market and the viability of the existing carriers. Without the study, the TSA does not believe it can effectively go forward with a system of allocation. The TSA has been approved by the Board of Examiners to enter into a contract with a transportation expert that will assemble objective factors for the TSA to consider in making the ultimate determination as to whether to implement a system of allocation. In truth, the final arbiter as to whether the TSA is able to go forward is the Legislative Commission because in the event that the TSA does not by statute receive the fee increase with respect to the annual limousine fee, then it cannot pay back the \$50,000 that it is requesting from the Interim Finance Committee and would not be in a position to go forward with respect to any system of allocation. With respect to today’s decision, it is the TSA’s position that if it

does not receive the "blessing" of the Legislative Commission, it would be difficult to secure the money from the Interim Finance Committee. Without the money, the TSA cannot pay the expert and could not undertake the study. She reiterated the fact that it is in a preliminary state in that it is a study to determine objective factors as to whether or not and to what level an allocation system should go into effect or take place.

Senator O'Connell said it was her understanding that the study had already been done and asked if that was incorrect. Ms. Rushton responded that there was an interim study conducted by the legislative subcommittee and done by Dr. R. Keith Schwer of the University of Nevada, Las Vegas. She said that it was a brief snapshot as to where the industry is in the state and was a recommendation that was made to the subcommittee in terms of helping the subcommittee determine whether it would make a recommendation to the Legislative Commission. As the TSA is a regulatory authority, it was its position that without an expert to identify the intricacies and the specifics of the Las Vegas market in the limousine industry as it currently exists, it would be difficult for the TSA to formulate the factors as to how to actually implement a system of allocation. The preliminary study was used as guidance for the subcommittee and now the TSA is seeking the contingency fund in order to have another expert come in and assist the TSA with factors for consideration. The reason for the difference is that Dr. Schwer's study was – is there an industry need, is the system of allocation helpful to the industry – and that was guidance for the subcommittee. Separate from that is the expert that the TSA intends to hire which will say – here are the factors that you must look to and when it reaches this level, this is the system of allocation that should go into place – and actually assist the TSA to formulate the system of allocation. The basis for that is to determine use of objective factors and research to establish where the strengths and weaknesses are of the industry as a whole and to effectively put into place a system of allocation which, as she earlier indicated, does not prohibit an entry into the market. It does not work to diminish the viability, both financial and operational fitness, of the existing carriers.

Mr. Brown asked if the commission passes this item, is it establishing regulations for an allocation except for the fee which would need to be considered at the next legislative session. Ms. Rushton replied that it is incumbent upon the TSA to move forward with respect to promulgating regulations in order to do the allocation. Those regulations would come before the Legislative Commission for approval. There must be a bill submitted for the 2005 session in order for the TSA to increase the licensing fee from \$100 to \$600 which the TSA could use to repay the amount it seeks to secure from the Interim Finance Committee in September. She confirmed that the TSA has the ability to go forward with the system of allocation but it could not do it without the funding. She said that it is incumbent upon the commission's recommendation to give the TSA guidance and is determinant as to whether there will be a manner in which it can secure the appropriate funding, both with the Interim Finance Committee and at the next legislative session. Further responding to Mr. Brown, Ms. Rushton said "As with all agency regulations, they must come before this body for ultimate approval and we will undertake those up until December. Based upon our securing funds from the Interim Finance Committee, we will begin holding our workshops and go forward in conjunction with our expert in determining a system of allocation. Once those regulations are adopted, yes sir, they will come back before this committee for ultimate approval."

Chair Townsend expressed his frustration with the wording and procedure which was to be followed in this matter and indicated he would defer to the wishes of the members from southern Nevada.

Mr. Brown said that he did not vote personally on A.B. 518 and to him it is nothing more than trying to get through the Legislative Commission something that could not be accomplished and passed by all legislators during the legislative session.

Mr. Horne indicated that he agrees in part but there is a problem in southern Nevada with limousines and there was a study which set forth trying to find an answer to the problem. He does not think that moving beyond this point hurts and it is premature to cut it before the answers were found.

ASSEMBLYMAN HORNE MOVED TO RECONSIDER THE ACTION PREVIOUSLY TAKEN BY THE LEGISLATIVE COMMISSION. MOTION SECONDED BY

SENATOR TITUS.

Under discussion of the motion, Senator Carlton said that she was on the subcommittee and a great deal of pertinent questions were asked and answers were received. She said that the matter has been thoroughly vetted. She wanted to put on the record that the TSA did not ask for this. It was brought forward by the industry and other folks and the TSA is merely responding to all the questions and concerns. The senator said that she voted against it in the subcommittee and at the last commission meeting. She does support the fee increases and thinks the TSA needs the money to do the job that it has been assigned to do. Once the TSA has the funds and the manpower, she believes a lot of the issues will "go away." She does not think that an allocation system will solve all the problems and the TSA just needs to get out there and do what needs to be done relative to monitoring the limousines. She stated that she will be opposing the motion.

Senator Titus said that while there has been a lot of discussion, members have not heard why the allocation system is a "good thing." She asked, "Can somebody just say why we need to regulate limousines and how it will help us with this industry in the south and put that on the record so we have before us the policy issue, not just the mechanics." Ms. Rushton responded, "Succinctly, that's the purpose of the study is to determine, as I've indicated, really what the strengths and weaknesses are of the industry as it currently exists. The reason to go forward with the study was based on three objective factors. First, the testimony that took place during the Legislature and during the subcommittee from the industry that they were experiencing both financial and operational deficiencies as a result of the market itself, some of which was based on tourism, others were based on the fact that there were a number of illegal operators and just multiple factors were set forth by members of the industry. That was reconfirmed by Dr. Schwer pursuant to his interim report to the subcommittee. Then as a regulator, both Chairman Avants and myself being primarily responsible with respect to our observations of the southern Nevada industry itself, we could see failing companies coming before us on a regular basis pursuant to our authority in an order to show cause and the basis for it was that they just couldn't financially make it because of the fact that they were competing not only amongst each other but other transportation entities in and around the Las Vegas area, some of which were the taxicabs, others were the rental car industry. So, again, that is the basis of this study is to open up the process for having regulations and workshops to allow all interested parties to come forward and then to determine really where the weaknesses are and how best to address those. I know that's longer than probably what you have requested but I think that gives you kind of a snapshot of what our plans are for the future and the basis as to where we came from and why we're undertaking this study."

Senator Care said that he thinks that procedure in this instance does matter because there is a statutory deadline of May 28th and he is still bothered by the notion that the commission can go back now. He stated, "This bill is written in a very goofy manner. It seems to me that, in part, it abdicates which should have been a decision by the Legislature. It is a significant matter of public policy to come up with an allocation system – that is a matter that the Legislature should have said 'yes' or 'no' on but here we have sort of abdicated our responsibility it would seem to me. On the merits themselves, as I said last time, I didn't see the correlation between conduct that needs to be regulated and an allocation system. One goes to conduct itself and the other, I think, goes to control of what should be a free market. Thank you."

Senator Carlton said that she just wanted to make clear that the other questions she had would only be pertinent if the reconsideration passes so she would hold them for the time being.

Mr. Anderson said that he was hopeful the motion for reconsideration would not pass but he would like to ask his question before the vote. He said that while the bill on the limousine question predominantly deals with a southern Nevada issue, the action of the TSA is statewide and is a limited agency with a limited ability of enforcement up in the north and he is continually amazed at its ability to do anything at all given the broad expanse of regulation that they are expected to enforce in the number of areas. He asked if the regulation were to come into being, would it not expand the TSA's authority to an extent that an already overextended workforce outside of Clark County would be cut additional resources in order to meet this particular demand.

Dave Kimball, Deputy Commissioner, TSA, said that the allocation system as it is set up is being funded totally on user fees and out of Clark County. There would be no change in what is happening in northern Nevada. In the subcommittee, it was explained that the resources the TSA has for manpower is extremely limited. The \$500 number for the limousines in Clark County was so that additional manpower could be funded. Therefore, it has been submitted in the budget request to the executive branch. In northern Nevada, there is no change in manpower or resources.

Mr. Anderson asked if the purpose behind the study is to try and obtain additional dollars to put the TSA in a position where it will do the job it is assigned to do and no other motivator than that. Mr. Kimball responded, "I wouldn't say that is the right answer. I would say that it certainly helps in a number of areas as Senator Carlton had talked about. Manpower-wise we are deficient in a number of areas and we certainly could use a large number increase in enforcement but that has not been what we have taken forward to the Legislature. When we have asked for fee increases, they have not been approved so we have worked as best we can and we have accomplished quite a bit as far as we have gone forward. This will help us. We cannot do an allocation system without more enforcement on the street, without more people able to handle the additional paperwork, the additional hearings that will come up, the additional public meetings and so on as we go forward. We have watched the TA as they have gone forward and done theirs as they've done it for a number of years. It is not something you can do without additional manpower. As you have suggested, as Senator Carlton's suggested, we just can't do additional work and not have something suffer unless we are able to use those monies to get additional people."

Ms. Rushton added, "I want to just iterate the fact that pursuant to the 2003 session this was not a proposal that was brought by the Transportation Services Authority. We were simply acting as instructed by the Legislature in 2003 and then by the subcommittee. The fee increases were, again as Senator Carlton pointed out, those were requests that were made of the TSA pursuant to that subcommittee at their hearings and to assist them and guiding them as to what would be necessary. This was not a proposal that was submitted by the Transportation Services Authority and with respect to any increases in our budget, that was not the objective in going forward with this. It was based, again as I've pointed out before, on objective research that assisted us in determining that a study of the system of allocation would be necessary."

Brent Bell, Whittlesea-Bell Transportation, present in Las Vegas, said that he would like to make two quick points. He said, "Number one, I sat on the subcommittee for all three hearings and it was determined that a study should be done and Dr. Schwer did the study and the overwhelming conclusion that he came up with is that allocation is not a perfect system but it's better than what we have now. The second point that I'd like to make is that Senator Hardy, I think, put it best towards the end of our meetings and Senator Carlton you can correct me if I'm wrong I'm paraphrasing something that he said. I believe he said 'go ahead and do the study and if I don't like it I get another shot at looking at it at the Legislature.' Senator Hardy was very concerned about making sure an allocation system was fair, he was concerned about good companies being able to grow if they could prove that they could grow in a fair and efficient manner by not breaking any laws, and he was also concerned about the restriction to entry. So, Senator Hardy basically said, 'go ahead, do the study, it'll come back to the Legislature and if we don't like the way the allocation system was set up, we can not vote for it at that time.' I urge you to reconsider this action. Thank you."

THE CHAIR CALLED FOR A VOTE ON THE MOTION TO RECONSIDER THE PREVIOUS ACTION.
MOTION FAILED DUE A TIE VOTE WITH SENATORS CARE AND CARLTON AND
ASSEMBLYMEN ANDERSON, ANGLE, BROWN AND CARPENTER VOTING NAY.

C. Proposed Gift for Centennial Project by Carson City Rotary Club--William Reeves, Rotary Club representative.

Bill Reeves, representative of the Carson City Rotary Club, introduced others at the witness table and

identified them as Rafael Cappucci, Don Hataway and Bruce Mackey. He also introduced others present in the audience. Material is contained in the meeting packet for this agenda item.

Chair Townsend said the some concerns have been expressed about the location of the clock. He asked if it was possible to consider the location as a centerpiece of the legislative mall area. Mr. Reeves explained that the committee has met for over one year and has considered many different locations in Carson City. The proposed location directly in front of the Legislative Building was absolutely the one preferred and it is thought to be the best and highest use of the clock as far as exposure and ambiance of the building. Mr. Reeves showed a photo of a clock installed by the Rotary Club of Palm Desert in the Veteran's Memorial City Park and is an example of what the clock would look like with the Rotary emblem on it.

Mr. Anderson inquired if the specific location of the clock at the Veteran's Memorial City Park was determined by the Rotary group or by the grounds people at the park.

Mr. Reeves responded that he did not have an answer to that question. Mr. Anderson explained that is the basic question about which the commission is concerned and he wants to make sure that the grounds staff place it where maintenance, grass mowing and such things are taken into consideration. He said that he realizes that the ambiance of the Rotary selection is a conceptual one and grounds concerns are a practical consideration in the placement and he would like to have that discretion.

Mr. Reeves called attention to the photos of slides contained in the meeting packet which showed various views. He proposed replacing the planter in the front of the building with the clock mounted on a stand. The photos provided were not shown to scale, he noted.

Mr. Malkiewicz explained that the issue that has come to staff from some legislators and the first one for the commission to resolve is – is it okay with the commission to have the clock placed on the legislative grounds. Assuming that the answer is yes, then the only other question is where to place the clock. One location would be directly in front of the Legislative Building and another alternative would be more toward the center of the complex closer to the Kit Carson statue. Staff could accommodate either location so it is a case of aesthetics for the commission members and whether they would prefer to locate the clock as illustrated or more towards the center of the legislative mall. The Legislature retains control over the mall location as it is legislative grounds.

Chair Townsend asked what the commission says to all the other service organizations when they ask to put something at that location. Mr. Reeves said that Rotary International is having its 100th year centennial celebration in 2005 and started to provide some history but was redirected to the question of the chair. He asked if any other organizations are coming forward with a clock project to give to the citizens of Nevada. He indicated that if Rotary is in competition with another group, it would have to study that situation. However, he did not believe any other organization was prepared to give a clock. The chair said that is not the point and expressed his concern about how to deal with another group if the location is given away.

Mr. Hataway said that the Rotary group is still looking at companies that provide these types of devices and the best estimate at the current time is that the gift would be between \$15,000 and \$30,000. The Rotary group is doing the project as a commemoration of the 100th anniversary of Rotary. If any other organization wishes to provide a gift to the Legislature such as the statues already in existence in the area, he thinks the commission needs to consider those on an individual basis and proceed from that point. He said that the Rotary group has a specific project in mind and hopes that the commission appreciates the site it is considering for the project and makes a decision based upon that fact and then if other groups come forward, the commission would consider their gifts at that time.

Responding to the chair's question about the mechanics of the issue, Mr. Malkiewicz said that staff would like some direction on the location if the commission is willing to accept the gift. He said that staff has worked with the Rotary group on the logistics of getting an appropriate base, electricity and

so forth and is ready to proceed with the commission's approval. Staff just needs to know if the commission will approve the gift and, if so, where it would like staff to locate the gift.

The chair asked if there was a national celebration of the 100th anniversary of Rotary. Mr. Reeves said that there will be a convention in Chicago, Illinois in June 2005. However, the target date for the local centennial project will be February 23, 2005, at the Legislature. February 23rd is the actual date that Rotary was initiated in Chicago.

Senator Carlton inquired if the clock chimes. Mr. Hataway responded that the clocks being considered do not have chimes. The senator expressed her appreciation for the gift and said that it is always nice to see the old style clocks and it would be nice to have one in front of the building.

Senator Townsend said that he is trying to talk another group into giving a gift of a water fountain and spoke on the water fountains in the city of Portland, Oregon.

Mr. Brown asked if the gift is conditional on the location. Mr. Cappucci responded, "Our condition in looking at the area was visibility and if there is a location that has as much visibility then we would be open to looking at that as well." Mr. Brown said that while it was mentioned that the photos shown were not to scale, someone might have the opinion at some point that it blocks the signage on the building and the clock face might be lower. He said that if it might be moved between the planter and the wall it might be an acceptable location. He said he would be happy to accept it. Mr. Hataway said that the group has a scale drawing of the largest clock being considered and it would fit very appropriately in front of the building. There is a smaller model that could be considered. He said, "We definitely want it to fit with the building, not to be out of scale and so forth."

The chair inquired about the signage designating the gift and where it is located.

Mr. Hataway responded that there are two options. One would be on the pedestal itself perpendicular and the other would be on a base. The preference would be a base with a dark granite that would match the trim on the building. The group would work with legislative staff to work out the final details. The chair mentioned the brass plaques at the bases of all the trees in the mall area. Mr. Hataway said that the group could go with either a brass plaque or engraved granite.

ASSEMBLYMAN ANDERSON MOVED TO THANK THE ROTARY CLUB FOR ITS GENEROUS GIFT, TO ACCEPT THE GIFT AND WORK WITH THEM IN SELECTING THIS LOCATION IF ACCEPTABLE TO STAFF AS A WORKABLE ALTERNATIVE AS NUMBER ONE IN CHOICE AND IF THERE IS A SECOND CHOICE MORE ACCEPTABLE TO STAFF THAT THE GIFT STILL BE ACCEPTED IF IT IS ACCEPTABLE TO THE ROTARY CLUB. MOTION SECONDED BY ASSEMBLYMAN CARPENTER.

Under discussion of the motion, Chair Townsend said the site out front would be used as the primary location and if there are problems such as a power line or something unknown, the club should work with LCB staff. In terms of the design elements such as the base and designation, it should be consistent with the building and the mall.

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

The chair directed attention to agenda Item I.

D. Request from Nevada Silver Haired Legislative Forum for bill draft--

Robert E. Erickson, Forum Member.

Robert E. Erickson, private citizen and Forum member, said that he is appearing on behalf of the Nevada Silver Haired Legislative Forum. He also noted that Thelma Clark, President of the Forum is

present in the audience. He said that the Forum arrived at three proposals during its deliberations during the interim that will require finding a legislator to sponsor or getting a legislative committee to obtain a bill draft for the proposals. One of the proposals is to avoid this process in the future and authorize the Forum to request up to five bill draft requests and submit them directly to the Legislative Counsel. He said that the Forum is not asking the commission to agree with the proposal but to allow the Forum to at least get a bill draft requested so that it can make its case during the next legislative session so that it can function independently and efficiently. Mr. Erickson provided a handout of NRS 218.2415 (copy attached as Exhibit G).

Senator Carlton inquired if the commission approves requests such as this for any other organizations that are not agencies so that members know where the precedent is.

Mr. Erickson said that he believes the answer is 'yes' but he would leave it to the counsel to place the bill draft request in NRS 218.2415. Chair Townsend said that there are less groups that don't have the authority than there are that have it.

Mr. Anderson said that recognizing when the Silver Haired Forum came into place, one of the purposes was to try to encourage greater examination of those senior citizen issues as compared to other issues that might be going on within a senate district. However, they seem very content on the fact that the purpose of which was to make legislators aware so that they may be able to pick up those bill drafts in those numbers which legislators can recommend. He said that this proposal seems to go around the question of legislative members and puts the Forum directly into the line as if they are elected members when in reality the Forum members are selected by senators with or without any other activity from anyone else except the Legislative Commission agrees that those people are the ones that will be appointed. He asked if his memory was incorrect. Mr. Erickson responded, "I think you are partially on target on that one. Yes, there was some thinking that by having the appointments made through the Legislative Commission at the recommendation of members of the Senate upon consultation with members of the Assembly as opposed to the former process which, I think, maybe the Governor was appointing those from the various senatorial districts so the Legislature was not in the process about four years ago. But now we are in the process and I think that was one of the considerations that this would give the members of our Forum a chance to go back to the Senator who recommended them to be a member. I guess the only other thing I would toss out here is that this is a statutory body and it was set up to develop recommendations that would be of importance to our senior population which is growing very rapidly in our state and around the country and thinking that this might be a way to streamline the process a little bit. I know that our President Clark has found

one sponsor for one of the bill draft requests that we have come up with during the interim but I think there are a couple of other ones that we have not been able to find a sponsor for yet."

The chair stated he did not have a problem with a bill draft request and then the appropriate legislative committees would deal with it.

SENATOR MCGINNESS MOVED APPROVAL OF A BILL DRAFT REQUEST ON BEHALF OF THE NEVADA SILVER HAIRED LEGISLATIVE FORUM. MOTION SECONDED BY ASSEMBLYMAN HORNE.

Under discussion, Mr. Anderson asked if the nature of the request is to amend NRS 218.2415 so that the Forum permanently gets to make a five bill draft request or is it a one time only request to come back to later commissions and requested clarification.

Ms. Erdoes said that the only way the bill draft could be done is to give the Forum some of the Legislative Commission's allocation of 10 bill draft requests. Mr. Erickson confirmed that the Forum is only asking for one bill draft request that would give them five bill draft requests in the future.

Senator Carlton said that she appreciates the Forum wanting to bring issues to the Legislature but it was her impression that, as Mr. Anderson said earlier, the person a Senator recommended and was

speaking to about the issues would bring the bill draft requests to the Senator so that they could stay in contact and discuss matters. She said it seems to her that with the Forum going straight to the Legislature with the bill draft requests, senators would not have the opportunity to have discussion about the best way to handle the bill draft, what should be in it and things like that which would be affecting the people the legislator represents. She stated that she has apprehensions about going "straight in" and if they have three bill draft requests this year and there are 63 legislators, it seems that there are probably three bill drafts available. She offered two bill draft requests out of her allocation noting that she does not use all of them.

Senator Townsend asked if any member of the Forum had a difficult time getting the person who appointed them to get a bill drafted for them. Mr. Erickson said that he did not have an answer as he has only recently been appointed but perhaps Ms. Clark could respond.

Ms. Clark, previously identified as President of the Forum, said that before the last session, members have always had trouble getting bill draft requests in to anyone. They have been more successful this interim and several people have already told her they would "take our bills." The Forum members never know from one session to the next what is going to happen to their requests and it has been frustrating. They have not gotten very many things accomplished from the time the Forum was organized until this year.

THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED.

The chair turned attention to agenda Item III. F.

E. Request from Senator Maurice Washington to attend Child and Family Law meetings in Russia as delegate of People to People Ambassador Program--Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to material contained in the meeting packet for this item. The reason the request comes before the commission is because it would need to pay the costs if Senator Washington were to attend the meeting. The costs are estimated at around \$6,000. The budget is not in the packet and the amount would be paid out of the Legislative Commission's budget and would limit the amount the commission would have available for other travel.

Mr. Anderson inquired if Senator Washington has been able to attend meetings of other national organizations and has he used his allocation of travel. Mr. Malkiewich replied that the senator has done some out-of-state travel as he is a vice chair of one of the national committees however, this particular request would not fall under the out-of-state travel policy. A trip such as this will be paid for either by the organization sponsoring the trip or specific commission approval will be required.

Mr. Horne said that he was sorry Senator Washington was not in attendance and he wondered if the organization provided some anecdotal evidence that they possessed program policies that Nevada would benefit from. Mr. Malkiewich said that he did not have any additional information other than the materials provided and thinks it is some type of exchange in that they are interested in how Nevada does things and that there is some benefit that they would get from our system and perhaps there are some things that Senator Washington would learn from their system that would benefit Nevada.

No action was taken on this agenda item.

F. Extension of Deadline for submitting Bill Draft Requests for Task Force for the Fund for a Healthy Nevada--Marsheilah D. Lyons, Senior Research Analyst.

Ms. Lyons said she is appearing before the commission on behalf of Assemblywoman Kathy McClain who is the chair of the Task Force for the Fund for a Healthy Nevada. There were major scheduling conflicts and prior commitments that the members of the task force had that did not allow for a

quorum at its work session. Therefore, the meeting was extended to September 14, 2004, in order to hold a work session. Since the deadline for submission of recommendations is Tuesday and the task force has not received more than five recommendations to consider, it does not expect to overload the Legal Division with bill draft requests.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE REQUEST FOR EXTENSION OF DEADLINE FOR BILL DRAFT REQUESTS FROM THE TASK FORCE FOR THE FUND FOR A HEALTHY NEVADA. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED.

G. Extension of Deadline for submitting Bill Draft Requests for Committee on High-Level Radioactive Waste--Senator Mike McGinness, Chairman of Committee.

Senator McGinness said that the Committee on High-Level Radioactive Waste rarely offers bill drafts. However, with the fluid nature of the issue occurring with the Yucca Mountain project if the committee does have requests for bill drafts, it will probably be in the form of resolutions. He estimated the count at no more than three and that might be on the "high end." The committee will meet the following week. The Department of Energy will not have representatives at the meeting because it does not have anything to tell the committee. The committee may meet prior to the legislative session and the senator said that he would like to keep the options open.

SENATOR MCGINNESS MOVED TO APPROVE THE REQUEST FOR EXTENSION OF DEADLINE FOR BILL DRAFT REQUESTS FROM THE COMMITTEE ON HIGH-LEVEL RADIOACTIVE WASTE. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED.

H. Approval of Bill Draft Requests concerning Legislature and LCB--Lorne J. Malkiewich, Director.

Mr. Malkiewich said that he is asking for approval for one bill draft request which is something that has been done for the last several sessions and has been very successful. It is referred to as a "generic" LCB bill which makes various changes relating to the Legislature and the LCB and instead of having four or five different bills making minor changes, he has put several totally severable provisions together in a bill and then there is just one piece of legislation for the Legislature to deal with. He requested authority to submit the bill draft request.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF THE REQUEST TO SUBMIT A BILL DRAFT. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED.

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

Mr. Malkiewich referred to material in the meeting packet for this agenda item. He said that a few were approved as early session hires at the last meeting of the commission and the material includes the remainder of the session hires for the 2005 Legislative Session. These are the people who are hired just for the duration of the session to supplement the services that the LCB provides.

Senator McGinness inquired if the number is comparable to the previous legislative session or are there increases. Mr. Malkiewich responded that there is a net increase of approximately 11 people and is, coincidentally, the amount of the increase in the Legal Division. That is where the vast majority of the increase is because it was found that is where the LCB had the biggest problems. There were situations when there were just not enough people to handle the large number of documents during the "crunch" time. He referred to page one of the material which shows a large number of document specialists and clerks and proofreaders that are being added in addition to a couple of miscellaneous ones that are unusual such as a law indexer and a former manager of technical services just retired so there is a situation where there is some overlap in those positions as well with the new person being

trained. Primarily, it is “beefing up” the Legal Division to try and avoid some situations last session where 20 hour days were considered short.

Mr. Anderson inquired if it is possible for someone to step into the Legal Division and pick up the technicalities as a short term hire. He said that he has some concerns about this situation in light of the recent retirement of the Assembly bill drafting advisor.

Ms. Erdoes said that she believes the answer is, ‘yes, they can’ as the division has simplified the system to the extent that it can. Although it has been a couple of sessions since the division asked for temporary session hire attorneys, it has been a practice that has worked well for the division. She believes they will be trained and effective for the session.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE SESSION HIRES. MOTION SECONDED BY ASSEMBLYMAN HORNE AND CARRIED.

Item V--Informational Items:

The chair called attention to the following informational reports that were contained in the meeting packet.

A. Legislative Committee Reports.

B. Legislators’ Travel Reports.

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

1. Board of Examiners for Alcohol, Drug and Gambling Counselors.
2. Board of Examiners for Long Term Care Administrators.
3. Board of Examiners for Social Workers.
4. Board of Marriage and Family Therapist Examiners.
5. Board of Psychological Examiners.
6. Board of Veterinary Medical Examiners.
7. Chiropractic Physicians’ Board of Nevada.

8. Health Division Bureau of Licensure and Certification, Department of Human Resources.
9. Nevada State Barber’s Health and Sanitation Board.
10. Nevada State Board of Accountancy.
11. Nevada State Board of Architecture, Interior Design and Residential Design.
12. Nevada State Board of Dental Examiners.
13. Nevada State Board of Medical Examiners.
14. Nevada State Board of Optometry.
15. Nevada State Board of Pharmacy.
16. Nevada State Contractors Board.
17. Private Investigator’s Licensing Board.
18. Real Estate Division, Department of Business and Industry.
19. State Board of Professional Engineers and Land Surveyors.

D. Miscellaneous Reports from State Agencies and Others:

1. Letter from Nevada State Board of Medical Examiners.
2. Semi-annual report from Juvenile Court Advisory Board.
3. 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:

Senator Townsend said that something unique and positive has happened in the State of Nevada and as a result, he asked counsel to draft a legislative proclamation which he proceeded to read. He said that it is to congratulate University of Nevada, Las Vegas senior Ryan Moore on winning the 2004 U.S. Amateur Golf Championship. A copy of the proclamation is attached as Exhibit H.

The chair said the proclamation will be framed and hopefully Mr. Moore will have time to visit the Legislature during the next legislative session.

There being no further comment, the meeting was adjourned.

Respectfully submitted,

Marilyn K. White
Executive Assistant

Senator Randolph J. Townsend, Chair
Nevada Legislative Commission