

**MINUTES OF THE 2021-2022 INTERIM
LEGISLATIVE COMMISSION**

MARCH 1, 2023

The meeting of the Legislative Commission was called to order by Chair Yeager at 5:11 p.m. at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada, and via videoconference at the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was adjourned at 6:19 p.m.

All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT IN CARSON CITY:

Assemblyman Steve Yeager, Assembly District No. 9; Chair
Assemblywoman Jill Dickman, Assembly District No. 31
Assemblyman Gregory Hafen, Assembly District No. 36
Assemblywoman Alexis Hansen, Assembly District No. 32
Assemblywoman Sandra Jauregui, Assembly District No. 41
Senator Nicole Cannizzaro, Senatorial District No. 6
Senator Pete Goicoechea, Senatorial District No. 19
Senator Scott Hammond, Senatorial District No. 18
Senator Ira Hansen, Senatorial District No. 14
Senator Dallas Harris, Senatorial District No. 11
Senator Roberta Lange, Senatorial District No. 7

COMMISSION MEMBERS EXCUSED:

Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Brenda Erdoes, Director
Roger Wilkerson, Deputy Director
Daniel Rushin, Chief Financial Officer
Bryan Fernley, Legislative Counsel, Legal Division
Kevin Powers, General Counsel, Legal Division
Asher Killian, Chief Deputy Legislative Counsel, Legal Division
Nicolas Anthony, Research Director, Research Division
Sarah Coffman, Assembly Fiscal Analyst, Fiscal Analysis Division
Wayne Thorley, Senate Fiscal Analyst, Fiscal Analysis Division
Daniel Crossman, Legislative Auditor, Audit Division
Broadcast and Production Services Staff, Administrative Division

Angela Hartzler, Secretary, Legal Division

Jordan Haas, Secretary, Legal Division

OTHERS PRESENT:

Sean Sever, Deputy Administrator, Office of Project Management, Department of Motor Vehicles

Craig Statucki, Interim Deputy Superintendent, Educator Effectiveness and Family Engagement Division, Department of Education

Patti Oya, Education Programs Director, Office of Early Learning and Development, Department of Education

Misty Allen, State Suicide Prevention Coordinator, Office of Suicide Prevention, Division of Public and Behavioral Health, Department of Health and Human Services

Joseph Widjaja, Senior Audit Manager, Crowe LLP

Assemblyman Steve Yeager (Assembly District No. 9; Chair):

Good evening, everyone, and welcome to the ninth meeting of the Legislative Commission. We do have a quorum. Please mark Assemblywoman Monroe-Moreno present when she arrives. As noted, we have a quorum. All of us here are up in Carson City. I want to say welcome again to those of you in the audience here in Carson City and to those joining us in Las Vegas or by telephone. Just a few quick housekeeping matters before we get started. If you're going to testify today, please state and spell your name for the record before testifying. If anybody would like a copy of the Commission's agendas, minutes or reports, you may be added to our mailing list by following the links on the Legislature's website or by providing information to our staff. Contact information for staff is also listed on the Legislature's website. In addition, we accept written comments, which may be emailed or mailed before, during or after the meeting. The information regarding where to send written comments is also on the website and listed on the agenda for this meeting.

We'll go next to agenda item II. That is public comment. We'll be accepting public comment at this time from persons present here in Carson City, then from those in Las Vegas and then from persons on the phone. We will have a second period of public comment at the end of the meeting, so if you would like to wait until the end, you can always do that. Public comment will be limited to no more than two minutes per person. Let's start here in Carson City. Is there anyone who would like to give public comment? If so, please come forward to the table. I don't see anyone coming forward here in Carson City. How about in Las Vegas? Would anyone in Las Vegas like to give public comment? I don't see anyone coming forward in Las Vegas. BPS (Broadcast and Production Services), could we check the phone lines to see if there's anyone there who would like to give public comment, please?

Broadcast and Production Services Staff (Administrative Division, Legislative Counsel Bureau):

The public line is open and working. There are no callers to provide public comment at this time.

Chair Yeager:

Thank you, BPS. I will close public comment, and again, as a reminder to those who are here or may be watching, we'll have a second round of public comment at the end of the meeting today. That will take us to [agenda item III](#), approval of the minutes. Committee members, you'll have found in your packet the draft minutes for the December 28, 2022 Legislative Commission meeting ([Agenda Item III](#)). These draft minutes are also available on the Legislature's website. Let me first ask if there is any discussion or corrections on those minutes from Commission members. Seeing none of that, I would accept a motion to approve the minutes.

ASSEMBLYWOMAN JAUREGUI MOVED TO APPROVE THE DRAFT MINUTES OF THE MEETING HELD ON DECEMBER 28, 2022.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY OF THE MEMBERS PRESENT.

Chair Yeager:

Next up, agenda item IV, which is our court-mandated status report regarding the Nevada Department of Motor Vehicles (DMV) technology fee refund project. As always, we have Mr. Sever here, Deputy Administrator of the DMV. Mr. Sever, please proceed, and then we'll see if we have any questions.

Sean Sever (Deputy Administrator, Office of Project Management, Department of Motor Vehicles):

Thank you, Chair and Committee members. Sean Sever from the Nevada DMV. Thank you for the chance to go first and to update you on our tech fee refund project. Through yesterday, February 28, 2023, the DMV has distributed more than \$1.86 million of the \$6

million available in refunds. The DMV started issuing these refunds by sending out checks to businesses on February 22 of last year, and 61,005 business refunds were issued for almost \$2.2 million. As of yesterday, 44,862 business refunds have cleared for more than \$1.6 million, or 74 percent. More than \$3.8 million in customer refunds were made available to the public on April 4 of last year, and as of yesterday, 82,047 of those refunds have been issued for more than \$242,000, or 6.35 percent. Many of our customers have told us to keep the refund, which is not reflected in these stats. The DMV has conducted a \$15,000 advertising campaign, received a lot of media coverage and posted many times on social media to inform and remind customers about the refund. We are proactively encouraging our customers to pick up their refunds when they visit our offices and plan on doing a final advertising push in April to remind them to claim their refunds. Any funds remaining after June 30, 2023 will revert to the State Highway Fund pursuant to section 4.7 of Senate Bill 457 of the 2021 Legislative Session. Thank you for your time today.

Chair Yeager:

Thank you, Mr. Sever. Commission members, do we have questions for Mr. Sever on the refund project? I do not see any questions. Thank you again for being here, and have a good rest of the evening. Okay, that takes us through agenda item IV.

Next up, agenda item V, which is administrative regulations. We have our Legislative Counsel Bryan Fernley with us on Zoom today, and Chief Deputy Legislative Counsel Asher Killian is with us here in Carson City to assist us with this item. There were two types of proposed approvals for regulations under item V today, but item V-A has been withdrawn ([Agenda Item V-A](#)). So, Commission members, anyone watching from the public, V-A has been withdrawn. We will not be considering that. The Department of Agriculture has determined that it needs more time to make some additional changes to R104-20, so they will be submitting a new regulation instead of asking for an extension on R104-20. Therefore, we're going to move on to [agenda item V-B](#). This evening we have 16 regulations submitted for approval pursuant to NRS (Nevada Revised Statutes) 233B.067 ([Agenda Item V-B](#)). These regulations are all contained in the booklet provided to all the members today and also posted on the Nevada Legislature's website under the tab for this meeting, which you will find by hitting the "View Events" button in the upper right-hand corner of the Legislature's website homepage.

As is our usual practice, I am going to let you know the regulations I have been asked to hold for questions, and then after we identify those I'll ask Commission members if there are additional regulations you would like held for further discussion. Once we pull all of those out, we'll take a motion and approve the remaining regulations, then we will come back to those regulations that we have pulled to discuss each regulation individually in turn. Let me get back to the regulations that have been identified to be pulled for further discussion. Out of the 16 regulations so far, there's only one regulation that's been

identified for discussion, and that is R153-22. That's a State Board of Health regulation. Again, that's R153-22 from the State Board of Health. With that being said, are there additional regulations that any Commission members would like to be pulled for additional discussion? Senator Hammond.

Senator Scott Hammond (Senatorial District No. 18):

Thank you, Mr. Chair. I would like to discuss R066-22.

Chair Yeager:

So that's R066-22? That's the State Board of Education regulation. That one will be pulled for discussion as well. Any other regulations from Commission members? We really only have 2 out of 16? Is that possible? Okay. All right, so we only have two that have been pulled. At this time—and let me just state for the record so it's clear, the two that have been pulled, in numerical order, R066-22, State Board of Education, and R153-22, State Board of Health. I would be looking for a motion to approve the remaining regulations that were not pulled for further discussion.

SENATOR GOICOECHEA MOVED TO APPROVE REGULATIONS R012-22, R013-22, R020-22, R021-22, R040-22, R062-22, R067-22, R068-22, R117-22, R132-22, R133-22, R136-22, R143-22 AND R159-22.

ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY OF THE MEMBERS PRESENT.

Chair Yeager:

Those remaining 14 regulations have been approved, and we'll next take the regulations that have been pulled for discussion. We will start with R066-22 ([Agenda Item V-B](#)). That is a State Board of Education regulation. I'm not sure who's here for that one, but it looks like you've been designated, or at least voluntold, to come to the table, and so we'll give Senator Hammond a chance to ask whatever questions he had on R066-22.

Senator Hammond:

Thank you, Mr. Chair, and I don't have very many questions because I was asking a little bit before. I know that you guys gave me a shot at calling Amber Reid beforehand, but I didn't take the opportunity and I should have. The question is, during the discussions when they're debating this particular regulation and they're looking at whether or not, I guess, doubling the number of minutes for a kindergartner to attend school was deemed needed, I was looking at some of the language afterwards and it said it'd have no economic impact. However, there's got to be some sort of impact, and I wanted to see if there was a discussion on that, because now you're asking for some of these students to be going, instead of 120, 240 minutes, and so economically—I mean, it would be better because now you have fewer teachers that you need. It's one teacher taking over two classes, perhaps. I don't know. I just want to know what came up in that discussion. I guess I'm wrong. If Senator Goicoechea is already shaking his head no, then I must be doing the math wrong the other way. Sorry. Yeah, so it actually—I guess I want to know more about the impact and what was the discussion on the impact.

Craig Statucki (Interim Deputy Superintendent, Educator Effectiveness and Family Engagement Division, Department of Education):

Thank you. Interim Deputy Superintendent for Educator Effectiveness and Family Engagement, Craig Statucki. I am going to defer your question to Director Patti Oya, who is on Zoom, who will be able to respond to your question, Senator.

Patti Oya (Education Programs Director, Office of Early Learning and Development, Department of Education):

Thank you. Good evening, my name is Patti Oya, Director of the Office of Early Learning and Development for the Nevada Department of Ed. This regulation change was brought to our attention by one of the school districts. It really is a catch-up change that has happened. Kindergarten is full day, and this is what this regulation is changing. The payments were already being made at full day under the old DSA (Distributive School Account) plan, or now Pupil-Centered Funding Plan, so there really is no cost change. I think there was only one district that previously had—been offering full day. They were exempt, but even Eureka now is going full day. So, the financial change is not there.

Senator Hammond:

Thank you. So once again, Eureka was last? Thank you very much. Appreciate it; it's all I need to hear.

Chair Yeager:

Are there any additional questions from Commission members on R066-22? Seeing no additional questions, would somebody like to make a motion to approve?

SENATOR LANGE MOVED TO APPROVE REGULATION R066-22.

ASSEMBLYWOMAN JAUREGUI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY OF THE MEMBERS PRESENT.

Chair Yeager:

That takes us to the second regulation that has been pulled, and that is R153-22 ([Agenda Item V-B](#)), State Board of Health, and I think we had a question on this one from Assemblywoman Dickman.

Assemblywoman Jill Dickman (Assembly District No. 31):

Thank you so much, Mr. Chair. My question is under section 5(3) where it says a medical facility listed shall adopt administrative procedures to ensure that only one provider of health care will report a case, so—and actually I talked to Dr. Titus about this, because for example, she said South Lyon Medical Center hires rotating doctors. Does this mean they have to choose one doctor who is the only one—reports, and could it be a designee?

Misty Allen (State Suicide Prevention Coordinator, Office of Suicide Prevention, Division of Public and Behavioral Health, Department of Health and Human Services):

Thank you, Assemblywoman. Misty Allen, Suicide Prevention Coordinator for the State, and thank you for your question, Assemblywoman Dickman. The single provider is meant to prevent duplicate reporting. So, say they went into the emergency department or ended up in another facility that is mandated to report by this law. We don't want both reports coming through, so it's intended to be that primary reporting physician at the moment of admittance.

Chair Yeager:

And Assemblywoman Dickman, if I could, I think your question probably is somewhat legal in nature as well, so I'd like to pass it over to Mr. Killian to weigh in on that question as well.

Assemblywoman Dickman:

Thank you, because there is a fine in this of \$1,000, so we'd need to understand exactly. Thank you.

Asher Killian (Chief Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau):

Thank you, Mr. Chair. The regulation as written doesn't provide for designees of providers of health care to do this reporting, and especially if you look in section 4, subsection 2 of this regulation, there is some discretion exercised by the provider about what information is included in the report. Allowing a designee to do this kind of reporting would be a substantive change. If that's the pleasure of the Commission, then this reg would have to go back to the agency to have that revision added.

Assemblywoman Dickman:

Thank you. Thank you, Chair.

Chair Yeager:

You're welcome. Are there additional questions from Commission members on R153-22? I don't see additional questions.

ASSEMBLYWOMAN JAUREGUI MOVED TO APPROVE REGULATION
R153-22.

SENATOR CANNIZZARO SECONDED THE MOTION.

Chair Yeager:

Is there any discussion on the motion? Senator Hansen.

Senator Ira Hansen (Senatorial District No. 14):

Thanks, Mr. Chair. The points that Assemblywoman Dickman brought up I think are valid. Having served on the Legislative Commission for many years, it was very common when a little thing like this was caught—it is true that the reg as currently written in the absence of that would be a bit of a problem, so what we used to do is just push it off to the next Legislative Commission meeting. I do realize that's going to be in May or going to be a little while. So, that would be my recommendation. I'm sure this wasn't some kind of a thing where Health Department is trying to slip something through the cracks here, but the doctors are concerned because you definitely want to have that option in the regulation, so I would just recommend to postpone it. But if not, you could pass it now, and then maybe at their next regulatory thing they could add it, perhaps. I don't know, but one thing or another, we do need to get that in the regs. Thanks, Mr. Chair.

Chair Yeager:

Thank you, Senator Hansen. Is there further discussion? Assemblywoman Dickman.

Assemblywoman Dickman:

Thank you, Chair. With the \$1,000 fine being part of it, I just think that it's something that needs to be changed, especially for the rural areas. Thank you. I guess I will have to be opposed.

Chair Yeager:

Further discussion? I'll just say, we'll go ahead and take the vote and see how it goes, and if the vote fails, obviously the agency will have the opportunity to work on it and bring it back to the next Legislative Commission meeting, which will likely be some time after session. I don't anticipate having another one during session. Further discussion?

ASSEMBLYWOMAN JAUREGUI MOVED TO APPROVE REGULATION
R153-22.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION DID NOT PASS (SENATORS GOICOECHEA AND HANSEN,
ASSEMBLYMAN HAFEN AND ASSEMBLYWOMEN DICKMAN AND HANSEN
VOTED NO).

Chair Yeager:

The vote count on that was six in favor, five against. We do need seven votes on the Commission to pass substantive regulations, so the motion fails. The regulation is not approved, and I think based on the discussion, probably have some good direction about where to go on that. Thank you so much for being here tonight, appreciate it.

All right, thank you, Commission, for your indulgence. I'm frankly not used to getting through regulations that quickly on our agenda. That takes us through agenda item V, and our next item up is [agenda item VI](#), which is the presentation of the Legislative Counsel Bureau's Audited Annual Financial Report for Fiscal Year 2022 ([Agenda Item VI](#)). We have our Chief Financial Officer, Dan Rushin, here with us, and he is going to present this item and then we'll have a chance for questions. So, Mr. Rushin, the floor is yours.

Daniel Rushin (Chief Financial Officer, Legislative Counsel Bureau):

Thank you, Mr. Chair. I am here today to present the annual financial report for the LCB (Legislative Counsel Bureau) for the fiscal year ended June 30, 2022. Copies of the report are in the meeting packet and under agenda item VI posted on the Legislature's website. Given that our time is limited and because the financial report contains a lot of information, I will focus this presentation on a few key points. Please feel free to stop me at any time if anyone has any questions. Before we begin, I wanted to note that I prepared this report with financial data provided by the LCB's Accounting Unit, and I wanted to take a moment to express my thanks to their Chief Accountant and the staff of the Accounting Unit for their efficiency and accuracy in maintaining the final financial records of the LCB. During Fiscal Year 2022, the Accounting Unit had two experienced employees retire and was only able to fill one of the vacancies before the end of the year. However, despite this and other challenges, there were no delays in the year-end close procedures and the external financial audit was completed on time with no audit findings noted. This speaks to the high level of competency and professionalism of the LCB's Accounting Unit, and I appreciate their efforts and dedication.

The annual financial report of the LCB was prepared in accordance with US generally accepted accounting principles (GAAP) and includes the stand-alone financial statements of the three state funds administered by the LCB. Those are the Legislative Fund, the Contingency Fund and the State Printing Office Fund. The Legislative Fund accounts for the operations of the LCB and the Legislature when it is in session. The Contingency Fund accounts for the activities of the Interim Finance Committee's administration of provisional funds for other state agencies. The State Printing Office Fund, as the name implies, accounts for the activities of the State Printing Office.

The LCB's financial statements were audited by the CPA (certified public accountant) firm of Crowe LLP. Governmental auditing standards require that two separate audit reports be issued for the LCB's financial statements. The first audit report on page 1 is the independent auditor's report, which provides assurance on the financial statements themselves. It is important to note that this audit report is unmodified. This represents the highest level of assurance available from the auditing profession that the LCB's financial statements are fairly presented. The second audit report can be found on page 55. This report provides an assurance opinion on the LCB's internal controls over financial reporting, compliance with provisions of laws, regulations and contracts, and other matters. I am also pleased to report that this audit report is also unmodified and there are no financial reporting, internal control or compliance audit findings reported for 2022. Fiscal Year 2022 is now the third consecutive year with no audit findings noted by the LCB's external auditors.

As I stated earlier, my intent is to keep this presentation as brief as possible. To that end, I would note that on page 11 of the report, the balance sheet shows that the Legislative Fund ended Fiscal Year 2022 with a fund balance of approximately \$27 million ([Agenda Item VI](#)). Of this total amount, just under \$1 million is classified as non-spendable, as it relates to inventory and prepaid expenses, and approximately \$18 million has been committed for specific purposes. This leaves about \$8 million for the general operations of the LCB going into Fiscal Year 2023. Also on page 13, the statement of revenues, expenditures and changes in fund balance shows that the Legislative Fund's fund balance decreased by approximately \$4 million during the year. This is primarily due to an increase in capital outlay in that fund that accounted for a significant portion of this decrease. As anyone who has visited the Legislative Building recently has no doubt noted, there are several capital projects underway, and many of them began in Fiscal Year 2022.

I wanted to take this opportunity to also thank the LCB's independent audit firm of Crowe LLP for their professionalism and hard work during this year's audit to ensure that our reporting deadline of November 2 was met. At this time, I would like to turn the presentation over to our Audit Engagement Senior Manager, Joseph Widjaja, who is attending on Zoom for some communications that are required by the auditing standards.

Joseph Widjaja (Senior Audit Manager, Crowe LLP):

Thank you, Dan, and good evening, members of the Legislative Counsel Bureau. I am here to represent Crowe LLP to present the audit results of this year's financial statements for Fiscal Year 2022. Before we presented the audit results, just wanted to remind you that our audit objective is to express an opinion that your financial statements are in accordance with GAAP, or accounting principles generally accepted in the United States. Those standards require that we perform the audit to obtain reasonable rather than absolute assurance whether the financial statements are free of material misstatement.

With that, going into our audit results for Fiscal Year 2022, as Dan mentioned, we have issued an unmodified opinion to all of the two deliverables that we audit. Unmodified opinion means that it's a clean and smooth and highest level of opinion that we can provide as an auditor. You can also refer to page 1 and page 55 within the agenda package for those two opinions ([Agenda Item VI](#)). In addition to that, we're required to provide communication if we note certain disagreements or difficulties among other things encountered during the audit, and again, happy to say that we did not note any difficulties encountered during the audit, no disagreements with management. We did not note significant unusual transactions related—findings and issues and independence issues.

At this point, I would like to take this opportunity to appreciate members of the Crowe audit team for their hard work and also thank members of Nevada Legislative Counsel Bureau management. So, Daniel Rushin, Jolanta Astronomo and all members of the finance department team for their collaboration on these audits. With that, I am happy to open it up for any questions. Thank you.

Mr. Rushin:

Seeing no questions, unless there is any for me, I'll turn it back over to the Chair.

Chair Yeager:

Commission members, this item is informational only. No action is needed, but this is a chance to ask any questions that you may have on the audit. Are there any questions from Commission members? Okay, I don't see any questions. Thank you for the presentation, and we appreciate you being here on Zoom as well. Thank you. That completes [agenda item VI](#). Next up is agenda item VII, legislative audit. We have two different items on this agenda and we'll take each one in turn, and these items do require action by the Committee. We have Dan Crossman, who is our Legislative Auditor. He'll be presenting both of the items, and we'll start with item VII-A. Mr. Crossman, we'll give you a chance to present that, take any questions and then we'll look for a motion.

Dan Crossman (Legislative Auditor, Audit Division, Legislative Counsel Bureau):

Thank you, Chair. Under [agenda item VII-A](#) in your packet you will see a letter from Assemblywoman Jauregui, who is Chair of the Audit Subcommittee, indicating that on January 12 of 2023, a meeting of the Audit Subcommittee of the Legislative Commission was held in which six audit reports were presented and accepted ([Agenda Item VII-A](#)). Legislators were also notified of the release of these reports following that January meeting via email with links to the reports on our website. During that meeting, we presented a summary of the audits to the Subcommittee, we answered questions of the Committee members and representatives from the agencies, and were able to provide

remarks and answer questions as well. Today I will briefly go over some of the key findings from those reports. Please note that the full reports are available on our website where more details can be obtained on our findings and our recommendations. Additionally, if any members of the Committee are interested in discussing any of these reports in any level of detail, we'd be more than happy to find a time to do that, to meet with you. We're also happy to make any presentations to any of the committees as desired.

Turning to the next page is the summary for the audit of the Department of Health and Human Services, Division of Health Care Financing and Policy, dual enrollments and supplemental drug rebates. The purpose of this audit was to determine if the Division monitored certain activities related to managed care organizations (MCOs), enrolled participants and supplemental drug rebate payments. We found that the Division does not have adequate processes in place to identify individuals concurrently enrolled in other states' Medicaid programs. Consequently, the Division made improper monthly capitation payments to MCOs because federal law does not allow an individual to be enrolled in more than one state. We conservatively estimate over \$22.9 million in improper capitation payments were made during calendar years 2020 and 2021. In addition, the Division's lack of oversight related to MCOs' supplemental drug rebate payments resulted in \$6.9 million going uncollected for almost 2 years until we identified the missing payments. Additionally, \$4.2 million in rebates were invoiced to the drug manufacturers by the MCOs but had not yet been remitted to the state. We made 10 recommendations to improve actions and effective oversight activities to reduce improper capitation payments and to ensure that supplemental drug rebates are collected by the state. All recommendations were accepted by the agency.

The next page is the summary of our audit of the Department of Employment, Training and Rehabilitation Division. The purpose of this audit was to analyze whether the Division was performing sufficient outreach for the Pre-Employment Transition Services youth program, or PreETS, and to determine if certain activities related to the approval and oversight of the adult vocational rehabilitation programs were adequately monitored and approved. We found the Division can do more to adequately implement the PreETS youth program. For example, the Division fell short of meeting youth spending requirements by an average of 5 percent since 2018, the impact of which affects available funding for adult services. Enhanced planning can help ensure program and financial requirements are being met. Youth with disabilities in the rural communities also lack equitable access to resources. Through improved program planning, enhanced communication and coordination with school districts and more robust data tracking, the Division will be in a better position to maximize available funding and ensure youth with disabilities receive the necessary services. Finally, the Division can strengthen oversight and outreach controls over the administration of the vocational rehabilitation services program. We found counselors did not review an average of 41 percent of open cases in accordance

with the grant requirements in Fiscal Years 2020 and 2021. Additionally, individualized plans of employment costs exceeded plan amounts without the adequate approval in 56 percent of the cases we reviewed. We made eight recommendations, which the Division accepted and is actively implementing.

Next is the summary of the audit of the Nevada System of Higher Education (NSHE) self-supporting and reserve accounts ([Agenda Item VII-A](#)). This audit was required by Assembly Bill 416 from the 2021 Legislative Session. The purpose of this audit was to analyze financial activity related to self-supporting funds and reserve accounts for Fiscal Years 2018 to 2021. Our conclusions were that minimal system-wide oversight and variations in internal control systems and operations at institutions of NSHE contribute to inappropriate and questionable financial activity. This occurred because the Board of Regents has provided institutions with latitude for operations at the institution level but policies and related guidelines are often vague or insufficient, which contributes to inconsistencies and variations amongst institutions. Our review of the self-supporting accounts found some inappropriate activity. For example, institutions moved expenditures to state-supported accounts without ensuring consistency in the type of activity. In addition, some state funds were not reverted in accordance with state law. In this audit, we recognize the latitude provided to and by the Board of Regents in their use of state funds. However, in light of some of these findings, we do state in the report that the Legislature may wish to consider whether NSHE's actions to move expenditures from self-supporting accounts at or near year end to utilize all state funds first meets the Legislature's intent when allocating general fund dollars. We also found questionable uses of student fees when compared to Board policies. Furthermore, institutions commingled restricted and unrestricted revenues, and reports to the Board did not always provide useful, accurate or complete information. Increased oversight of institutions will help ensure funds are used appropriately and NSHE's accountable to the Legislature, its students and to the public. Additionally, we found that reserve and contingency accounts are not adequately overseen by the Board. As a result, there is little consistency among the institutions in how accounts are created, structured and used. For instance, some institutions utilized reserve accounts for routine operational expenditures such as payroll. We also found some self-supporting programs had a significant amount of idle funds relative to total uses. Excess reserves can indicate programs are overfunded and fees should be reduced, or funding should be redirected for more immediate purposes. We made 13 recommendations to help ensure self-supporting funds are utilized appropriately and to improve accountability of NSHE resources, which the System accepted and is actively implementing.

Turning to the next page is the summary for the audit of the Nevada System of Higher Education capital construction projects, also required by AB (Assembly Bill) 416. The purpose of this audit was to determine if UNLV (University of Nevada, Las Vegas) and UNR (University of Nevada, Reno) managed capital construction projects in accordance

with state laws, policies and appropriate management standards. Our audit included a review of capital construction projects that were solicited, in progress or completed between Fiscal Years 2019 and 2021. We found NSHE needs to enhance its policies and procedures to ensure institutions' capital construction project funding and management practices comply with state laws, NSHE policies and contract terms. Funding of some capital construction projects used state-appropriated operating funds not appropriated for capital construction, and institutions did not have authority to manage some state-funded projects. In addition, change order documentation was not always adequate to ensure contractors' billed amounts complied with contract terms, and some un-allowed amounts were billed. Furthermore, better project planning is needed to limit unnecessary modifications to scopes of work for some construction contracts. Proper controls over construction project management are critical for ensuring compliance with applicable state laws, NSHE policies and to safeguard financial resources. Next, better controls over project solicitation and procurement practices are needed to ensure compliance with again state laws and NSHE practices. Specifically, some projects' solicitations did not comply with state law requiring the disclosure of selection criteria weights. Furthermore, institutions use some nontraditional procurement methods for capital construction projects. For one specific project a private-public partnership was used, but it is unclear whether NSHE has the statutory authority to use this form of construction as it is defined in statute. We made 18 recommendations, which NSHE accepted: four recommendations to improve compliance with state laws and sound budgeting practices regarding capital construction financing and management, nine recommendations to help control change orders and to strengthen project closeout practices and five recommendations to strengthen procurement practices.

Turning to the next page in the packet is the summary for the audit of the Nevada System of Higher Education institution foundations. This is the last of three audits pursuant to AB 416. The purpose of this audit was to determine if privately donated money was appropriately recorded and spent in accordance with donors' intended purposes. To be brief, we found they did. Our testing found that 99 percent of nearly 800 sample donations were properly recorded. Our testing also found that 99 percent of about 700 gift expenditures were appropriately spent in accordance with the intended purpose of the gift. While we did identify limited exceptions, they were exactly that, limited. We have three recommendations to ensure that adequate policies are in place related to documenting the acknowledgment letters, or donation receipts, verifying certain key controls are occurring and reviewing of inactive gift accounts, which the System did accept all those recommendations

On the next page is the summary for our review of governmental and private facilities for children ([Agenda Item VII-A](#)). Our inspection's dated December of 2022. This report includes the results of 19 children's facilities that we inspected. We had notable findings at 5 of the 19 facilities. In each of these, we identified certain health, safety or welfare

issues and contacted the respective licensing agency to share our concerns. As a result of our reviews and based on the licensing agencies' actions, various forms of corrective actions were taken for the facilities and homes to ensure that standards of care are being met. Through our continued work in this area we'll continue to monitor and follow up with these facilities, as well as their licensing agencies where we had concerns. Additionally, in the report we note that two of eight correction and detention facilities—we had identified a deficiency in their implementation of the Prison Rape Elimination Act intake process, or PREA. In short, we noted that a screening tool being used did not meet the PREA standards, and we recommended that they implement one that does. We also reviewed more than 600 complaints during the year submitted to us by the facilities and actively utilized that information in helping us perform risk assessments to select which facilities to inspect. There are many other details included in this report, which is included on our website.

As I mentioned, we are available any time to meet and discuss any of these reports at any level with the legislators or any committee. That would conclude my summary of the reports issued on January 12 of 2023. As noted on the cover letter, Chair Yeager, the Audit Subcommittee recommends the Legislative Commission accept these six reports. Thank you.

Chair Yeager:

Thank you so much, Mr. Crossman. Commission members, do we have any questions or any discussion about the audit reports that were just presented to the Commission? Assemblywoman Hansen.

Assemblywoman Alexis Hansen (Assembly District No. 32):

Thank you, Mr. Speaker, and thank you so much. Actually, I wanted to put on the record a great thank you to the auditors for this information. I am new to the Commission. To be honest, my mind is blown by some of the audits. Thank heavens for AB 416, the one with capital construction projects and the reserve accounts in particular. My question—there were things that you noted of concern and there will be follow-up. Just to help me understand the process, they have a certain timeline, and then I'm thinking it's in October that they have to kind of show what changes have been made. I'm just curious what the additional accountability is, if you could help me understand how it will look from here going out the rest of the year.

Mr. Crossman:

Thank you, Assemblywoman Hansen. Yes, you are correct, we do have a well-defined audit follow-up process that begins with a 60-day plan of corrective action. For each of

these reports that we presented today, short of the children's facility reviews, the audited agencies are required to submit that plan to us, and those are due on April 10. That 60-day plan is meant to encapsulate their plans to implement those recommendations in a level of detail that they feel comfortable sharing at that time. Following that, 6 months after that report is due, as you indicated, in October, a 6-month report is due to our office, and that is the responsibility of the Division of Internal Audits within the Governor's Finance Office to go out to the entities and to do a review of the status of implementation of those recommendations. That report is then provided to us and we do present that to the next Audit Subcommittee meeting where we review that status with them. We have the authority to continue to work with agencies to understand the status of implementation moving forward. At the Audit Subcommittee meeting we will discuss the status of those recommendations, and if we are not satisfied or if the Chair or members of the Subcommittee are not satisfied with the status, we can invite them to return to another meeting until we're satisfied with the implementation of those recommendations.

Assemblywoman Hansen:

Thank you so much. I'm glad to hear that we'll continue to follow up. I appreciate all the work.

Chair Yeager:

Any other questions or comments from—Senator Lange, please.

Senator Roberta Lange (Senatorial District No. 7):

Thank you, Mr. Chair. So my question—will you correct me if I'm wrong—did you say that the follow up, the 60-day follow-up, included all of them except the governmental private facilities for children inspections?

Mr. Crossman:

Senator Lange, yes, that is correct. Those are not considered audits and therefore not subject to the formal audit follow-up process. However, our process is to continue to follow up with those entities on our own as we go through and make selections for future visits. We will visit some facilities multiple times to go back in and ensure that implementation of the—corrective actions have taken place.

Senator Lange:

So if I could follow up, I noticed on these findings, some of them to me are pretty serious, and so I'm just wondering how often you're going to go out to these facilities and what's

the process for someone that's not making substantial changes, because I think they are substantial changes that need to be made.

Mr. Crossman:

Senator Lange, the frequency with which we visit these facilities, it really depends on the level of risk we associate with that facility. In the back of the report we identify that we have about 57 facilities statewide that fall under our purview, and as we note that we did 19 visits this year, inspections, so we are unable to get to them all as frequently as we'd like to. As far as following up, part of our responsibility is to work with the licensing entities, whether it be Clark County, Washoe County or DCFS (Division of Child and Family Services) or other licensing entities that might be involved with the licensure of these facilities to ensure that, as they are the ones that have the authority to work with them specifically on the requirements of their respective licenses. So it is a collaborative effort with us working with them to ensure that they're able to take the appropriate steps to meet not only our review—to fix the issues we've identified but also to satisfy the licensing agency.

Chair Yeager:

Additional questions or discussion? Before I take a motion, I'll just reiterate what Assemblywoman Hansen said. Our Auditing Division is just phenomenal. If you haven't had a regular chance to look at those audits when you get them, definitely take a look at them. Part of our duty as the Legislature and a separate branch of government is to oversee executive agencies and make sure that they're doing things right. We obviously can't do that because we're a part-time Legislature and we're here every other year, but through our Auditing Division those reviews take place on a regular basis, and I think it really does result in better efficiency out of these agencies and them being able to fix the issues, so just want to take a moment to thank our auditors because I can't imagine how hard and detailed that work is, but you guys do it on a regular basis and do it very, very well, so let me say thank you for that, Mr. Crossman, and to your entire Division as well. I'd be looking for a motion to accept the audit reports that were presented.

ASSEMBLYWOMAN JAUREGUI MOVED TO APPROVE THE SUMMARY OF
AUDIT REPORTS PRESENTED TO THE LEGISLATIVE COMMISSION'S AUDIT
SUBCOMMITTEE.

SENATOR HANSEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY OF THE MEMBERS PRESENT.

Chair Yeager:

That takes us to [agenda item VII-B](#), and Assemblywoman Hansen, I think this will fit nicely with one of your questions about what the follow-up is for different audit reports. We'll go back to Mr. Crossman to talk about some of the follow-up that was done on a couple of previous audits. Mr. Crossman, please.

Mr. Crossman:

Thank you. I will repeat a little bit of what I just mentioned. By way of review, 6 months after the audited agencies submit that corrective action plan, the Division of Internal Audit works with those agencies to report on the status of those recommendations. We do review that assessment; we don't just take it at face value, and if we feel that it is warranted, we will request additional information from the agencies to gain a better understanding. Under [agenda item VII-B](#), as mentioned by the Chair, you'll see there's another letter from Assemblywoman Jauregui, Chair of the Audit Subcommittee, which indicates that 3 6-month reports were reviewed at our meeting on January 12 ([Agenda Item VII-B](#)). The letter shows the implementation status of the recommendations for 33 recommendations made on those audits. Those three audits were the Department of Corrections, use of force; the Department of Health and Human Services, Division of Child and Family Services, management of maltreatment reports and child health; and the Department of Health and Human Services, Division of Health Care Financing and Policy, information security. Fifteen recommendations were fully implemented at the time of this report, thirteen partial and five had no action. We will continue to track the status of these recommendations with these agencies as they move forward with their corrective action plans. They may, as I mentioned, return to future Subcommittee meetings to provide additional information to the Subcommittee.

I will just mention too that the work that we do does take cooperation of the agencies, and it is our intent to work with the agencies throughout these processes. There's times when we disagree on things and have to agree to disagree, but I would say by and large most of the agencies do cooperate with us and work with us well to make sure that we can complete our work and provide a good product to you and to the public through our auditing process. With that, Chair, I will conclude my remarks and just mention that this letter does indicate that the Subcommittee recommends the Legislative Commission accept these 3 6-month reports, and I'd be happy to answer any questions. Thank you.

Chair Yeager:

Thank you, Mr. Crossman. Do we have questions or further discussion on these 3 6-month status reports? I don't see any, so I'd be looking for a motion to accept the three of these reports.

ASSEMBLYWOMAN JAUREGUI MOVED TO ACCEPT THE SUMMARY OF 6-MONTH STATUS REPORTS ON THE IMPLEMENTATION OF THE AUDIT RECOMMENDATIONS BY THE LEGISLATIVE AUDITOR AS SUBMITTED TO THE LEGISLATIVE COMMISSION'S AUDIT SUBCOMMITTEE.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY OF THE MEMBERS PRESENT.

Before I go to the next agenda item, I did want to take a chance to thank Assemblywoman Jauregui, who chaired the Audit Subcommittee. It's a lot of extra work that comes with Legislative Commission, but for those of you who are new to this Commission, if you are on the Commission next interim and you would like to serve on that Subcommittee, that's where a lot of the real work is done in analyzing those reports as they come out, so I always—to the extent that I'm on this Commission next session, please let me know if you'd be interested in serving on the Audit Subcommittee, because we are always looking for volunteers and people who want to dive into that work. But thank you, Assemblywoman Jauregui, for sharing. Okay, that takes us through agenda item VII. We are on to agenda item VIII, reports of certain 2021-2022 interim committees. We have Mr. Nick Anthony with us. All of you know him, I believe. He is the Division Chief and Director of the Research Division. He's going to be presenting this item today, and then we'll have a chance for questions and we'll take a motion to approve. Mr. Anthony, please.

Nicolas Anthony (Research Director, Research Division, Legislative Counsel Bureau):

Thank you, Mr. Chairman. Before the Commission this evening are summary abstracts and recommendations from 14 various committees from this past interim, 11 standing committees ([Agenda Item VIII-A](#)) and 3 interim studies ([Agenda Item VIII-B](#)). These reports in your folder represent just a summary. The full reports are available online and through the Research Division, if you should so choose. But again, these reports are

presented every interim to the Legislative Commission for your approval. The majority of the recommendations will be coming through the various committees in the form of legislation, so you'll see those also this session. If you have any questions, I would be pleased to answer them. Thank you, Mr. Chair.

Chair Yeager:

Thank you, Mr. Anthony. As noted, members, you do have quite a bit of information about what those interim committees did, and as you are all aware, those bills are coming through your committees. The BDRs are being approved through the committees on a rolling basis. But does anyone have questions for Mr. Anthony about that report? Okay, I don't see questions. Seeing no questions, I would take a motion to approve—excuse me, a motion to accept the reports under agenda item VIII.

ASSEMBLYWOMAN JAUREGUI MOVE TO ACCEPT THE REPORTS OF THE
2021-2022 INTERIM COMMITTEES.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY OF THE MEMBERS PRESENT.

Chair Yeager:

That takes us next to [agenda item IX](#), approval of session hires for the ongoing 2023 Legislative Session. We have Ms. Erdoes here to present this item and answer any questions ([Agenda Item IX](#)). Ms. Erdoes, is there anything to present? No? Okay.

ASSEMBLYMAN HAFEN MOVED TO APPROVE THE SESSION HIRES FOR
THE 2023 LEGISLATIVE SESSION.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY OF THE MEMBERS PRESENT.

Chair Yeager:

Next is agenda item X, which is a report from our General Counsel, Mr. Kevin Powers, regarding litigation. As you can see, Mr. Powers is joining us virtually on Zoom this evening. Mr. Powers, welcome, and please proceed.

Kevin Powers (General Counsel, Legal Division, Legislative Counsel Bureau):

Thank you, Mr. Chair. I have four cases to report to the Commission this evening. The first case is *Nevada Policy Research Institute v. Miller*. In this case, NPRI (Nevada Policy Research Institute) claims that state legislators are prohibited by the separation of powers provisions in the Nevada Constitution from holding any positions of public employment with the state executive branch or with local governments. As a reminder, LCB Legal is not representing the individual legislator defendants in this lawsuit, but LCB Legal is representing the Legislature as an intervenor defendant in order to protect the official interests of the Legislature as an organizational client. Now, this case is before the Nevada Supreme Court on appeal for a second time. After the first appeal, the Nevada Supreme Court returned the case to the District Court in a published opinion reported at 138 Nevada Advance Opinion 28. In that first appeal, the Supreme Court determined that NPRI has standing to litigate its separation of powers claims in the District Court. After remand to the District Court, the parties filed several motions, including various motions to dismiss. On January 4, 2023, the District Court entered an order dismissing NPRI's first amended complaint. The District Court determined that the separation of powers provision does not prohibit state legislators from holding positions of public employment with the state executive branch or with local governments. The District Court also determined that, with regard to the named legislator defendants, there is no common law incompatibility for an individual to be employed as a county public school teacher, a county public defender or a professor at a state college and simultaneously serve as a state legislator. Therefore, the District Court denied NPRI's complaint in whole and rejected its separation of powers claims.

On January 6, 2023, NPRI filed an appeal with the Nevada Supreme Court. That appeal number is Case No. 85935 with the Nevada Supreme Court. At the time of filing its notice of appeal, NPRI also filed a motion to expedite the appeal. In response, the legislator defendants filed a countermotion for a legislative continuance under NRS 1.310, which would continue the appeal until after the 2023 Legislative Session. On February 9, 2023, the Nevada Supreme Court denied NPRI's motion to expedite the appeal. The Court granted the countermotion for the requested legislative continuance, and the Court ordered NPRI to file its opening brief on June 12, 2023. Once NPRI files its opening brief on June 12, 2023, then the time for the legislative defendants and the Legislature to file their responsive brief will begin to run from that date, June 12, 2023.

The second case to report on is *Killebrew v. State of Nevada*, and that is Nevada Supreme Court Case No. 83830. This case involves SB (Senate Bill) 512 of the 2017 Legislative Session, which amended and revised statutory authority of the State Land Registrar to charge fees for the use of piers and mooring buoys for mooring vessels that are associated with the navigable bodies of water of the state. Under that statutory authority provided by SB 512, the State Land Register promulgated annual use fees by regulation designated LCB File No. R167-18, and that regulation was approved by the Legislative Commission. The petitioners challenged the validity of the regulation and the annual use fees on October 19, 2021. The District Court upheld the regulation and the annual use fees. The petitioners filed an appeal with the Nevada Supreme Court. The parties have completed their briefing on appeal and the Nevada Supreme Court will now determine whether it will hear oral arguments in the appeal or whether it will decide the appeal on the briefs without oral arguments.

The next case to report on is *Nevada Hospital Association v. State*, and that's Nevada Supreme Court Case No. 84991. In this case, the plaintiffs challenged the constitutionality of section 20.9 of SB 329 of the 2021 Regular Session, which prohibits health care providers from including certain anticompetitive contractual provisions in their contracts with insurers, governmental entities and other third parties that provide health care coverage or benefits in Nevada. On March 10, 2022, the District Court entered an order and final judgment that upheld the challenged provisions of SB 329 and granted the state defendants' and the Legislature's motions to dismiss. The plaintiffs filed an appeal with the Nevada Supreme Court. The parties have completed their briefing on appeal and the Nevada Supreme Court will now determine whether it will hear oral arguments in the appeal or whether it will decide the appeal on the briefs without oral arguments.

The final case to report on is a new case that hasn't been reported on before, before the Legislative Commission, so I'll take some time to go into the details of this case. This case also is related to a piece of legislation that was passed this session, SB 124, and recently approved by the Governor this week. The case is the *Eureka County School District v. State of Nevada*. It's currently pending in the First Judicial District Court in Carson City. This case involves the state's funding of Nevada's public schools for K-12 education. During the 2019 and 2021 Regular Sessions, the Legislature enacted several bills that were intended to replace the prior Nevada Plan for funding the operation of K-12 public schools with the Pupil-Centered Funding Plan. During the 2019-2021 Biennium, the Pupil-Centered Funding Plan became effective for the purposes of each school district creating their budget for the following biennium, which would begin on July 1, 2021, and then full implementation of the new Pupil-Centered Funding Plan started on July 1, 2021, and would cover the following Fiscal Year of 2021-2022. During that first fiscal year of implementation of the new Pupil-Centered Funding Plan, the State Department of Education notified the Eureka County School District that its apportionment of money from the State Education Fund for Fiscal Year 2021-2022 exceeded the amount that the

School District was lawfully entitled to receive under the new Pupil-Centered Funding Plan. The Department also informed the School District that it was required to repay the excess amount to the State Education Fund. On September 2, 2022, the School District filed and served an amended complaint for declaratory injunctive relief against the Department of Education and the Department of Taxation challenging the constitutionality of certain provisions of the Pupil-Centered Funding Plan. The School District also filed a motion for a preliminary injunction to enjoin the Department of Education from taking any further action to enforce repayment. In addition, the parties agreed for the Legislature to intervene in the case and defend the constitutionality of the legislation. The School District's constitutional claims involve provisions of Article 10, Section 5 of the Nevada Constitution, which governs the tax on the net proceeds of mining operations. Those constitutional provisions require the Legislature to appropriate certain amounts collected from the net proceeds tax to each county where the mining operations are located. The county is then required to apportion the appropriated money to the county school district and other local governmental entities within the county based on the property tax levied by the school district and those other entities within the taxing district where the mining operations are located. In the lawsuit, the School District claims that the Department's demand for repayment for that additional amount that was paid during the 2021-2022 School Year is violating the Nevada Constitution because the Department is seeking to recover money that was apportioned to the school districts from the net proceeds tax.

At the hearing before the District Court, the District Court determined that the School District had failed to exhaust its administrative remedies before the State Department of Education in order to determine whether in fact the School District had to repay that money. As a result, the Department sent it back to the administrative proceeding, and the State Department of Education will be conducting an administrative proceeding to determine the factual basis for the County School District claim that the repayment of money would impact their net proceeds revenues received under the Nevada Constitution.

In addition to the claim dealing with the repayment of money for the 2021-2022 School Year, Eureka County School District also challenged the provisions of the Pupil-Centered Funding Plan, which requires each county school district under certain circumstances to make transfers or sweeps to the Education Stabilization Account of certain amounts exceeding their ending fund balance after each particular fiscal year. The claim from Eureka County School District is that transfer or sweep from the County School District fund to the Education Stabilization Account would collect money that was generated through the net proceeds tax. At the time that the County School District filed their complaint, no money had been transferred from the County School District fund in Eureka County to the Education Stabilization Account. As a result, the argument was made that their claims were not ripe for adjudication because the Eureka County School District was not harmed in any way because no transfer had occurred. The District Court did not get

to that issue during the hearing because the District Court remanded the proceedings to the State Board of Education for having its administrative hearing on the matter, so the District Court did not rule on the merits of that constitutional issue.

In the meantime, in order to clarify the legislation that was passed during the 2019 and 2021 Legislative Sessions, the Legislature passed SB 124 this legislative session. The Governor signed SB 124 into law this week. LCB Legal believes that the provisions of SB 124 make clear that any transfer or sweep from a county school district fund to the Education Stabilization Account will not touch any money that the county received through the net proceeds tax. So, it is the view of LCB Legal that when this case returns to the District Court after the administrative proceeding that there will no longer be an issue with regard to transfers to the Education Stabilization Account. However, the District Court will still be dealing with the repayment issue from the 2021-2022 Fiscal Year. SB 124: that legislation didn't affect that other issue that will be proceeded before the administrative proceeding for the State Board of Education and most likely will return to the District Court after that administrative proceeding.

That covers the four cases that I have to report in the litigation report. Mr. Chairman, I am certainly open to any questions.

Chair Yeager:

Thank you so much, Mr. Powers. Commission members, this is an informational item only. There's no approval needed, but is a chance to ask questions or have discussion on any of the items. I will open it up for questions or discussion. Senator Hansen, please.

Senator Hansen:

Thanks, Chair. It's kind of interesting to actually—because there are competing parties right here on this panel—certain extent. Kevin, quick question on the *NPRI* lawsuit. As I understood it, the judge said that while you could be a county public defender, you could not be a member of the district attorney's office in the county. Is that accurate?

Mr. Powers:

Thank you, Mr. Chairman. That is accurate. It must be noted, however, that at the time the District Court made its decision, none of the individual legislative defendants who remained in the lawsuit were actually employed by the county as prosecuting attorneys. So, the essence of the District Court's decision dealing with county prosecuting attorneys is what's known as dictum, a decision that's unnecessary to the actual merits of the case, because no defendants were actually county prosecuting attorneys at the time the District

Court made its decision. Whether or not the Nevada Supreme Court will actually address that issue is indeterminate.

Let me say one other thing about the county prosecutory issues. The way the District Court structured its order, it found no violation of the separation of powers provisions with regard to legislators serving as state executive branch employees or local government employees. It did find, however, a violation of the common law doctrine of incompatibility for a county prosecuting attorney to also serve as a legislator. The common law doctrine of incompatibility is different from the separation of powers provision. It also must be noted that none of the parties raised the common law doctrine of incompatibility in their arguments for their pleadings and brief, including NPRI. The District Court sua sponte, on its own, addressed the common law doctrine of incompatibility and applied it to county prosecuting attorneys. That is another issue that will be dealt with on appeal because that is somewhat unusual in a judicial decision. Thank you, Mr. Chair.

Senator Hansen:

We could have a lot of fun with that one, but I don't want to exhaust the evening. Thank you, Kevin.

Chair Yeager:

Going to get our continuing legal education credit here on this Committee tonight. The doctrine of incompatibility—it's been a while since I've heard that one. Thank you for that response, Mr. Powers. Are there additional questions or discussion from Commission members? Okay, I don't see any. Mr. Powers, thank you as usual for the update, appreciate that, and I'm sure we'll see you at a Legislative Commission meeting soon. All right, that takes us through agenda item X. One moment. That takes us to agenda item XI, which is our second round of public comment. I don't see many people here at all, but we'll see if there's anyone who wants to give public comment. Just by way of reminder, you have two minutes for public comment. We'll start here in Carson City. Would the one person in the audience like to give public comment this evening? Two people in the audience. Okay, no one's coming forward, so no public comment here. How about in Las Vegas? I don't know if anyone's there, but if there is someone there who'd like to give public comment, please come forward to the table. Okay, nobody was hiding behind that post. How about on the phone? BPS, is there anyone who'd like to give public comment this evening?

Broadcast and Production Services Staff:

The public line is open and working. There are no callers at this time.

Chair Yeager:

Thank you as usual, BPS. Commission members, that takes us to the end of the agenda. I did want to correct something I said. There likely will be another Legislative Commission meeting during session, but it will be at the end of session when the Legislative Commission gets reconstituted by the Senate and the Assembly, and that will be to choose the Chair and Vice Chair of the Commission, but I don't anticipate any other substantive issues coming before the Legislative Commission between now and then. If that changes, I will let you know. I just want to say thank you for all being here tonight into the evening, thank staff for making this happen, and we will see you all very soon. Be careful out there driving home tonight and back to the building tomorrow morning. With that, we are adjourned.

RESPECTFULLY SUBMITTED:

Jordan Haas, Secretary

APPROVED BY:

Assemblyman Steve Yeager, Chair

Date: _____

Agenda Item	Witness/Agency	Description
<u>Agenda Item III</u>	Jordan Haas, Commission Secretary	Draft Minutes of the Meeting Held on December 28, 2022
<u>Agenda Item V-A</u>	Bryan Fernley, Legislative Counsel	R104-20 for Continuance Request
<u>Agenda Item V-B</u>	Bryan Fernley, Legislative Counsel	Administrative Regulations for Review
<u>Agenda Item VI</u>	Dan Rushin, Chief Financial Officer	Legislative Counsel Bureau's Audited Annual Financial Report for Fiscal Year 2022
<u>Agenda Item VII-A</u>	Dan Crossman, Legislative Auditor	Summary of Audit Reports Presented to the Audit Subcommittee
<u>Agenda Item VII-B</u>	Dan Crossman, Legislative Auditor	Summary of 6-Month Status Reports on the Implementation of Audit Recommendations by the Legislative Auditor
<u>Agenda Item VIII-A</u>	Nicolas Anthony, Research Director	Reports of Certain 2021-2022 Statutory Interim Committees
<u>Agenda Item VIII-B</u>	Nicolas Anthony, Research Director	Reports of Certain 2021-2022 Interim Studies
<u>Agenda Item IX</u>	Brenda Erdoes, Director	Session Hires for the 2023 Legislative Session