

**MINUTES OF THE 2023-2024 INTERIM
LEGISLATIVE COMMISSION**

NOVEMBER 8, 2023

The meeting of the Legislative Commission was called to order by Chair Cannizzaro at 2:17 p.m. at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via videoconference at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada. The meeting was adjourned at 3:24 p.m.

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

COMMISSION MEMBERS PRESENT IN LAS VEGAS:

Senator Nicole Cannizzaro, Senatorial District No. 6; Chair
Senator Dallas Harris, Senatorial District No. 11; Vice Chair
Senator Carrie Ann Buck, Senatorial District No. 5 (Alternate for Senator Jeff Stone)
Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1 (Alternate for
Assemblywoman Sandra Jauregui)
Assemblywoman Sarah Peters, Assembly District No. 24 (Alternate for Assemblyman
Steve Yeager)

COMMISSION MEMBERS PRESENT IN CARSON CITY:

Senator Skip Daly, Senatorial District No. 13
Senator Robin Titus, Senatorial District No. 17 (Alternate for Senator Ira Hansen)
Assemblywoman Natha Anderson, Assembly District No. 30 (Alternate for Assemblyman
C.H. Miller)
Assemblyman P.K. O'Neill, Assembly District No. 40 (Alternate for Assemblyman Rich
DeLong)

COMMISSION MEMBERS PRESENT VIA VIDEOCONFERENCE:

Senator Lisa Krasner, Senatorial District No. 16
Assemblywoman Shannon Bilbray-Axelrod, Assembly District No. 34 (Alternate for
Assemblywoman Shea Backus)
Assemblywoman Jill Dickman, Assembly District No. 31 (Alternate for Assemblywoman
Alexis Hansen)

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Brenda Erdoes, Director
Roger Wilkerson, Deputy Director

Asher Killian, Legislative Counsel, Legal Division
Kevin Powers, General Counsel, Legal Division
Nicolas Anthony, Research Director, Research Division
Dan Crossman, Legislative Auditor, Audit Division
Sarah Coffman, Assembly Fiscal Analyst, Fiscal Analysis Division
Wayne Thorley, Senate Fiscal Analyst, Fiscal Analysis Division
Brendan Bucy, Secretary of the Senate
Broadcast and Production Services Staff, Administrative Division
Angela Hartzler, Secretary, Legal Division
William Bennett, Secretary, Legal Division
Jordan Haas, Secretary, Legal Division

OTHERS PRESENT:

Tony Simmons
Cathy Sheehy, Commissioner, Division of Mortgage Lending, Department of Business and Industry
Leslie Bittleston, Juvenile Justice Program Chief, Division of Child and Family Services, Department of Health and Human Services
Paul Anderson, Maupin, Cox and LeGoy

Senator Nicole Cannizzaro (Senatorial District No. 6; Chair):

All right, welcome to the November 8 meeting of the Legislative Commission. This is our fifth meeting this year. I want to welcome everybody for joining us here in person and in Carson City, and we have a few members who will be joining us via Zoom. We have five members here in Grant Sawyer and then four in Carson City, and we will go ahead and start this meeting with item I-B and our roll call. Please note that I do see Assemblywoman Dickman. I think she just didn't get unmuted quite enough for us to hear her, but she is present here in the meeting.

Thank you for everyone joining us. We do have a quorum, and before we get started with the next item on our agenda, I want to talk about some general housekeeping items. For anybody who is here to testify, whether you are here with us in Grant Sawyer, whether you are present in Carson City or whether you will be joining us on the phone, please make sure that you state and spell your name for the record so that we can keep accurate records of everyone who is testifying. I would note that for anyone who would like to receive a copy of the Commission's agendas, minutes or reports, you can 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 from those who wish to submit written comments. We always welcome those as well. The information regarding on where to send those written comments is also listed on the website and is also listed on the agenda for this meeting.

With that, it brings us to our first public comment period, item II on our agenda. We will be accepting public comment at this time from persons who are present here in Grant Sawyer and then from those attending from Carson City and then from people who are wishing to provide public comments by telephone. If you prefer to wait and speak until later, there will be a second public comment period at the end of the meeting once we've gone through the remainder of our business. Please remember that, because it is public comment, folks will be limited to not more than two minutes per person. With that, I will have anybody here in our audience in Las Vegas who wishes to give public comment to please come forward to the table in the front of the dais, and if there's anybody in Carson City as well who might be present and wanting to give public comment, you can go ahead and fill those seats at the dais in Carson City and we'll come to you once we are finished here in Las Vegas. Welcome, please have a seat. As a general reminder, again, if you are testifying, everyone who wishes to speak, please make sure you state and spell your name for the record and make sure that you also sign the clipboard by the door. There's one here; there's also one in Carson City. That way we have your information should we need to contact you. We will go ahead and begin here. Whenever you are ready, go ahead and hit that microphone button for us and state and spell your name.

Tony Simmons:

Thank you for the opportunity to speak. My name is Tony Simmons. I want to comment on the budget for the Joint Interim Standing Committee on Growth and Infrastructure. As you may know, I have submitted recommendations for legislative investigation and legislation and investigation that falls in within the purview of that Committee ([Agenda Item II A](#)). That budget is inadequate to conduct that investigation or consider that legislation. You probably need three to five times as much time for that, because that's going to be a complex issue and we're trying to correct 25 years of mistakes. Thank you very much.

Chair Cannizzaro:

Thank you. I am not seeing anyone else in Las Vegas wishing to give public comment. I do not see anyone filling the seats in Carson City at this time, so we will move to our phone lines. BPS (Broadcast and Production Services), if you could? If there's anyone wishing to give public comment on the telephone, we will turn it over to you.

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

Thank you, Chair. Your public line is open and working and there are no callers at this time.

Chair Cannizzaro:

Great, thank you. For anyone who is joining us and decides that they would like to give public comment, please keep in mind that we will have a second public comment period at the end of this meeting before we adjourn.

That will take us to [agenda item III](#), which is approval of the minutes. Committee members, you have found in your packets the draft minutes for the September 28, 2023 Legislative Commission meeting ([Agenda Item III](#)). Of course, these draft minutes are also available on the Legislature's website. With that, I will ask if there is any discussion on these minutes from any of our members.

Assemblywoman Jill Dickman (Assembly District No. 31):

Madam Chair, I don't think it would be appropriate for me to vote on this since I was not at that meeting. Thank you.

Chair Cannizzaro:

Okay. We will have one abstention then from Assemblywoman Dickman, and I see Assemblywoman Bilbray-Axelrod raising her hand, I assume for the same reason, and she is shaking her head yes. So, with that, I see—

Senator Skip Daly (Senatorial District No. 13):

Madam Chair, we have—

Chair Cannizzaro:

Yes, Senator?

Senator Daly:

Senator Titus, Assemblywoman Anderson and Assemblyman O'Neill, same thing. They weren't here at the last meeting. I don't know if that takes us below seven or not.

Chair Cannizzaro:

I think I'm probably getting ahead of myself as well, because it is common—we do—and you will note from the resolution that is passed during a legislative session that allows and appoints the members of the Legislative Commission, it also appoints the first and second alternates and also gives discretion to leadership to appoint alternates as needed outside of those official alternates, so we frequently—and not just on this Committee, but on all of our interim committees may be voting on minutes. Certainly that's why we will provide those in a paper form for folks to take a look at. I don't know, I'm probably getting

ahead of myself when I deferred to abstention. I believe we are also joined by legal counsel Mr. Killian up in Carson City. I keep wanting to say down in Carson City, but we are down in Las Vegas and they're up in Carson City. So, Mr. Killian, if you would weigh in on the appropriate fashion—I think it is common practice for us to review minutes and enter them into the record even though we are alternates and did not sit through the physical meeting, so long as we've had an opportunity to review the copy of the minutes.

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

Thank you, Madam Chair. Yes, alternate members of the Committee or members of the Committee who were not in attendance at the previous meeting are certainly allowed to vote on the minutes. Previous meetings are posted on the web and available for review by all members. Personal attendance is not required at the previous meeting to have reviewed the records of that meeting, and it has been common practice of the Legislative Commission in the past for members who may not have been in attendance but who did have the opportunity to review the materials and the video of the previous meeting to still vote on confirming the minutes as an accurate record of that meeting.

Chair Cannizzaro:

Great, thank you. I know I opened it up for discussion on these minutes. Aside from the notion that we do have several members who are alternates to the regularly seated members of the Legislative Commission as is allowable under our rules and certainly the resolution that establishes the membership of the Legislative Commission, is there any further discussion on this particular item? Seeing none.

SENATOR DALY MOVED TO APPROVE THE DRAFT MINUTES OF THE MEETING HELD ON SEPTEMBER 28, 2023.

ASSEMBLYWOMAN MONROE-MORENO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

The motion carries unanimously of the members present. Thank you, Mr. Killian, and I appreciate you being here to be our steadfast legal authority on all things coming before the Legislative Commission today.

We'll move on to item IV, which is the administrative regulations, and speaking of which, Mr. Killian is going to help us out with this agenda item as well. There are nine regulations for consideration under item IV today ([Agenda Item IV](#)). All nine regulations on our list were submitted for approval pursuant to NRS (Nevada Revised Statutes) 233B.067. You may recall that in September of 2022 this Commission approved the continuation of R119-19 past that original 2-year limitation. It has now been submitted for approval, and so you'll notice that that one was a little older than the others, and that was because of a vote of this particular Commission to extend that time. The nine regulations that we do have on the agenda today are all contained in the notebook and the materials that were provided to the members of the Legislative Commission. There is also a public copy of the same notebook on the sign-in table at each end of our videoconference, and these regulations are 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.

With that, I will ask Commission members if there are any regulations that you would like to be held for further discussion, and once we have had an opportunity to identify those for pulling for additional discussion, we will go ahead and consider the other regulations in a motion to approve. So far, members of the Commission, I do have R119-19 pulled for additional conversation and R021-23. That is R119-19 from the Commissioner of Mortgage Lending and R021-23 for the Nevada Interscholastic Activities Association. Are there any additional regulations that members of the Commission would like to have pulled at this time?

Senator Robin Titus (Senatorial District No. 17):

Madam Chair, Vice Chair?

Chair Cannizzaro:

I'm are not seeing any—yes, please, Senator Titus.

Senator Titus:

Thank you. I would like further discussion on R055-22, and then the one you just mentioned. I thought it was the R018-23. If that's not already being pulled, I would like to see that one pulled.

Chair Cannizzaro:

That one is not on our list, so we will add that one, Senator. Any additional regulations to be pulled? I'm not seeing any here in Las Vegas. We heard from Senator Titus in Carson City. I don't hear anyone else speaking up from Carson and I don't see anyone on our Zoom. Okay, so I have pulled for further discussion at today's meeting R119-19 from the Commissioner of Mortgage Lending, R055-22 from the Division of Child and Family

Services of the Department of Health and Human Services, R018-23 for the Nevada Interscholastic Activities Association and also R021-23 for the Nevada Interscholastic Activities Association. With that, I would entertain a motion to approve R138-22, R189-22, R002-23, R020-23 and R038-23, which are the remaining regulations on our list today.

SENATOR HARRIS MOVED TO APPROVE REGULATIONS R138-22, R189-22, R002-23, R020-23 AND R038-23.

ASSEMBLYWOMAN MONROE-MORENO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

The motion carries unanimously and those regulations will be adopted. If you were here just for those regulations, you are free to leave. That will bring us to the first item on our agenda for further discussion, which is R119-19 from the Commissioner of Mortgage Lending ([Agenda Item IV](#)), and so we will invite, I think we may have—please come on up, and I'm going to turn it over to Assemblywoman Peters. We'll follow the same format for the remainder of the regulations for consideration. I will turn it over to a member who has asked to have it pulled; we'll let you answer the questions and let the discussion proceed from there. So, Assemblywoman?

Assemblywoman Sarah Peters (Assembly District No. 24):

Thank you, Madam Chair. Thank you for being here. It's nice to see these regs having some movement. It's been a little while. I went through the notes that you provided on your public meetings and the input that you've received on these, and it looks like there was no big concern from the public on these. I did have a question, though, about how the change from the word broker or the meaning of broker to company affects liability and the effect on the industry. I was not clear, and I'm not in the industry. It wasn't clear to me what that effect would have, so if you could just describe some of those?

Cathy Sheehy (Commissioner, Division of Mortgage Lending, Department of Business and Industry):

Yes, good afternoon. Thank you for the question. My name is Cathy Sheehy, the Commissioner for the Mortgage Lending Division. There was minimal liability—general practice in the industry and those that are familiar with the nationwide multisystem

licensing system. The names were mortgage company and mortgage loan originator rather than the way we had it split up with mortgage broker and mortgage banker, and so there was not any liability change. What we had were surety bonds in place for each of the bankers and brokers, and so when the name was changed to mortgage company, that remained exactly the same so there was no change in that. As far as how it affected the industry, it was an industry-requested change to make it simpler, and this also helped a number, I want to say approximately 78, mortgage bankers that had dual licenses that they no longer needed to have a banker and a broker license. They could just keep the—and convert it to a mortgage company license, which remained under NRS 645B.

Assemblywoman Peters:

Thank you. That answered my question. I appreciate it.

Chair Cannizzaro:

Any additional questions from members of the Commission? I am not seeing or hearing any, so I would accept a motion.

ASSEMBLYWOMAN PETERS MOVED TO APPROVE REGULATION R119-19.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

R119-19 is approved and adopted. Thank you so much for being here. That will bring us to the next item on our agenda. It is R055-22 for the Division of Child and Family Services, the Department of Health and Human Services ([Agenda Item IV](#)), and I believe this was a request from Senator Titus. So, Senator Titus, when you are ready, please go ahead. I think we have some folks joining us in Carson City and we have someone here in Las Vegas as well. Senator Titus?

Senator Titus:

Excellent. Thank you, Vice Chair. Thank you for being here. Just some quick questions that I couldn't find an answer to with the explanation for this. I understand the state law; I understand what we're trying to accomplish. I want to make sure we could do that with these regulations. On page 3, it was talked about within 60 days the state will upon the—

receives the application that you need to give written notice or not. Is the state going to be able to do that, and if somebody applies with the program and it's not clarified within 60 days, what happens then?

Leslie Bittleston (Juvenile Justice Program Chief, Division of Child and Family Services, Department of Health and Human Services):

Thank you for the question. I am the Juvenile Justice Program Chief within the Division of Child and Family Services. So yes, we will be able to work with the individual county or entity on improving or ensuring that their training meets the requirements. That will be done within the Programs Office, the unit that I oversee.

Senator Titus:

Okay, so we'll take your word of guarantee that you'll get it done within 60 days. The next question is, do you have a minimal—I know what they have to cover. I don't see a minimum amount of hours—just needed some clarification on that.

Ms. Bittleston:

Thank you. There is no minimal or maximum, either amount of hours. It is just ensuring that the training covers all the requirements

Senator Titus:

Who in your department's going to be reviewing these applications?

Ms. Bittleston:

For clarification, it won't be an application, it will be a training curriculum, and somebody within my unit will be reviewing those and we will be ensuring that all of those bulleted areas are within that training curriculum somewhere. Another piece of that is, if it is developed in conjunction with the university, we will be approving that.

Senator Titus:

Okay, thank you for the clarification. Thank you, Madam Vice Chair, for the questions.

Senator Daly:

If I can ask one, or make one comment real quick?

Chair Cannizzaro:

Yes, Senator Daly, please.

Senator Daly:

Thank you, Madam Chair, and I don't really have a question, more of a comment. When I look at the statement of the need for the regulation, the clear and concise statement, you guys have one sentence: it's needed to comply with legislative changes. That may or may not meet the intent. I don't think it meets the spirit of the reason that we require that statement, for me at least. A reference to the bill or the proposed changes that were made so I can go back, and I think everyone would want to go back and at least review that and look at it. It's also useful, at least to me, to hear in your words on what you believe the changes were done and what are the requirements now that you have to comply with to make the changes so when I read the regulation, I can have a little bit of insight of where you're coming from, what you're trying to do, why and how, to see if that's within the intent of what the legislation was and if you're hitting that, at least the way I read the regulation. I think the statement is a little thin and I would hope that it would be better, and anybody else that's listening, I hope they have clear and concise statements. Most of them do. This one was a little thin, in my opinion.

Ms. Bittleston:

Is that a question or a comment? Thank you.

Chair Cannizzaro:

Any additional questions or comments on this regulation? Assemblywoman Peters.

Assemblywoman Peters:

Thank you, Madam Chair, and I appreciate my colleagues' statements on just the importance of this and what it means to the folks, the kiddos who are impacted by this type of training. I think in my own experience—and mine is different from most folks, right? We all have our different stories. I have experienced people reaching out to me to tell me how important it was for them to hear from me even the term pansexual or the term non-binary and learn about it from somebody else rather than being approached in a situation in which maybe they don't understand what that means, so this training is really, really imperative, I think, to creating that baseline for people going into scenarios where maybe they don't understand or know based on their own life experience what those things mean, and those kiddos will benefit so much from having that experience, that experienced person come in with a little bit more information to help them out or just engage with them at a different level. I really appreciate this coming forward. I know that there's been a lot of hard work that's gone into these regulations and I just really appreciate seeing them today and being able to vote for them. Madam Chair, if there are no other questions?

Chair Cannizzaro:

I am not seeing any.

ASSEMBLYWOMAN PETERS MOVED TO APPROVE REGULATION R055-22.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

Thank you so much for being here with us today. That will bring us to the next item on our agenda, and we actually have two regulations here. We'll start with the two regulations for the Nevada Interscholastic Activities Association (NIAA), but we will start with the first one that was pulled for further discussion, which is R018-23. I believe that this was a request from Senator Titus, and I believe we have—you're joining us on Zoom, so you should be able to see that up on the screen. Senator Titus, when you are ready, the floor is yours.

Senator Titus:

Thank you very much. I appreciate that, Madam Vice Chair. I had this pulled because I have been someone who's done literally hundreds of these physical exams on student athletes, and I'm curious—the regulations got changed within my span of practice. Initially it was annually that they had to be examined, and then it was moved to every other year or when they got hurt, and now it looks like we're moving back to an annual exam, and I have some concerns about that. Again, the explanation on why wasn't clear in when you submitted the explanation. It's really hard to get into a provider of any kind, and going back to mandate that the student athletes participate in these physicals, I have concerns about that, so I'd like to hear a little explanation. Just a further comment, one of the things that I would like to see is that, yes, they have to have the initial exam and then maybe only if they're hurt, but mandating annually I think is going to be very hard for students and expensive.

Paul Anderson (Maupin, Cox and LeGoy):

Madam Vice Chair, this is Paul Anderson. I'm with the Maupin, Cox and LeGoy Law Firm in Reno. To answer the Senator's question, the recommendation to go back to annual physical examinations for all student athletes came from our Sports Medicine Advisory Board, which is made up of physicians and various health care providers that donate their time to the NIAA Nevada Interscholastic Activities Association for the betterment of student athletes. I understand the comment in terms of the cost and that sort of thing. However, there's been numerous incidents throughout the country primarily dealing with cardiac-type issues and whatnot, and that's what prompted the Commission, I believe, to

recommend that we go back to an annual exam as opposed to the regulation as it currently stands, which only requires an initial examination the first year that a student participates and then only after answering questions in subsequent years that may spurn the need for an additional physical examination. As far as costs, that was certainly considered. Many of our communities that—and our smaller communities as well as our larger urban areas have physicians that either donate their time or do examinations at a reduced cost for student athletes that can't afford it. We felt from a safety standpoint that it was the proper thing to do.

Senator Titus:

Thank you. Thank you for that. And just to be clear, literally the hundreds that I have done, I've never charged and certainly volunteer, but I would also argue that even during my tenure when I did these sports physicals and when we had cardiologists examining these students and no one was picked up with the sudden cardiac death, some of these issues that we see with athletes—so I still have significant concern that it's going to put a hardship on some of the rural students and even some of the urban students if they don't have access to getting these physicals. Admittedly I did have some young men who didn't go out for sports because they knew I would be doing a hernia check on them and that wasn't—they didn't want to do that. Sometimes you just don't go for your physicals, but the reality is—I think this is just—I haven't seen any data to support an annual physical would prevent sudden cardiac death and would like to talk to your group about that. I know they have had different meetings on it, but just can't support it going back to this annual exams. Thank you.

Chair Cannizzaro:

Additional questions from members of the Commission?

Senator Daly:

Madam Chair?

Chair Cannizzaro:

Yes, Senator Daly, please.

Senator Daly:

Thank you, Madam Chair. Similar type questions, or maybe just expand on some of the comments that have been made already. So we were at one year, or annual, and then we went to two year, so twofold question, or two-part question. Are any of the reasons that were acceptable to justify going from annual to once every two years—are any of the reasons that that was deemed to be appropriate still not applicable? In other words, all of those reasons would still be applicable and valid? Then the second part is, going back to

the annual, on the questions on why you would need to go forward—so has there been any data received or whatever that would change the minds other than in the minds of this group of physicians? No conflict there. But anyway, a group of physicians that say, “Hey, we should go back to annual,” is there any data to support that based on injuries or anything else?

Mr. Anderson:

Yes, that’s where our Sports Medicine Advisory Committee came forward. I don’t have that data sitting in front of me, but that’s the reason for the change of the regulation. It’s a safety issue. We don’t have data that would support Senator Titus’ comment that student athletes are not participating because they cannot obtain a physical. That has not been a problem with respect to our student athletes. Like I say, in smaller communities—or if you look at the regulation, there’s a number of different providers that can provide these exams, and typically they’re volunteers in all of our communities that provide these examinations, whether at a cost or no cost, to student athletes. It’s a safety issue and we feel very important with respect to our student athletes.

Senator Daly:

So on the first part of the question, have any of the justifications to go from one year to two year been invalidated?

Mr. Anderson:

I’m not sure that I’m following your question. You say any of the justifications? What do you mean by that?

Senator Daly:

So when we were at one annual examination and then we changed it to only once every two years, I’m sure there were some justifications, some analyses, some reasons why you felt that it was justifiable to make those changes. Have any of those reasons been invalidated?

Mr. Anderson:

Well, I think that there has been an increase with respect to cardiac issues throughout the country, and it’s not just in the State of Nevada but throughout the country with high school athletes and detecting early signs of potential heart issues. I’m not a medical professional so I can’t testify to exactly what those are, but there have been increased incidents with the increase in participation throughout the country as well as in our state, and so again, it’s a safety concern.

Senator Daly:

Understood, thank you.

Chair Cannizzaro:

I guess I just have a comment. I would note, we receive some supporting documentation along with all of our regulations with respect to the public meetings that are held and individuals who could weigh in, and this one, there was not any of this opposition to this regulation. This one was pretty straightforward. I was a student athlete in high school and had to do annual physicals. No one, I don't think, is super excited to go to the doctor or the dentist, but you have to do those kinds of things, and certainly that was never an excuse if I didn't want to go to the dentist for my mom to just not take me. I think with the understanding and the testimony today that there are plenty of providers who are willing to provide these physical examinations, and I'm sure school districts who are willing to help facilitate that as well—I recall that being the case when I was in school—I feel comfortable with this. We were actually just visited—I was just mentioning to my colleague, Senator Harris, that we were visited during the legislative session by a team of women's—I think they play flag football—flag football team from her district who came and visited us during the legislative session because they actually won their title and were champions, but they unfortunately lost one of their team members due to an undiagnosed cardiac issue and she unfortunately passed away. We were able to at least recognize and to congratulate and honor and celebrate them for their amazing accomplishment, but certainly I think anything we can do to help protect our student athletes is certainly something that we should endeavor to do. I think asking for them to undergo a physical examination once a year before participating in sports doesn't feel overly burdensome, certainly as someone who has participated in that same fashion. We also don't, I don't think, have any documentation from the adoption of this regulation and its language that would suggest that that is the case for folks who have children who are participating in these activities. I think a physical examination over someone losing their life unexpectedly is certainly a very small thing to require, so I feel comfortable with this regulation. Assemblywoman Monroe-Moreno? No? I saw you reaching for that button.

Assemblywoman Daniele Monroe-Moreno (Assembly District No. 1):

I was just going to say, if there isn't any other discussion, I'll move to approve.

Chair Cannizzaro:

I don't see any additional discussion.

ASSEMBLYWOMAN MONROE-MORENO MOVED TO APPROVE
REGULATION R018-23.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION PASSED (SENATOR TITUS VOTED NO).

Chair Cannizzaro:

We will move on to the next regulation on our agenda and the final regulation for our consideration. It is R021-23, again for the Nevada Interscholastic Activities Association ([Agenda Item IV](#)). I'm going to turn it over to Senator Daly, and then I believe we have some questions here in Las Vegas. No? More questions in Carson. We'll go Senator Daly first and then Assemblywoman Anderson.

Senator Daly:

Thank you, Madam Chair. Straightforward, pretty much. In your statement for the reason for the regulation, it says that these regulations that are being deleted are obsolete, so I guess I'm just curious, what rules do you use now? Who adopted them? Where are they written? How are they enforced? Because if you're putting the stuff in regulation and then take it out—I was just curious how these tasks that are being deleted are now performed and who's in charge of them, where is it written down, and enforcement? If they're obsolete, where are they now?

Mr. Anderson:

Vice Chair Cannizzaro, Paul Anderson, Maupin, Cox and LeGoy Law Firm in Reno. I am General Counsel for the NIAA. Senator Daly, the majority of the regulations that we deleted—these deletions were done pursuant to the executive order that was issued by Governor Lombardo when he took office asking that all agencies examine and review all of their regulations and delete at least 10 that were not—either obsolete or not really being used. The majority of the ones that you see—well, all of them—are regulations that were no longer being implemented by the NIAA. Many of them—as you can see, there's some that deal with minor things such as what dugout would be a home dugout for a baseball or a softball team. Those are all matters that are covered in our preseason sport meetings now, just through league meetings, as well as in our regional and state tournaments. We issue brochures to all participants that outline all of those basic rules, and so it's not as though they need to be necessarily in regulations. They're handled on a direct basis, and so that was the reason for the deletion of those. There is one that has been deleted within this, and Mr. Killian and I have been working on that, and that's the realignment regulation.

That's become obsolete based upon practice of the NIAA, and there's presently a regulation that is pending at the LCB (Legislative Counsel Bureau) for the adoption of a new regulation. That would be the only one that would have any real relevance as far as what's currently being used at this time by the NIAA, and it's certainly important. The rest, like I say, are handled through other materials and aren't necessarily needed with respect to state law or regulation. I hope that answers your question.

Senator Daly:

It does, and I'm just making sure how those—because those processes still need to be done. So, they are, they're just done in a different area. That was all I had, Madam Chair. Thank you.

Assemblywoman Natha Anderson (Assembly District No. 30):

Thank you, Chair. I'm just going to jump in. My question is actually very specific to page 4's regulation of 385B.642, and that has to do with the termination of playoff times and locations and all those things, because I understand that that is obsolete based upon the last discussion, however, as this—looking through the documentation behind it, was this ever discussed in an NIAA Board meeting or with all the athletic directors so this way dates were known before the season started, or what is that process so the Executive Director cannot just decide, "We're going to do this playoff game on a Tuesday"? Is that already decided upon before the season even starts?

Mr. Anderson:

Yes. We approve dates for all of our state and regional competitions two years in advance of when they're going to take place. It's done based on the calendar that's received from the National Federation of High Schools, which is the governing body for all the state high school athletic associations. They're similar to what the NCAA (National Collegiate Athletic Association) would be to college athletics. That's planned out two years in advance. It's discussed and reviewed and approved typically at least two of the four board meetings that are held annually of the NIAA Board of Control. Like I say, it goes two years in advance. We've had to make some recent changes. For instance, this year you may have seen in the paper, if you follow state high school football, championships are going to be played for the most part I think at Allegiant Stadium. They were planned to be played on the weekend of the 19th or the 18th that's coming up. We've had to cancel or move that to later in the next week because of the Formula 1 race that's going on in Las Vegas. We simply didn't have any hotel rooms to house teams and fans and that sort of thing because of that event. Those things are reviewed and addressed all the time based on what may be happening on a statewide basis, but in general, they're approved a couple years in advance.

Assemblywoman Anderson:

Great. Thank you so much.

Chair Cannizzaro:

Any additional questions or comments from members of the Commission? I am not seeing any further discussion.

SENATOR DALY MOVED TO APPROVE REGULATION R021-23.

ASSEMBLYWOMAN MONROE-MORENO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

That concludes item IV on our agenda for the review of our administrative regulations and brings us to item V, which is the appointment of members to interim legislative committees and similar entities and designation of chairs and vice chairs of committees. Members, at your desks you should have a document for item V ([Agenda Item V](#)). We have the Director of the Research Division, Nick Anthony, here to present this item, and I am going to turn it over to him to walk us through.

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

Thank you, Chair Cannizzaro. The materials provided under agenda item V provide for the appointment of legislative members to two committees and the designation of a chair and vice chair to one committee. The first Committee, the Gaming Policy Committee, pursuant to NRS 463.021 consists of the Governor and 11 members and is tasked with reviewing and evaluating gaming in the state. The Legislative Commission is required to appoint one member of the Senate and one member of the Assembly. The materials provide for the reappointment of Senator Cannizzaro and Assemblyman Yeager. The second Committee is—the Legislative Commission is also required to appoint members to the Legislative Committee for the review and oversight of the TRPA (Tahoe Regional Planning Agency) and the Marlette Lake Water System pursuant to NRS 218E.555. The members listed for appointment are Senators Daly, Scheible and Titus and Assembly members Bilbray-Axelrod, DeLong and Taylor. The members of this Committee then select a chair and vice chair at their first meeting from amongst the members appointed.

Finally, the materials provide for the designation of the chair and vice chair of the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs pursuant to NRS 218E.750 with Senator Spearman designated as chair and Assemblywoman Brown-May as vice chair. Thank you, Madam Chair, and I'd be pleased to answer any questions.

Chair Cannizzaro:

Any questions or comments on item V? Assemblywoman Peters.

Assemblywoman Peters:

Thank you, Madam Chair. I'm very sad to be leaving the TRPA Marlette Lake Committee, but last cycle we did make a request that we add alternates to that Committee because sometimes it's difficult to get folks in a quorum there. I just wanted to put on the record that I would hope we can consider that. I don't know what the process looks like for that, but I want to not forget that that was a request made for that Committee.

Chair Cannizzaro:

Thank you, Assemblywoman Peters, and I think that that's a good point made. We will select a few alternates for this particular Committee. We will do that at the next Legislative Commission meeting, and so we will make note of that and reach out to legislative leadership to determine a few alternates to fill in as needed for that Committee. Any additional questions or comments? I am seeing none. So then, do I have a motion to approve the appointments that were just listed and walked through by Mr. Anthony?

SENATOR HARRIS MOVED TO APPROVE THE APPOINTMENT OF MEMBERS TO INTERIM LEGISLATIVE COMMITTEES AND SIMILAR ENTITIES AND THE DESIGNATION OF CHAIR AND VICE CHAIR OF CERTAIN COMMITTEES.

ASSEMBLYWOMAN PETERS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

We will be appointing those members to those committees. Congratulations for some interim work. That brings us next to item VI on our agenda, which is the approval of interim committee budgets and work programs. You, members, at your desk should also have a

document for this item for your consideration ([Agenda Item VI](#)), and I am going to turn this over to the Director of our Legislative Counsel Bureau, Brenda Erdoes, who will assist us with this item.

Brenda Erdoes (Director, Legislative Counsel Bureau):

Thank you, Madam Chair. The document that you have in front of you is pretty similar to the budgets proposed for last session, and there are—some things stick out, some places we have—like the Joint Standing Committee on Education. They were assigned five or six studies during the session so that has a little bit higher—so there were things like that that got increased, but the bottom line is that the point of this document is to assign funding in the most—in the smallest amount that we think might be used. Then, during the interim, these committees are allowed to come back and ask for more money. The point there is just to not tie up any more money than might definitely be needed for these meetings, but you can certainly—you are allowed under the rules to make any changes today that you want. You can simply make a motion to make changes to this and we can make them today. But based on where we are on the committees, we just wanted to get these basic budgets out there so that the meetings could start, and then as you go along, at the next Commission meetings you can adjust them in any way that you want. I know that the gentleman who came up under public comment was talking about the Growth and Infrastructure budget. One way to handle that is to get the Committee together to ask them what they think will take to get through these issues, and then we will have folks in Fiscal be able to estimate the cost of that so that you're only increasing it one time and you're not tying up money in a place where it may not be used. But you're welcome to do it any way that you would like.

Chair Cannizzaro:

Great. Thank you so much. Members of the Commission, I think—having watched this process in at least the last interim, I think it worked well to have some of these committees, the Joint Interim Standing Committees, come to us if they find themselves in a place of needing some additional meetings or budgets in order to complete their work, but setting a standard budget and allowing them to start planning. That way—because I know that there might be some issues that potentially they might want to tackle that might change with the committee membership or that maybe they can facilitate into the same meeting as another topic that they thought might take a bit more time, and so I would prefer to, I think, approve these budgets and these meeting numbers, and then we can always adjust as time goes on. I think that that just makes a little more sense with allowing the committees the flexibility to do their work. Any additional questions or comments? Seeing none, do I have a motion to approve?

ASSEMBLYWOMAN MONROE-MORENO MOVED TO APPROVE THE PROPOSED INTERIM COMMITTEE BUDGETS AND WORK PROGRAMS.

SENATOR KRASNER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Cannizzaro:

This will be our current working budget and meeting numbers for our interim committees who will start to get to work. We're excited to see what they do during this interim. That will bring us, members of the Commission, to item VII, which is a report from General Counsel Kevin Powers regarding litigation. We do have Mr. Powers I believe joining us virtually, so we'll see if we can't—there he is. We will turn it over to you, Mr. Powers, to proceed when you are ready.

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

Thank you, Madam Chair. I have four cases to report to the Legislative Commission today. The first two cases are actually cases that were resolved by the Nevada Supreme Court recently, so I'll spend some significant time explaining those cases. The first case to discuss is *Killebrew v. State of Nevada*, and that's Nevada Supreme Court Case No. 83830. This case involves SB (Senate Bill) 512 of the 2017 Legislative Session. That particular legislation amended and revised the statutory authority of the State Land Registrar to charge fees for the use of piers and mooring buoys or similar devices for mooring vessels that are associated with the navigable bodies of water of the state. Under the statutory authority provided by SB 512, the State Land Registrar promulgated annual use fees by regulation, which was designated LCB File No. R167-18, which was approved by the Legislative Commission in August of 2019. The petitioners challenged the validity of those regulations relating to the annual use fees. On October 19, 2021, the District Court upheld the regulation and the annual use fees.

Recently, on September 28, 2023, the Nevada Supreme Court issued a published opinion affirming the District Court's order upholding the validity of the regulation and those annual use fees. The published opinion is reported at 139 Nevada Advance Opinion No. 43. In its published opinion, the Nevada Supreme Court clarified the standard of review for challenges to the validity of agency regulations under the Administrative Procedure Act, or the APA, which is codified in NRS Chapter 233B. In previous cases, the Court had suggested that a regulation could be challenged as being arbitrary and capricious even though the APA limits such arbitrary and capricious review to challenges to agency adjudications in contested cases. To remove any uncertainty regarding the standard of

review for agency regulations under the APA, the Court held that such review is limited to determining whether the challenged regulation violates constitutional or statutory provisions or otherwise exceeds the statutory authority of the agency and such review does not include the arbitrary and capricious standard used in contested cases.

Turning to the specific statutes at issue in the case, which were NRS 322.100 and 322.120, the Court determined that the statutes require the Registrar to charge annual use fees for the residential use of peers and mooring buoys in an amount that the Registrar determines to be reasonable based on the fair market value of the use of the state land. The Court held that the annual use fees established by the Registrar in the challenged regulation, which were \$750 annually for peers and \$250 annually for buoys, did not violate the statutory provisions or otherwise exceed the statutory authority of the Registrar. Consequently, the Court affirmed the District Court's order.

It should be noted that LCB Legal filed an amicus brief in this case in support of the validity of the challenged regulations. In that brief, LCB Legal argued that because the Legislative Commission's power to review and approve a challenged regulation is derived expressly from the Nevada Constitution, the Court must accord great deference to the Legislative Commission's legal determination that the challenged regulation conforms to statutory authority and carries out legislative intent and that it should uphold the challenged regulation because the Legislative Commission's legal determination was reasonable as a matter of law. However, in its opinion, the Nevada Supreme Court rejected LCB Legal's argument, with the Court stating that "we decline the invitation to alter our statutorily mandated review of the regulation." As a result of the Court's decisions, it appears that, under the current statutory standard of review for regulations in the APA, the judicial branch will not accord any deference to the Legislative Commission's legal determination that a challenged regulation conforms to statutory authority and carries out legislative intent. Instead, the judicial branch will review de novo whether the challenged regulation violates constitutional or statutory provisions or exceeds the statutory authority of the agency. However, it should be noted that the Legislature has the constitutional authority to change the current statutory standard of review under the APA in order to have the judicial branch accord an appropriate level of deference to the Legislative Commission's legal determination that a challenged regulation conforms to statutory authority and carries out legislative intent. However, in the absence of such a statutory change, the courts generally will not be granting any deference to the Legislative Commission's review of a regulation.

Because that was an extensive overview of that case, Madam Chair, I will certainly open it up to any questions at this time.

Chair Cannizzaro:

Members of the Commission, do you have any questions or discussion on this item? I would note that this is an informational item so we will not be taking any action on it, but

if you have any questions or discussion regarding Mr. Powers' update? I am not seeing any.

Mr. Powers:

Okay. Thank you, Madam Chair. The next case to report on is *Nevada Hospital Association v. State of Nevada*. 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. That legislation prohibited health care providers from including certain anti-competitive contractual provisions in their contracts with insurers, governmental entities and other third parties providing 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 respective motions to dismiss. On November 6, 2023, the Nevada Supreme Court issued an unpublished order affirming the District Court's order dismissing the plaintiff's complaint. On appeal, the primary issue was whether the plaintiffs had pled sufficient facts in their complaint to survive a motion to dismiss of their constitutional claims that SB 329 violated the Dormant Commerce Clause of the United States Constitution. The Court held that the plaintiff's mere allegation that SB 329 burdens interstate commerce, without more, failed to meet Nevada's pleading standard because the plaintiff's complaint contained no allegations of fact as to the alleged burdens SB 329 actually imposed on interstate commerce. As a result, the Court concluded that the District Court correctly dismissed the plaintiff's complaint, and so the Court affirmed the District Court order. At this juncture, in the absence of any motion to seek further consideration by the Supreme Court, this case is essentially closed.

The next case to report on is *Nevada Policy Research Institute v. Miller*, Case No. 85935 before the Nevada Supreme Court. In this case, NPRI (Nevada Policy Research Institute) claims that state legislators are prohibited by the separation of powers provision 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 representing the Legislature as an institution in this case to protect the official interests of the Legislature as an organizational client. LCB Legal is not representing any of the individual state legislators who are being sued based on their employment with the executive branch or with local governments. 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 and held that NPRI has standing to litigate its separation of powers claims in the District Court. After remand to the District Court, 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 was no common law incompatibility for an individual to be employed as a county public school teacher, a public defender or a professor at a state college and simultaneously

serve as a state legislator. NPRI filed an appeal with the Nevada Supreme Court. The parties have completed their briefing on the second appeal and the Nevada Supreme Court will determine whether it will hear oral arguments in the appeal or whether it will decide the appeal on the briefs without oral arguments.

Finally, the last case to report on is a new case, and the case is *Lombardo v. Nevada Commission on Ethics*. That case is pending in the First Judicial District Court in Carson City. On August 31, 2023, the Ethics Commission entered an opinion concluding that the petitioner violated certain provisions of the Nevada Ethics in Government Law in NRS Chapter 281A. On September 26, 2023, the petitioner filed a petition for judicial review with the District Court under the Administrative Procedure Act, or APA. In the petition for judicial review, the petitioner raises several constitutional challenges to the Ethics Law. In particular, the petitioner alleges that the Ethics Law improperly deprives the Governor of authority to appoint all Commission members or otherwise oversee the Commission and improperly confers on the Legislature the right to appoint half of the commissioners who sit on the Commission. In addition, the petitioner alleges that, insofar as the Ethics Law delegates certain executive powers to the Legislature, it should be declared unconstitutional as a violation of separation of powers. The petitioner also alleges that the Ethics Law improperly impinges on the Governor's duty to see that the laws of Nevada are faithfully executed. Finally, the petitioner alleges that the Commission's opinion violates additional provisions of the Nevada and United States Constitutions as well as Nevada statutory provisions. Because this case involves a challenge to the power of the Legislature to appoint members of commissions, committees and other bodies, this has significant implications, because as you are aware, the Legislative Commission and other legislators and legislative bodies appoint a significant number of members to commissions and similar bodies. So, this is in fact a challenge to not only the Ethics Commission but the Legislature's power of appointment in general. On October 31, 2023, the party submitted a stipulation and order regarding the intervention of the Legislature for the purpose of protecting its official interests and defending the constitutionality of its legislative enactments and appointments. In the stipulation and order, the Legislature will be addressing only those issues or arguments raised in the case concerning the constitutionality of the challenged provisions of the Ethics Law under the separation of powers and concerning any other challenges that may be made to the facial constitutionality of the Ethics Law. However, the Legislature will not be addressing or taking any position regarding any issues or arguments raised in the case that arise from the Ethics Commission's application of the Ethics Law to the particular facts of this case. Essentially, the Legislature will be defending the constitutionality of its legislative enactments and appointments, but the Legislature will not be commenting or taking any position on the particular facts of this case and the Ethics Commission's application of those facts and a finding that the Ethics Law was violated.

Thank you, Madam Chair. That covers the litigation report. I am certainly open to any questions that members will have. Thanks.

Chair Cannizzaro:

Thank you, Mr. Powers. Any questions, discussion from members of the Commission? I am not seeing any. As always, thank you, Mr. Powers, for your thoughtful walkthrough on these legal matters. We appreciate your hard work, and that will conclude item VII on our agenda.

Members of the Commission, that takes us to item VIII, which is our second period of public comment. We again will be accepting any public comment from persons who are present here in Grant Sawyer in Las Vegas and then from those who are attending in person in Carson City at the Legislative Building, and then we will move to our phones. Again, if you are wishing to give public comment, please make sure you state and spell your name and sign in on the clipboards at each of the in-person locations. Reminder: everyone will be limited to two minutes as we are in a public comment period. I don't have anyone here in Las Vegas. I don't think I see anyone having taken those seats in Carson City, so we will move to the phones. BPS, do we have anyone who would like to join us and give public comment via the telephone?

Broadcast and Production Services Staff:

Chair, your public line is open and working and you have no callers at this time.

Chair Cannizzaro:

Ok, great. Thank you so much for your help. With that, that will conclude item VIII on our agenda, and that brings us to item IX, which is our adjournment. Seeing no further business before the Legislative Commission today, I want to thank the members and all of our staff for making this whole meeting possible, and we are adjourned. Thank you so much.

RESPECTFULLY SUBMITTED:

Jordan Haas, Secretary

APPROVED BY:

Senator Nicole Cannizzaro, Chair

Date: _____

Agenda Item	Witness/Agency	Description
<u>Agenda Item II A</u>	Tony Simmons	Public Comment
<u>Agenda Item III</u>	Jordan Haas, Commission Secretary	Draft Minutes of the Meeting Held on September 28, 2023
<u>Agenda Item IV</u>	Asher Killian, Legislative Counsel	Administrative Regulations for Review
<u>Agenda Item V</u>	Nicolas Anthony, Research Director	Appointment of Members and Designation of Chairs and Vice Chairs of Interim Committees
<u>Agenda Item VI</u>	Brenda Erdoes, Director	Proposed Interim Committee Budgets and Work Programs