MINUTES OF THE
LEGISLATIVE COMMISSION
NEVADA LEGISLATIVE COUNSEL BUREAU
February 25, 2014

The Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218E.150, held its first meeting in calendar year 2014 on Tuesday, February 25, 2014. The meeting began at 3:16 p.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and was videoconferenced to Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada.

COMMISSION MEMBERS PRESENT:

Assemblywoman Marilyn Kirkpatrick, Chair
Assemblyman Jason M. Frierson, Vice Chair
Senator Kelvin D. Atkinson
Senator Moises (Mo) Denis
Senator Ben Kieckhefer
Senator Ruben J. Kihuen
Senator Michael Roberson
Senator James A. Settelmeyer
Assemblyman Richard (Skip) Daly
Assemblyman Wesley K. Duncan
Assemblyman Ira Hansen
Assemblyman Lynn D. Stewart

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Rick Combs, Director
Donald O. Williams, Research Director
Risa B. Lang, Chief Deputy Legislative Counsel
Cindy Jones, Fiscal Analyst
Mark Krmpotic, Fiscal Analyst
Janet Coons, Secretary for Minutes
Sylvia Wiese, Secretary for the Director

Chair Kirkpatrick called the meeting to order. Exhibit A is the agenda; the attendance sign-in sheets are Exhibit B. All exhibits are filed in the Director's Office of the Legislative Counsel Bureau (LCB) and are posted to the Legislative Commission's webpage: http://www.leg.state.nv.us/Interim/77th2013/Committee/Interim/LC/?ID=2. Agenda items taken out of order have been placed in proper agenda order in the minutes for purposes of continuity.

I. PUBLIC COMMENT
(Because of time considerations, the period for public comment by each speaker may be limited, and speakers are urged to avoid repetition of comments made by previous speakers.)

Chair Kirkpatrick called for public comment.

Patsy Roumanos, Senior Sales Representative, Pac-Van Incorporated, Las Vegas, Nevada, expressed concern that the Manufactured Housing Division (Division) of the Department of Business and Industry (DBI), has not properly vetted R009-12. (Please see Exhibit C.) After meeting with the Division and asking many questions, Ms. Roumanos claimed she did not receive any answers. She contested the Division's Informational Statement that said R009-12 would not have an impact on the portable building industry; Ms. Roumanos suggested businesses might incur thousands of dollars in fees because of the new regulation. She questioned the implementation of the regulation, especially when a building is 100 miles or more away from the nearest inspector. Addressing the rising cost of engineering requirements for all buildings, Ms. Roumanos suggested that some of her competitors might leave Nevada, leaving its citizens without temporary building space for churches, conventions, construction trailers, schools, et cetera.

David Lee, Branch Manager, Mobile Mini Incorporated, Las Vegas, Nevada, agreed with the concerns of Ms. Roumanos. He opposed R009-12 in its current form.

Gene Temen, President, Quick Space, Sparks, Nevada, testified that he also has concerns regarding the implementation of R009-12. He reiterated Ms. Roumanos's comment that compliance with the regulation could cost businesses thousands of dollars. Mr. Temen pointed out the intent of Assembly Bill 358 (Chapter 293, *Statues of Nevada 2011*) was to simplify the standards for portable buildings. He explained that portable buildings are not manufactured homes; they are not for residential use; and they are not commercial coaches. They are ground-mounted and usually built out of a steel shipping container. Because the financial impact of the regulation is unknown, Mr. Temen requested the Commission allow the portable building industry more time to work with the Division on the regulations. He stressed the Division has received no reports regarding public safety issues with any portable buildings in the last two and one-half years.

Louis S. Test, Attorney, representing Sani-Hut Company Incorporated, Sparks, Nevada, stated he has been working on this project for ten years. He thanked Jim deProsse, Administrator, Manufactured Housing Division, DBI, and his staff for developing regulations that eliminate an inspection each time a portable unit is moved. Under the new process, a unit is required to have a $50 certificate that will be valid for two years, during which the unit can be moved an unlimited number of times without an inspection. However, if the Division requests to inspect a unit for proper installation, a business must notify the Division of the unit's location within three business days. Mr. Test shared that when Sani-Hut is out in the field at a special event, such as the National Championship Air Races held in Reno, three business days does not allow enough time to return to the office and provide this information to the Division. He requested five to seven business days for notification.

Continuing, Mr. Test explained a certificate is renewable at the end of the two-year period. At that point, the Division may want to inspect a unit for deterioration. The industry requests the certificate be valid for a three-year period, which would allow more time to move a unit. Even though Sani-Hut appreciates the work of the Division in simplifying the process, he has concerns regarding the implementation of the regulation after a building receives a certificate. Mr. Test requested an additional six weeks to meet with Mr. deProsse and the Division regarding the implementation of the regulation in order to avoid violating the *Nevada Administrative Code* (NAC).

II. APPROVAL OF MINUTES OF THE DECEMBER 20, 2013, MEETING—Assemblywoman Marilyn Kirkpatrick, Chair

SENATOR DENIS MOVED APPROVAL OF THE MINUTES OF THE DECEMBER 20, 2013, MEETING.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

III. REVIEW OF ADMINISTRATIVE REGULATIONS—Brenda J. Erdoes, Legislative Counsel (Copies of the permanent regulations are on file in the Director's Office of the LCB.)

Referring to the list of State Agency Regulations that the Legislative Commission is to review, Chair Kirkpatrick asked members of the Commission to identify any regulations they wanted to discuss. (Please see Exhibit D.)

Members requested that Chair Kirkpatrick hold the following regulations: R009-12, R058-12, R173-12, R178-12, R020-13, R036-13, R062-13, R065-13, R076-13, R114-13, R122-13, R130-13, and R081-13.

ASSEMBLYMAN FRIERSON MOVED APPROVAL OF R105-12, R117-12, R035-13, R048-13, R059-13, R101-13, R115-13, AND R133-13.

SENATOR ATKINSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 009-12

A REGULATION relating to manufactured housing; making various changes concerning portable buildings, manufactured buildings, factory-built housing and branch offices of certain licensees of the Manufactured Housing Division of the Department of Business and Industry; repealing certain unnecessary definitions; and providing other matters properly relating thereto.

Jim deProsse, previously identified, provided background information regarding the development of R009-12 (Exhibit C). He clarified that the definition of a "portable building" came from the definition of "commercial coach," which is an office trailer with wheels, such as those used for construction and security offices. Current law requires the Division to inspect a commercial coach each time it is moved at a cost of $140 to the licensee. Mr. deProsse said he began working with the industry about three years ago regarding structures that fell into the "commercial coach" category but were moved frequently for special events, sat on the ground, and did not have axles. Assembly Bill 358 passed as a result; NRS 489.133 defines "portable building," and NRS 489.262 mandates that the Administrator shall adopt regulations pertaining to portable buildings.

Mr. deProsse said he held conversations, meetings, and workshops with the industry to relieve the burden of the $140 fee charged every time a unit is moved, especially since many of these structures are moved frequently. The result of the collaboration was R009-12, which now offers licensees two options: (1) pay the Division $140 to inspect a unit each time it is moved; or (2) show how a unit will be installed and upon approval receive a $50 certificate that allows the unit to be moved an unlimited number of times during a two-year period. He suggested the second option makes the industry self-policing.

Mr. deProsse said a constituent testified about the excessive cost of the new approach during the Division's recent hearing. The constituent claimed to own 200 units, with 10 to 12 different installation configurations, and would have to pay between $200 and $300 for each engineering plan. Using those figures, the Division calculated that under the old system when it classified the units as "commercial coaches," 10 engineering plans and 200 buildings moved twice in a two-year period would cost the licensee $58,500. Under the new method, those same units moved an unlimited number of times during the two-year period would cost $12,500—a savings of $46,000. He suggested the industry is comparing the

new costs to the last two years when there was no regulation of portable buildings. The Division did not have the authority to inspect these buildings in the absence of regulations; therefore, licensees were exempt from fees.

Continuing, Mr. deProsse shared that licensees, constituents, and interested parties were actively involved in the drafting of R009-12. He added that many portable buildings experience wear and tear during each move, and some units have been out in the field for more than two years without an inspection.

Chair Kirkpatrick pointed out that the Informational Statement indicated only one person testified at the regulation's hearing, yet four concerned people testified today. She asked whether there was additional testimony at the hearing or the Division held more meetings than what the Informational Statement indicates.

Mr. deProsse recalled that three people testified at the adoption hearing conducted on January 10, 2014. One person was a licensee from Las Vegas with questions related to portable buildings, and Louis Test, who testified today during public comment, shared his concerns about implementation of the regulation. Mr. deProsse said that during the hearing he suggested a 90- or 120-day transition period may be needed for implementation since the Division would not be able to inspect all units on the regulation's effective date.

Chair Kirkpatrick repeated her concern that the Informational Statement indicates only one person testified, to which Mr. deProsse acknowledged he made a mistake. He clarified that one person submitted written testimony and three people testified according to the audio recording. Mr. deProsse noted the industry is small with less than 15 total licensees, and when they meet, there is much interaction among the interested parties.

Assemblyman Hansen questioned the length of time the portable building industry has not been regulated, to which Mr. deProsse replied that when A.B. 358 passed in 2011, the structures became classified as "portable buildings," and in the absence of regulations, the Division could not inspect them.

Assemblyman Hansen also questioned the need for regulating portable buildings since the Division has no evidence that the public's safety was in jeopardy over the last two years when the industry was policing itself in the absence of regulations. He suggested the businesses that rent the portable buildings are the true regulators of the industry. If regulations are necessary, Assemblyman Hansen supported increasing the life of the certificate to three years. He mentioned there is a request for the Commission to postpone the adoption of R009-12 until its next hearing in order to give the industry an opportunity to meet again with the Division. Assemblyman Hansen stated his opinion that the portable building industry needs minimal regulation since there seems to be no threat of public danger.

According to Mr. deProsse, the Division and the industry collaborated on developing regulations pertaining to the construction and installation of portable buildings. Since the law went into effect on October 1, 2011, he said the Division has no record of failures or safety-related issues because it has not been inspecting the structures since that time.

Responding to Chair Kirkpatrick's question of whether he would like to hold R009-12 in order to have more time to meet with members of the industry, Mr. deProsse replied that the Division adopted the regulation on January 10, 2014, and is 23 months into its two-year time frame. He did not think the Division could draft a new or revised regulation before the Commission's next meeting.

SENATOR ROBERSON MOVED TO DEFER R009-12.

Assemblyman Daly referenced minutes from the April 19, 2011, meeting of the Assembly Committee on Ways and Means regarding the testimony of A.B. 358, where Mr. deProsse testified the Division intended to draft regulations that satisfied both the industry and the Division, and the outcome would be revenue neutral. Testimony from the May 14, 2011, minutes of the Assembly Committee on Ways and Means indicated an amendment to the bill intended to remove the fiscal note. In Assemblyman Daly's opinion, the bill no longer provides for the $90 fee and adds a new fee of $50, yet there was no fiscal note and no two-thirds voting requirement. He surmised the bill might not have passed unanimously in both houses if there had been a fiscal note regarding a new fee. Assemblyman Daly asked whether the Division collects the $90 fee now and whether it is still in statute or regulation. He pointed out the Small Business Impact Statement says there will be a lowering of consequence and price to the consumer, but he does not see any evidence of that happening. Assemblyman Daly questioned how the impact statement could say there is no additional fee, when clearly the regulation identifies a new $50 fee.

Mr. deProsse replied that the $50 fee is not new. He explained that under the old method the installation fee of $140 is comprised of an $80 one-hour charge, a $10 permit fee, and a $50 installation label that is still in place but charged only once every two years rather than every time a building is moved.

Since they have not been regulated, Chair Kirkpatrick asked whether licensees are currently getting the label to which Mr. deProsse clarified that no fee is collected today. In the absence of regulations, he said the Division has not collected any revenue or performed any inspections of these structures over the past two years.

Summarizing Mr. deProsse's statements, Chair Kirkpatrick said that buildings were previously inspected every time they were moved for a fee of $140, but under the new process, buildings are inspected once during a two-year period and receive $50 labels upon approval. She asked when the Division issues the labels.

Mr. deProsse explained that under the current method, a building is inspected by the Division for proper installation; a label that allows occupancy of the structure and matching certificate are placed in the window upon approval. Under the proposed method, the Division inspects a building at the beginning of a two-year period. The licensee must show proper installation of the building. Upon approval, a label is placed in the window that allows the licensee the freedom to move the unit about the State as long as it is installed under the approved method.

Discussion occurred regarding the $140 fee. Assemblyman Daly asked whether the Division inspected a building each time the licensee moved it at a rate of $90 prior to A.B. 358. Mr. deProsse explained that each time a building moved, a $90 fee and $50 for the label were assessed for a total of $140. Assemblyman Daly said he did not see $140 mentioned in the regulations. Mr. deProsse clarified that $140 is not listed anywhere; the fee amounts for installation are parceled out in NAC 489.360, 489.370, and 489.380.

The discussion of the fees continued. Assemblyman Daly asked whether the Division stopped collecting the $140 fee with the passage of A.B. 358, which would have affected the Division's budget as well as the State's budget, or whether the Division continued to collect the fee in the same manner as it did before the passage of the bill. Mr. deProsse answered that the Division has not collected any fees for the new "portable buildings" in the last two years and four months. Assemblyman Daly asked whether the Division continued collecting fees under the old regulations or whether it just stopped collecting revenue altogether. Following A.B. 358's mandate, Mr. deProsse said the Division had no authority to charge fees for the portable buildings until it developed regulations. He repeated the Division has not collected a penny for the installation or inspection of portable buildings since October 1, 2011.

Assemblyman Daly said that A.B. 358 was supposed to be revenue neutral, with the amendment removing the fiscal note; he suggested that has not been the case. The new regulation appears to be eliminating the $140 fee and adding a new fee of $50. Even though Mr. deProsse stated the $50 fee is not new, Assemblyman Daly is of the opinion that the fee is new based on his understanding of the definitions and standards in the regulation.

After consulting with the Legal Division, Assemblyman Hansen stated the Division has met the requirement of bringing the regulation before the Commission within the required two-year window. In light of all the confusion, he suggested the Commission push the regulation back to its next meeting in order to give the Division an opportunity to meet again with the industry.

Senator Settelmeyer asked Mr. deProsse how much time would it take to have another meeting in order to develop satisfactory protocol for implementation of the regulation, to which Mr. deProsse said it would take a few months.

Chair Kirkpatrick questioned the reason for the addition of "manufactured building" and "factory-built housing" in section 17 of the regulation.

Mr. deProsse stated these new definitions were created during the 2009 Session. They refer to different structures; the Division added them to Section 17 because they were not included in previous regulations.

ASSEMBLYMAN HANSEN SECONDED THE PREVIOUS MOTION BY SENATOR ROBERSON TO DEFER R009-12.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 058-12

A REGULATION relating to industrial relations; repealing provisions that require employers to maintain records of certain occupational injuries and illnesses; and providing other matters properly relating thereto.

Assemblyman Hansen complimented the Division of Industrial Relations of the DBI for its amended Informational Statement, which stated in No. 1, "The repeal of these regulations will eliminate duplicative and unnecessary regulations." (Please see Exhibit E.)

ASSEMBLYMAN HANSEN MOVED APPROVAL OF R058-12.

Assemblyman Daly asked for clarification that the State regulations duplicate the requirements of the federal regulations.

Donald C. Smith, Senior Division Counsel, Division of Industrial Relations, DBI, stated that was accurate.

ASSEMBLYMAN DALY SECONDED THE PREVIOUS MOTION BY ASSEMBLYMAN HANSEN TO APPROVE R058-12.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 173-12

A REGULATION relating to interscholastic activities; authorizing any high school in this State to apply for limited membership in the Nevada Interscholastic Activities Association; authorizing the Board of Control of the Association to approve such an application under certain circumstances; requiring the Board to determine the number of games, contests or meets in which such a school may participate in a sanctioned sport; and providing other mattes properly relating thereto.

Senator Denis asked the purpose of the regulation. (Please see Exhibit F.)

Paul J. Anderson, Legal Counsel, Nevada Interscholastic Activities Association (NIAA), explained that R173-12 was adopted primarily because Findlay Prep of the Henderson International School in Henderson, Nevada, has a basketball team composed of students who are not residents of Nevada and play at a national level. He explained that Findlay Prep does not play Nevada high schools, but in order to compete nationally, it must have an affiliation with the NIAA. In the past, Findlay Prep has annually requested a limited membership from the NIAA's Board of Directors, which the Board typically approves since Findlay Prep always complies with the NIAA's regulations. Mr. Anderson shared the team has won several national championships, bringing national notoriety at the high school level to Nevada. So that Findlay would not have to attend NIAA meetings and make the same request every year, the Board passed a regulation that provides a limited membership with the following restrictions: (1) the team cannot have athletes or students who are Nevada residents; (2) the team cannot compete for any of Nevada's league, regional, or State championships; and (3) the team plays a limited schedule of five games a year in the State.

Senator Denis asked whether the regulation disallows athletes from Nevada who have the skills to play at the national level from competing on Findlay Prep's team, to which Mr. Anderson replied Nevada athletes cannot play on the team. He explained the regulation is trying to avoid recruiting issues among Nevada schools; the players on the Findlay Prep team are foreign students or are from other states around the country.

Unrelated to R173-12, Assemblyman Daly asked what the compensation is for the Executive Director of the NIAA, to which Mr. Anderson replied he did not know but would be willing to find out and provide the information.

Also unrelated, Assemblyman Daly asked whether the NIAA uses a bidding process for media coverage. He stated one of his constituents wanted to broadcast a soccer game on Spanish radio but ran into some issues.

Mr. Anderson explained the NIAA does use a bidding process for regional and State championship events, but not for weekly competitions. The National Federation of State High School Associations, the mother ship for all state high school athletic associations, has entered into a contract with various states to provide national coverage of state high school athletic events. He said Nevada has joined the contract, which has resulted in significant revenue increases for the NIAA. Mr. Anderson explained the NIAA would not be able to honor the request from Assemblyman Daly's constituent to cover soccer on Spanish radio because of its contract with the national federation.

Assemblyman Daly stated he would like to speak to Mr. Anderson further regarding the national contract.

Assemblyman Hansen referenced Section 1, subsection 2, paragraph (b) of the regulation that states, "The applicant pays annual dues in the amount of $5,000," and Section 4, subsection 1 that states, ". . . if a school enrolls less than 600 pupils during a school year, the annual dues . . . is $850." He asked whether the intent of the regulation was for small schools to pay a minimum of $5,000.

Mr. Anderson said the $5,000 fee only applies to the preparatory membership in the new regulation, clarifying that the $850 on page six refers to the regular membership regulation.

SENATOR DENIS MOVED APPROVAL OF R173-12.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 178-12

A REGULATION relating to water and sewer utilities; authorizing certain water and sewer utilities to request the approval of the Public Utilities Commission of Nevada for a rate surcharge to provide cash reserves to fund certain repairs and maintenance of water supply and wastewater treatment systems and the replacement of certain capital assets; establishing requirements to apply for such a rate surcharge; providing for the deposit and withdrawal of certain rate surcharges by water and sewer utilities; and providing other matters properly relating thereto.

Senator Kieckhefer asked whether this regulation applies only to utilities with less than $200 million in revenue or fewer than 3,000 customers.

Alaina Burtenshaw, Chair, Public Utilities Commission of Nevada (PUCN), said the regulation started out that way, but the 2013 Legislature passed a law increasing the PUCN's options for ratemaking methodologies.

Senator Kieckhefer asked whether R178-12 would apply to any water or sewer utility in the State, to which Ms. Burtenshaw stated it would apply to those utilities regulated by the PUCN. Of the 26 water and sewer utilities regulated by the PUCN, she said only two of them have over 3,000 connections, while the majority has between 200 and 300 connections.

Senator Kieckhefer referred to Section 1, subsection 1, paragraph (b) of the regulation that states, "Provide a cash reserve for the purposes of: (1) Funding significant, unanticipated repairs to, or maintenance of, a water supply or

wastewater treatment system; or (2) Funding significant but nonspecific capital improvements or replacements of capital assets." He stated his opinion that building a reserve without having an actual spending plan in place or an identified purpose is a "slippery slope." (Please see Exhibit G.)

Sharing Senator Kieckhefer's concerns, Ms. Burtenshaw stated the PUCN requires the utilities to provide a reason for withdrawing any money. She explained that the two water utilities with 3,000 to 4,000 connections are part of a larger consortium and have access to the capital markets, while the vast majority of the smaller water utilities with 200 to 300 connections use their credit cards when their pumps go down. The PUCN is concerned that the smaller companies cannot build up a cash reserve for significant infrastructure repairs that they have no ability to fund, absent a surcharge, unless they have access to this capital. Otherwise, the utilities are in a tenuous position with regard to maintaining their liability.

Senator Kieckhefer and Ms. Burtenshaw discussed limits placed on the surcharges. She stated the utilities must come to the PUCN with an identified reason for needing the cash reserve. Senator Kieckhefer questioned how the utility company can identify what the cash reserve is for if it is unspecified. Ms. Burtenshaw said the PUCN's engineers and auditors inspect the systems, which allows parameters to be set regarding the amount the utilities receive and for how long they receive it when they request the cash reserve.

Responding to Senator Kieckhefer's question regarding why the reserve is not built into the original rate if this is a declared need for many smaller utilities, Ms. Burtenshaw replied that a revenue requirement is based on what the utilities have done, not what they might do in the future. The PUCN created the surcharge because it could take three or four years for the smaller water utilities to build up cash reserves for specific projects. She stressed that an event that has not happened cannot be built into a revenue requirement.

Senator Kieckhefer asked whether the PUCN allows other utilities to build a reserve from an undeclared, unanticipated need, to which Ms. Burtenshaw stated that small water utilities have always been exceptional. The Legislature gave the PUCN the ability to develop a simplified methodology for rate structures because small water utilities do not have access to capital. The reserve gives them access to capital when a well or pump goes down in order to maintain liability.

SENATOR KIECKHEFER MOVED APPROVAL OF R178-12.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 020-13

A REGULATION relating to gas utilities; providing for the recovery by a gas utility of certain costs relating to the replacement of existing natural gas pipelines and related infrastructure; and providing other matters properly relating thereto.

Senator Kieckhefer asked why the utility's ongoing capital infrastructure program does not cover the replacement of an old pipe for public safety reasons. He questioned the need for an additional regulation.

Donald J. Lomoljo, Utilities Hearings Officer, PUCN, stated that general rate cases are a backward process. The PUCN sets rates based on work completed during a historical test period, which does not always capture future projects.

Senator Kieckhefer asked whether the gas utilities have a forward-looking capital infrastructure plan, to which Mr. Lomoljo replied they do, but historical completion might not be enough and the plan may need amending to capture other projects. For example, if the utilities in southern Nevada were replacing a certain type and vintage of pipe, such as polyvinyl chloride pipe, the plan may not capture the need to replace other types of pipe.

Responding to a question by Senator Kieckhefer regarding whether the PUCN used this process over the past few years for replacement and emergency fixes that posed public safety issues, Mr. Lomoljo stated the PUCN used this process on a case-by-case basis. The PUCN thought it best to codify the process through regulation, adding further definition to the process.

Addressing Section 5 of the regulation, Assemblyman Daly requested an example of a "nonrevenue-producing pipe." (Please see Exhibit H.)

Mr. Lomoljo said a "nonrevenue-producing pipe" limits the process to replacing pipe that already exists in the ground. Normal utility practices cover extending pipe to new developments, as stated in Gas Rule No. 9, "Gas Main Extensions."

Referring to Section 19, subsection 2, paragraphs (e) and (f) that address labor and contractor costs of the replacement project, Assemblyman Daly asked if the PUCN interferes with the bidding process, to which Mr. Lomoljo replied the PUCN only looks at the cost and not alternatives when it sets its rates.

SENATOR KIECKHEFER MOVED APPROVAL OF R020-13.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 036-13

A REGULATION relating to professions; revising the qualifications of an applicant to practice in this State as a physician assistant, practitioner of respiratory care or perfusionist; and providing other matters properly relating thereto.

Senator Denis asked the reason for the regulation. (Please see Exhibit I.)

Edward O. Cousineau, J.D., Deputy Executive Director, State Board of Medical Examiners, said R036-13 updates the current language of NRS 630.160 that requires a medical doctor applicant to prove United States citizenship or lawful entitlement to be in the U.S. prior to the issuance of a license. The Board wants to ensure that the law clearly states the requirements for all licensee categories, including physician assistants, practitioners of respiratory care, and perfusionists.

Responding to a question by Senator Kieckhefer regarding the length of time applicants are eligible to live and work in the U.S. or whether the U.S. eventually grants permanent status, Mr. Cousineau replied that established citizenship is perpetual, but issues could arise with visas about to expire. The Board has established protocol to notify licensees of their visas' forthcoming expiration dates and remind the applicants they must provide documentation showing their visas have been extended or that they are in the process of extension.

SENATOR DENIS MOVED APPROVAL OF R036-13.

SENATOR ATKINSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 062-13

A REGULATION relating to education; revising the performance standards for courses of physical education offered in public schools; and providing other matters properly relating thereto.

Senator Denis asked if the regulations for physical education (PE) include kindergarten (K), first, and second grade. (Please see Exhibit J.)

Tracy Gruber, K-12 Mathematics Specialist, Nevada's Department of Education, stated she is testifying today because the PE consultant is on maternity leave. Ms. Gruber indicated the PE regulations now include all grade levels and grade bands for K-12.

A discussion ensued regarding children who do not have the physical ability to meet these standards. Ms. Gruber explained that a physical therapist would address the standards of adaptive PE for students with kinesthetic issues. Senator Denis asked whether the adaptive standards are different from those of

R062-13. Ms. Gruber stated the adaptive PE standards make accommodations for special needs students; they are not standards of record like the academic standards. Chair Kirkpatrick suggested a student's individualized education program would address any PE issues.

SENATOR DENIS MOVED APPROVAL OF R062-13.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 065-13

A REGULATION relating to energy-related tax incentives; revising provisions governing the application for and approval of certain energy-related tax incentives; and providing other matters properly relating thereto.

Assemblyman Hansen pointed out the original purpose of providing energy-related tax incentives is to encourage new energy businesses to locate in Nevada. Several of the counties he represents have energy projects in existence now, but some counties denied requests for the incentives because the taxes provide a significant revenue stream. He said these counties seek assurance that R065-13 will not allow an existing energy producer already denied tax incentives to reapply. (Please see Exhibit K.)

Paul Thomsen, Director, Governor's Office of Energy (GOE), explained the regulations specifically state that an applicant cannot apply after a project has reached commercial operation, which is when a producer has started selling power to the utility under contract, as defined by the industry. Any applicant who falls under that definition would be unable to reapply. He added this stipulation is new and did not exist prior to R065-13.

Assemblyman Hansen asked for clarification that if the Commission adopts R065-13, a producer previously denied would be denied again, to which Mr. Thomsen replied if a producer is denied during the application process today, it has the ability to reapply, but should the project reach a commercial operation date, the company loses its ability to ever reapply.

Responding to a question by Assemblyman Hansen regarding whether a company already in existence can apply for tax incentives, Mr. Thomsen explained the new regulations are not retroactive to any projects that applied under the previous regulations. He pointed out that nothing in the previous regulations prohibit a company from applying after building a project; the GOE is trying to rectify that situation with R065-13. If these new regulations are adopted, he maintained a project cannot apply for abatements after it has achieved its commercial operation date.

Referring to Section 23, subsection 3 of the regulation, Assemblyman Daly requested clarification that any remaining tax revenue will go to the counties.

Mr. Thomsen stated that A.B. 239 (Chapter 504, *Statutes of Nevada 2013*), sponsored by Assemblywoman Kirkpatrick, requires the remaining tax revenue to stay with the counties. Since the requirement is in statute, the GOE cannot include it in the regulations. He explained that before R065-13, a large portion of the remaining tax revenue funded the GOE, but A.B. 239 requires the GOE to return the money to the counties. Mr. Thomsen added that current GOE funding comes from a $7,500 application fee, a $200 annual compliance fee, and a $500 fee if it must visit a project to ensure compliance with all standards.

Referencing Section 10, subsection 3 of the regulation, which addresses an untimely filed application, Assemblyman Daly questioned the use of the word "and" in the sentence that reads, "If the Director determines that an application is not timely filed and the Director determines that the application was filed in bad faith . . . ." He suggested changing "and" to "or" because in his opinion, if the application is untimely but in good faith, then the application could still go forward.

Mr. Thomsen said the "bad faith" language gives the Director discretion if an applicant tries to deceive start dates, which is still a reality with the commercial operation date. He suggested that Assemblyman Daly's concern is protected by the phrase ". . . or that the timing of the filing frustrates the purposes of sections 2 to 36 . . . ," which implies that if an applicant misses the timing deadlines, the Director will deny the application. Mr. Thomsen said the second "or" illustrates the GOE's intention of not approving an application submitted after a commercial operation date because it frustrates the timing of the process.

Assemblyman Daly stated his understanding of and appreciation for Mr. Thomsen's explanation, but he still finds it confusing when an application can be untimely as long as it is in good faith, which suggests the regulation needs clearer construction. He requested an explanation of the process used when noncompliance of paying the required wage rate for construction and labor frustrates the process, causing rejection of the application.

Mr. Thomsen said the regulations do not address labor requirements because they are statutory. Paying 175 percent of Nevada's average wage, including benefits, and having 50 percent of the employees in the second quarter of construction from Nevada are statutory obligations that cannot be frustrated. A project is ineligible for the tax abatement if it does not meet these obligations. He suggested the only place the GOE has discretion is with matching the health care provision. Previous regulations stated that health care required an employer match 80 percent, but feedback from the industry showed many small contractors in rural Nevada did not meet that threshold. Even though the GOE found other State offices requiring

a 50 percent match, it decided to keep the bar at 80 percent and allow the Director to decide if special exceptions are necessary for small employers who want to work on these projects, typically in rural Nevada.

Assemblyman Hansen asked whether the new regulations eliminate the ability of existing energy companies to reapply for tax incentive rebates under the old regulations.

Based on consultation with the GOE's Deputy Attorney General (AG), Mr. Thomsen explained a company was grandfathered in under the old regulations if it: (1) paid 175 percent of Nevada's average wage; (2) employed 50 percent of Nevadans during the second quarter of construction; (3) paid health benefits; and (4) met the minimum capital threshold investment of $10 million. Theoretically, if a developer met those statutory requirements under the old regulations and wanted to reapply, he said the GOE's Deputy AG has opined that the company could reapply, but the county must approve the reapplication.

According to Chapter 701A of NRS, "Energy-Related Tax Incentives," Mr. Thomsen said a county can only reject a project: (1) if the projected cost of the services that the local government is required to provide to the facility will exceed the amount of tax revenue that the local government is projected to receive as a result of the abatement; or (2) if the projected financial benefits that will result to the county from the employment by the facility of the residents of this State and from capital investments by the facility in the county will not exceed the projected loss of tax revenue that will result from this abatement. He stated the counties must now use these criteria when reviewing projects.

Under the old regulations, he suggested companies could reapply infinitely, with the reapplication submitted six months to the purchase of personal property. Regulation 065-13 intends to codify a timeline that states a company cannot reapply once a project has reached commercial operation. He added the Nevada Association of Counties reviewed the regulations as drafted and had no objections.

Chair Kirkpatrick stated she gave her word to the counties in 2011 that the GOE would return their money provided the counties work with the Legislature regarding project development. Sharing historical background of the issues resulting from A.B. 621 (Chapter 539, *Statutes of Nevada 2007*), Chair Kirkpatrick expressed confidence that R065-13 will help the State grow by keeping 50 percent of the jobs with good benefits and health care in Nevada. She thanked Mr. Thomsen for giving the counties their say and returning their money while keeping the industries going.

ASSEMBLYMAN HANSEN MOVED APPROVAL OF R065-13.

ASSEMBLYMAN DUNCAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 076-13

A REGULATION relating to professions; revising provisions governing the practice of architecture, interior design and residential design in this State; and providing other matters properly relating thereto.

Referring to the text of the repealed sections on page 26 of R076-13, Assemblyman Hansen asked if deleting the language, "This chapter does not prevent a person from providing services such as the design, arrangement or selection of furniture, equipment, cabinetry or materials used for interior finishes . . . ," would prevent a person from providing these services. (Please see Exhibit L.)

Gina Spaulding, Executive Director, State Board of Architecture, Interior Design and Residential Design, verified the deletion does not prevent someone from providing these services. She said the exact same language is in statute; therefore, it does not need to be in the regulation.

ASSEMBLYMAN HANSEN MOVED APPROVAL OF R76-13.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 114-13

A REGULATION relating to nursing; replacing the term "advanced practitioner of nursing" with "advanced practice registered nurse"; making various other changes to provisions governing advanced practice registered nurses; and providing other matters properly relating thereto.

Assemblyman Hansen asked whether nurses must specify a "population of focus" for their licenses, or are they able to incorporate several populations into their practices. (Please see Exhibit M.)

Debra Scott, M.S.N., R.N., F.R.E., Executive Director, State Board of Nursing, testified that if advanced practice registered nurses are educated in a particular role, such as a clinical nurse specialist or certified nurse midwife in a mental health population, then those nurses would only work in mental health. If they received further education, the nurses could possibly have more than one population focus.

Even though he supported this concept during session, Assemblyman Hansen expressed concern that tight regulations might limit many of these nurses from practicing, particularly in rural areas. He asked for clarification that this type of license would allow multiple population focuses, to which Ms. Scott replied the regulation does not limit the nurses from practicing in more than one population of focus.

ASSEMBLYMAN HANSEN MOVED APPROVAL OF R114-13.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (Senator Kihuen and Assemblyman Frierson were not present for the vote.)

Regulation 122-13

A REGULATION relating to energy; revising regulations relating to the Solar Energy Systems Incentive Program, the Wind Energy Systems Demonstration Program and the Waterpower Energy Systems Demonstration Program; and providing other matters properly relating thereto.

Regarding Section 8 of the regulation, Assemblyman Daly asked where the utility would get the installed cost data. He requested an explanation as to how the average installed cost relates to the individual incentive amount. (Please see Exhibit N.)

Carolyn Tanner, General Counsel, PUCN, stated that because this regulation is new and because of processes mandated from A.B. 428 (Chapter 510, *Statues of Nevada 2013*), the annual plan process, which currently is a contested docket, will vet the calculation for the incentive amount. Her understanding is the incentive amount is the quarterly amount, for approximately five years, and it should not exceed 50 percent of the cost of the overall project.

Assemblyman Daly asked whether the PUCN is collecting data from the contractor after installation or from the person who applies for the incentive based on payment the contractor received for installation. He asked whether the PUCN disallows an amount above prevailing wage. Suggesting higher costs might mean a larger incentive, Assemblyman Daly does not want those numbers inflated.

Ms. Tanner repeated that the annual plan docket would vet the new process. She is of the understanding that the incentive will be an average of costs that apply to a particular level or size of project. Both the regulation and annual plan address prevailing wage issues for host customers, who are public entities, because they are subject to public work statutes and regulations.

Assemblyman Daly asked why Section 6 defines Indian tribes and corporations for public benefit as public entities, yet Sections 9 and 11 treat them differently than other public entities. He suggested if being a public entity provides an incentive, then the host customer should also carry the burdens of being a public entity.

Ms. Tanner explained that "public entity" essentially refers to State or local government entities. Statute defines "corporation for public benefit," and it is more than just a 503(c), or nonprofit corporation. Even though it has a public benefit concept, a corporation for public benefit is not a public entity. She did not know why Indian tribes were an exception in Sections 9 and 11.

Assemblyman Daly repeated that Section 6 specifically defines Indian tribes and corporations for public benefit as public entities, yet the sections dealing with prevailing wage exclude them. He questioned the benefit(s) of being a public entity if they do not have to follow the rules.

Chair Kirkpatrick intervened, asking Assemblyman Daly whether he is questioning why Section 9 excludes an Indian tribe and a corporation for public benefit from having to follow the regulations of a public entity when Section 6 identifies them as public entities. Assemblyman Daly stated the regulation excludes them from the prevailing wage requirement for a public entity, even though it defines them as public entities.

Chair Kirkpatrick wondered whether Indian tribes and corporations for public benefit receive special treatment or an exemption under a federal guideline, allowing them to cherry-pick which benefit is best for them. Assemblyman Daly surmised they must receive extra benefits for being public entities, even though they do not follow the same requirements of the other public entities.

Excluding Indian tribes and corporations for public benefit, Ms. Tanner said the public entities identified in Section 6 are true government agencies. She did not know why Indian tribes and corporations for public benefit did not have to comply with all the requirements of a public entity, but she offered to find the answer for Assemblyman Daly.

Before he can identify these regulations as sound public policy, Assemblyman Daly said he wants to know the intent of drafting them as they appear.

Chair Kirkpatrick acknowledged that David Noble, Commissioner, PUCN, worked on the regulations, which Ms. Tanner verified. Ms. Tanner shared that Mr. Noble is the presiding officer over R122-13 and the contested annual plan docket, but due to other commitments, he asked her to present this regulation for him today. She stated she was not intimately involved with the details or the drafting of R122-13. Surmising that Mr. Noble was listening to the Commission's meeting,

Chair Kirkpatrick asked him to e-mail answers to Assemblyman Daly's questions to Risa B. Lang, Chief Deputy Legislative Counsel of the LCB, or Assemblyman Daly.

Continuing, Assemblyman Daly addressed Section 19, subsection 2 that adds the terms "residential and small commercial" and "large commercial and industrial" as categories or levels of participation in the incentive program. He asked whether the NRS or the NAC define those terms, to which Ms. Tanner stated she did not know if existing statutes or regulations defined those terms.

Chair Kirkpatrick suggested that R122-13 be pulled momentarily and requested Assemblyman Daly give a list of his questions to the representatives of the PUCN in order for them to find the answers, which will allow the Commission to move on to the next regulation.

Regulation 130-13

A REGULATION relating to elections; revising certain provisions relating to major and minor political parties; requiring county clerks to submit information relating to signature verification of certain petitions on the form prescribed by the Secretary of State for that purpose; requiring county clerks to provide copies of signatures of registered voters to city clerks; requiring local elections officials to count a military-overseas ballot signed by a covered voter using a digital or electronic signature; requiring a candidate personally to sign a contribution or campaign expense report; setting forth certain considerations for determining whether a statement or communication "advocates expressly" or "expressly advocates" for or against a clearly identified candidate or group of candidates or a question or group of questions on the ballot at an election; setting forth certain considerations for determining whether a candidate, group of candidates, question or group of questions is "clearly identified" in a statement or communication; revising provisions relating to nominating petitions for successors to public officers who are subject to a recall election; making various other changes relating to elections; and providing other matters properly relating thereto.

Chair Kirkpatrick asked the Legal Division to address the change that occurred in the regulation.

Risa B. Lang, previously identified, stated that R130-13 was submitted as an adopted regulation. She explained it initially contained a provision that amended NAC 293.025, formerly Section 4 of the regulation. Upon request, the Legal Division removed the provision from R130-13 and placed it in a separate regulation. Ms. Lang noted the Legal Division splits regulations on occasion, upon request from the agencies. She stated the Legal Division made no other changes to the regulation, and the regulation complied with all statutes. The first page of the regulation indicates that NAC 293.025 was moved into LCB File No. R023-14. Ms. Lang added that if the Commission approves R130-13, the Legal Division

would be responsible to ensure that the correct version of the regulation is filed with the Secretary of State (SOS). (Please see Exhibit O.)

Assemblyman Hansen stated concern that at the conclusion of a public hearing, the public thought the Commission would be reviewing the complete regulation. Instead, the Legal Division separated it into different regulations, which in his opinion, tampers with the spirit of the open meeting law.

Chair Kirkpatrick explained that these regulations affect the next election cycle filing that begins in March. Wanting to maintain a sense of transparency, she did not submit the regulations to the Legislative Commission's Subcommittee to Review Regulations. Due to concerns regarding Section 4, which addressed the issue of confidentiality, the SOS separated that piece so the regulation process would not have to start over and R130-13 could take effect for this election cycle. Chair Kirkpatrick pointed out that the public adopted all the regulations; the only difference is that R130-13 no longer contains Section 4. At some point, she said the SOS would probably have a full public hearing to explain moving forward with R023-14. She suggested that possibly the Office of the SOS will acknowledge that when R130-13 was adopted, Section 4 was missing. Chair Kirkpatrick verified that the Legal Division has split regulations upon request of agencies in the past. She stressed there is a great deal of good, bipartisan information in the bill, which is why it was done this way.

Assemblyman Hansen said that even though he did not like the part pulled from R130-13, he is still uncomfortable with an agency randomly removing parts of a regulation after a public hearing.

Senator Settelmeyer appreciated Chair Kirkpatrick's clarification. He did not know the Legal Division split regulations in the past. If he has problems with particular sections of a regulation in the future, Senator Settelmeyer stated he will ask the appropriate entity to pull that regulation or create a separate regulation now that he knows there is an opportunity to do so.

SENATOR SETTELMEYER MOVED APPROVAL OF R130-13.

Questioning Section 8, Senator Kieckhefer stated that Chapter 294A of NRS, "Campaign Practices," gives guidance to the SOS for interpreting "advocates expressly" or "expressly advocates," of which both relate exclusively to candidates and questions on election ballots as they relate to campaign practices. He asked where the nexus is to have this interpretation relate to the timing of the regular legislative session.

Regarding a communication's relation in time to a legislative session, Scott F. Gilles, Esq., Deputy for Elections, Office of the SOS, stated that the SOS determines whether a communication is or is not expressed advocacy.

For example, if a message received during the middle of session tells or requests Senator Kieckhefer to do something on a particular bill, it is the relation in time to the legislative session that allows the SOS to determine whether the message is or is not expressed advocacy to vote against Senator Kieckhefer.

Senator Kieckhefer and Mr. Gilles discussed whether R130-13 determines that something is specific to an issue rather than a campaign practice. Mr. Gilles said the regulation clarifies whether an issue is expressed advocacy to vote for or against a particular individual rather than the type of advocacy directed toward a legislator during a session on a particular issue.

Referring to Section 7 that states, "A candidate must personally sign any report that he or she is required to submit pursuant to chapter 294A of NRS," Assemblyman Daly asked for clarification of what "personally signing" means in the electronic filing process.

Mr. Gilles clarified that the SOS considers a candidate entering his or her name on the online submission form as "personally signing" the report.

Assemblyman Daly questioned whether the SOS considers a report turned in by a staff person, with a name on the signature line other than the candidate's, to be "personally signed." He suggested this violates the regulation because there is no way of knowing who electronically filed the report.

Mr. Gilles said the SOS is trying to avoid someone other than the candidate submitting and filing the reports. Under the law, when candidates submit electronic or paper reports, they must declare the foregoing is true, under penalty of perjury or an oath to God. The candidates must also agree to certain terms and conditions, one of which is acknowledging they received the NRS 225.083 notice that relates to the completeness of filings and contains a warning that they could be criminally responsible for any type of fraudulent or forged filing. Regulation 130-13 clarifies that the declaration, which states the foregoing is true and the acknowledgement that the candidates have received the notice and terms of conditions, is satisfied when the actual candidates sign and submit the reports.

SENATOR ROBERSON SECONDED THE PREVIOUS MOTION BY SENATOR SETTELMEYER TO APPROVE R130-13.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 081-13

A REGULATION relating to business licenses; adopting procedures for the imposition of penalties on persons who conduct a business in this State and willfully fail or neglect to obtain or renew a state business license and pay the accompanying required fees; requiring a person who claims to be excluded from

the requirement to obtain a state business license to submit an annual claim for the exemption on a form that contains certain required information; and providing other matters properly relating thereto.

Chair Kirkpatrick reminded the members that the Commission heard testimony regarding R081-13 during its December 20, 2013, meeting.

Assemblyman Stewart expressed concern that Section 7 will impose a fee on a business operating out of a home that currently does not have to pay for a State business license. (Please see Exhibit P.)

Scott Anderson, Deputy for Commercial Recordings, Office of the SOS, explained that Section 7 addresses the problem of entities claiming the home-based business exemption when they actually have operations outside the home, including possible storefronts. A number of self-proprietors stated they were exempt under the home-based business exemption when indeed they were not. He said the intent of R081-13 is not to go after those who work directly out of their homes but rather those who should maintain a State business license but do not.

Assemblyman Stewart asked for clarification that as long as businesses do not have operations outside the home, they would not have to pay the fee for a State business license, to which Mr. Anderson verified that was correct.

Assemblyman Hansen pointed out that one of the main purposes of the Legislative Commission is to ensure that regulations conform to the NRS. He suggested that Section 7 allows the SOS to interpret the definition of "person." Regarding the definition of a "business," Assemblyman Hansen referred to Section 2, paragraph (c) of NRS 76.020 that states, "A person who operates a business from his or her home and whose net earnings from that business are not more than 66 2/3 percent . . . ." Noting that statute does not say "natural person," he suggested that R081-13 allows the SOS to interpret that "person" does not include businesses. He reminded the Commission that regulations should follow the intent of original legislation, and if a definition needs to be changed, the legislative process should make the change rather than regulations. Legislation from 2009 clearly made a distinction between "natural person" and "person" because NRS 0.039 defines a person as, ". . . any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization." Assemblyman Hansen questioned why the SOS has the right to reinterpret the definition of "person."

Mr. Anderson said the italicized language in R081-13 clarifies that businesses with a home office and operations outside the home must obtain a State business license. He said the Commission substantially debated this issue in previous meetings and ultimately passed a regulation that defined "natural person"

as a person operating a business from home. Mr. Anderson stressed that the adoption of R081-13 will not change the previous regulation.

Assemblyman Hansen suggested if that is true, the Commission made a mistake adopting the previous regulation because the definition in statute is clear. Regulation 081-13 forces people who incorporate their home-based businesses for protection to pay a $200 fee for a State business license when that was not the intent of the business law passed in 2009. He suggested the Commission reject R081-13 because it goes beyond the original intent of the legislation.

Sympathizing with Assemblyman Hansen's position, Senator Roberson said he has been fighting this regulation since the 2011 Session and the 2011-2012 Interim. During the 2013 Session, he brought a bill forward to provide that home-based businesses incorporated or organized under Chapter 78 of NRS, "Private Corporations," would not be subject to the State's business license fee. However, he said the majority party did not pass the bill. Suggesting this regulation is not the appropriate vehicle in which to address the issue, he promised to bring legislation forward during the 2015 Session to change the law. Unfortunately, the Legislative Commission, by regulation, changed the definition of a "person" for purposes of this specific case. Therefore, Senator Roberson suggested the issue is moot and said he would support the regulation today.

SENATOR ATKINSON MOVED APPROVAL OF R081-13.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION CARRIED. (Senator Settelmeyer and Assembly Members Hansen and Stewart voted no. Assemblyman Daly was absent during the vote.)

Chair Kirkpatrick resumed the hearing on R122-13.

Referring to the definition of "residential and small commercial" in Section 19 (Exhibit N), Assemblyman Daly shared his opinion that a business should be able to read the regulation and understand which category it fits into without having to consult a secondary document or process.

Carolyn Tanner, previously identified, explained that "residential" is a commonsensical term, and "small commercial, large commercial, and industrial" are defined in the utility company's tariffs, which have the force and effect of law. Any clarification would be set forth in the annual plan docket she referred to earlier.

Assemblyman Daly did not agree that "residential" is clearly defined, pointing out that Nevada has $55 million homes in Lake Tahoe, the Arlington Towers in

downtown Reno, and 25-story apartment buildings in Las Vegas. He repeated his concern that this regulation does not clearly allow a layperson to determine which category his or her utility qualifies for when filling out an application.

Ms. Tanner stated that Section 19 addresses a "host customer," which is a third party, such as a solar company, leasing equipment to a resident or a small commercial business. She noted that businesses in the industry understand the terms used. Ms. Tanner explained this is a complicated process directed by A.B. 428, and she repeated the PUCN will vet the details through the annual plan process with the newly required performance-based system.

Assemblyman Daly questioned how the performance-based system makes the regulation clearer.

Chair Kirkpatrick explained that the Legislature intended to give the PUCN flexibility in order for the State to move forward with the incentive program. She expressed comfort knowing that the 2015 Legislature can approve changes, if necessary. Chair Kirkpatrick is certain the Chair of the Senate Committee on Commerce, Labor and Energy would agree that flexibility is needed regarding these regulations in order for the program to be successful. She added the Chair of the Legislative Committee on Energy for the 2013-2014 Interim will be watching the program and will more than likely discuss its progress. Appreciating Assemblyman Daly's frustration, Chair Kirkpatrick stressed that flexibility is necessary to work through any issues that may arise in this new program.

According to NV Energy's tariffs, Garrett C. Weir, Assistant General Counsel, PUCN, clarified that the "residential" category refers to residential customers; "small commercial" refers to the General Service (GS)-1 category of customers; and "large commercial" refers to the GS-2 category.

Assemblyman Daly asked for an explanation of: (1) the relationship and calculations for an incentive based on meter production under a five-year contract; (2) what happens if the system proves more energy is consumed by a user; and (3) the difference between a five-year contract, the under-25 kilowatt (KW) incentive lump sum, and how net metering relates to ratepayers.

Regarding meter production, Mr. Weir stated that if customers over produce more than their expected consumption, the law does not allow them to recover beyond 100 percent of their system.

Assemblyman Daly surmised companies' returns are going to be higher if they produce more in their system, to which Mr. Weir stated that is correct, up to the capacity allowed. He said they cannot go beyond 500 KWs according to regulations and statute.

Assemblyman Daly and Ms. Tanner discussed the statutory solar cap. He asked whether $255,270,000 is still the cap and whether anything remained before reaching the cap. Ms. Tanner said she did not have the precise number, but she estimated approximately $80 or $90 million was left.

Addressing Section 21, subsection 6 of the regulation, Assemblyman Daly asked whether the PUCN would be using an independent cost estimator to determine the reasonable cost of materials and labor. He pointed out that "reasonable cost" is not contained in the sections of the regulation pertaining to wind and water. He asked whether this was an error in drafting or whether the PUCN was not concerned about reasonable costs for wind and water.

A discussion regarding reasonable costs ensued. Ms. Tanner did not know why "reasonable" was not included in the sections pertaining to wind or water. She noted the annual plan docket would vet the issue of reasonableness when the utilities bring forth their records regarding construction costs. The parties can participate and cross-examine that information under oath, providing them an opportunity to examine the reasonableness of the costs. Assemblyman Daly agreed the PUCN should examine the reasonableness of costs, suggesting if customers are paying a rate higher than Nevada's prevailing wage, the PUCN should disallow that and set a standard, otherwise companies may receive reimbursement for an unjustifiable expense. Ms. Tanner stated the construction costs for the solar program are limited to racks and panels versus any kind of enhancement(s) that a piece of property may need in order to hold solar racks and panels.

Assemblyman Daly acknowledged he is open to legislation during the 2015 Session or an amendment to the regulations to address his concerns.

Chair Kirkpatrick explained that A.B. 416 from the 2011 Session, vetoed by the Governor, addressed some of these very issues. Currently, the program gives businesses a set amount of money at a time when it is unclear whether the companies produce enough or too much energy. Surrounding states in the West use a performance-based incentive, which is what Nevada is trying to incorporate. She also indicated that there were times when the fastest contractor on the computer would get all the contracts, and Nevadans were beholden to that price. This became a consumer issue because residents in a lower residential neighborhood might have been charged $40,000 for a solar panel while those in a gated community could have been charged $70,000 for the same solar panel. Regulation 122-13 gives consumers some protections, especially in the solar industry where prices are dropping but consumers are not seeing the benefit of that decline.

Chair Kirkpatrick suggested that data comparing areas within Nevada as well as with its western neighbors would be available before the 2015 Legislative Session,

giving the PUCN the ability to ask questions and ensure greater consumer protection as the incentive program moves forward. The creation of the Legislative Committee on Energy for the 2013-2014 Interim will allow the Legislature to monitor the program.

Ms. Tanner stated that Chair Kirkpatrick's comments were correct. She repeated that the annual plan docket gives the PUCN the flexibility to deal with issues on an annual basis rather than continually modifying regulations. Ms. Tanner appreciated the Chair's comments about consumer protection. She noted the elimination of the grace period for receiving full incentive rebates since the process is now ongoing and businesses can apply whenever they want.

SENATOR ATKINSON MOVED APPROVAL OF R122-13.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Daly voted no.)

IV. APPOINTMENTS OF MEMBERS TO COMMITTEES:
Assemblywoman Marilyn Kirkpatrick, Chair

A. Appointments to Ongoing Statutory Committees:
1. Commission on Special License Plates (NRS 482.367004)

Chair Kirkpatrick announced that Assemblyman Peter Livermore has resigned from his committees due to health issues.

Assemblyman Hansen nominated Assemblyman Jim Wheeler to the Commission on Special License Plates.

ASSEMBLYMAN HANSEN MOVED APPROVAL OF THE APPOINTMENT OF ASSEMBLYMAN JIM WHEELER TO THE COMMISSION ON SPECIAL LICENSE PLATES.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION CARRIED. (Senator Roberson voted no.)

2. Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System (NRS 218E.555)

Assemblyman Hansen nominated Assemblyman Randy Kirner to the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System.

ASSEMBLYMAN HANSEN MOVED APPROVAL OF THE APPOINTMENT OF ASSEMBLYMAN RANDY KIRNER TO THE LEGISLATIVE COMMITTEE FOR THE REVIEW AND OVERSIGHT OF THE TAHOE REGIONAL PLANNING AGENCY AND THE MARLETTE LAKE WATER SYSTEM.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

B. Appointment of Members to Various Committees and Similar Entities:
   1. Nevada Silver Haired Legislative Forum (NRS 427A.320)

Rick Combs, Director, LCB, stated that Senator Scott Hammond nominated Patsy Metler for Senate District No. 18, and Senator Aaron D. Ford nominated Stephanie L. Rose for Senate District No. 11 to fill current vacancies on the Nevada Silver Haired Legislative Forum. (Please see Exhibit Q).

SENATOR DENIS MOVED APPROVAL OF THE APPOINTMENTS OF PATSY METLER AND STEPHANIE L. ROSE TO THE NEVADA SILVER HAIRED LEGISLATIVE FORUM.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

   2. Advisory Council on Mortgage Investments and Mortgage Lending (NRS 645B.860)

Mr. Combs explained that during its December 20, 2013, meeting, the Legislative Commission appointed Kyle Nagy to a term that expired last week. Based on his understanding of the Commission's intent at the last meeting, he advised the Commission to appoint Mr. Nagy to an additional two-year term. (Please see Exhibit R.)

SENATOR ROBERSON MOVED APPROVAL OF APPOINTING KYLE NAGY TO THE ADVISORY COUNCIL ON MORTGAGE INVESTMENTS AND MORTGAGE LENDING FOR A TWO-YEAR TERM THAT WILL EXPIRE ON FEBRUARY 15, 2016.

ASSEMBLYMAN DUNCAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

V. PUBLIC COMMENT

(Because of time considerations, the period for public comment by each speaker may be limited, and speakers are urged to avoid repetition of comments made by previous speakers.)

Chair Kirkpatrick called for public comment; however, no testimony was provided.

There being no further business to come before the Commission, the meeting was adjourned at 6:03 p.m.

Respectfully submitted,

Janet Coons, Secretary for Minutes
Legislative Commission

APPROVED BY:

Assemblywoman Marilyn Kirkpatrick, Chair
Legislative Commission

LIST OF EXHIBITS

Exhibit A is the "Meeting Notice and Agenda," dated February 25, 2014, provided by Sylvia Wiese, Secretary, Director's Office, Legislative Counsel Bureau (LCB).

Exhibit B is the attendance sign-in sheets dated February 25, 2014, from Carson City and Las Vegas, Nevada.

Exhibit C is the Digest for Adopted Regulation R009-12 and the Adopted Regulation of the Administrator of the Manufactured Housing Division of the Department of Business and Industry, LCB File No. R009-12, Effective February 26, 2014, provided by the Legal Division, LCB.

Exhibit D is a list of the State Agency Regulations to be reviewed by the Legislative Commission, dated February 25, 2014, submitted by Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB.

Exhibit E is the Digest for Adopted Regulation R058-12 and the Adopted Regulation of the Division of Industrial Relations of the Department of Business and Industry, LCB File No. R058-12, Effective February 26, 2014, furnished by the Legal Division, LCB.

Exhibit F is the Digest for Adopted Regulation R173-12 and the Adopted Regulation of the Nevada Interscholastic Activities Association, LCB File No. R173-12, Effective February 26, 2014, provided by the Legal Division, LCB.

Exhibit G is the Digest for Adopted Regulation R178-12 and the Adopted Regulation of the Public Utilities Commission of Nevada, LCB File No. R178-12, Effective February 26, 2014, submitted by the Legal Division, LCB.

Exhibit H is the Digest for Revised Proposed Regulation R020-13 and the Adopted Regulation of the Public Utilities Commission of Nevada, LCB File No. R020-13, Effective February 26, 2014, furnished by the Legal Division, LCB.

Exhibit I is the Digest for Adopted Regulation R036-13 and the Adopted Regulation of the Board of Medical Examiners, LCB File No. R036-13, Effective February 26, 2014, provided by the Legal Division, LCB.

Exhibit J is the Digest for Adopted Regulation R062-13 and the Adopted Regulation of the State Board of Education, LCB File No. R062-13, Effective February 26, 2014, submitted by the Legal Division, LCB.

Exhibit K is the Digest for Adopted Regulation R065-13 and the Adopted Regulation of the Director of the Office of Energy, LCB File No. R065-13, Effective February 26, 2014, furnished by the Legal Division, LCB.

Exhibit L is the Digest for Adopted Regulation R076-13 and the Adopted Regulation of the State Board of Architecture, Interior Design and Residential Design, LCB File No. R076-13, Effective February 26, 2014, provided by the Legal Division, LCB.

Exhibit M is the Digest for Adopted Regulation R114-13 and the Adopted Regulation of the State Board of Nursing, LCB File No. R114-13, Effective February 26, 2014, submitted by the Legal Division, LCB.

Exhibit N is the Digest for Adopted Regulation R122-13 and the Adopted Regulation of the Public Utilities Commission of Nevada, LCB File No. R122-13, Effective February 26, 2014, furnished by the Legal Division, LCB.

Exhibit O is the Digest for Adopted Regulation R130-13 and the Adopted Regulation of the Secretary of State, LCB File No. R130-13, Effective February 26, 2014, provided by the Legal Division, LCB.

Exhibit P is the Digest for Adopted Regulation R081-13 and the Adopted Regulation of the Secretary of State, LCB File No. R081-13, Effective February 26, 2014, submitted by the Legal Division, LCB.

Exhibit Q is a memorandum dated February 18, 2014, to Rick Combs, Director, LCB, from Mary Shope, Coordinator, Nevada Silver Haired Legislative Forum, Administrative Division, regarding appointments to the Nevada Silver Haired Legislative Forum.

Exhibit R is a document regarding an appointment to the Advisory Council on Mortgage Investments and Mortgage Lending, submitted by Rick Combs, Director, LCB.