MINUTES OF THE
LEGISLATIVE COMMISSION
NEVADA LEGISLATIVE COUNSEL BUREAU (LCB)
June 29, 2012

The fourth meeting in calendar year 2012 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218E.150, was held on Friday, June 29, 2012. The meeting began at 9:07 a.m. in Room 4401 of the Grant Sawyer Office Building, 555 E. Washington Avenue, Las Vegas, Nevada. A simultaneous videoconference was broadcast to Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada.

COMMISSION MEMBERS PRESENT:

Senator Steven A. Horsford, Chair
Senator John J. Lee for Senator Mo Denis
Senator Don Gustavson
Senator Michael Roberson
Senator Michael Schneider
Senator James A. Settelmeyer
Assemblyman William Horne for Assemblyman Marcus Conklin
Assemblyman Ira Hansen
Assemblywoman April Mastroluca for Assemblywoman Marilyn Kirkpatrick
Assemblyman Richard McArthur
Assemblywoman Debbie Smith
Assemblyman Lynn D. Stewart

LEGISLATIVE COUNSEL BUREAU STAFF:

Tammy Grace, Acting Director
Brenda J. Erdoes, Legislative Counsel
Risa B. Lang, Chief Deputy Legislative Counsel
Mark Krmpotic, Senate Fiscal Analyst
Paul V. Townsend, Legislative Auditor
Donald O. Williams, Research Director
Connie Davis, Secretary
Tarron Collins, Committee Assistant

Chair Horsford called the meeting to order. Exhibit A is the agenda. Exhibit B is the guest list. All exhibits are on file in the Director's office of the Legislative Counsel Bureau. The Chair may have taken certain items out of order, but, if so, those items were placed in 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 Horsford called for public comment.

Barry Lovgren, a private citizen, appeared before the Commission to testify in opposition to the dissolution of the Governor's Committee on Co-Occurring Disorders, as recommended by the Legislative Commission's Sunset Subcommittee.

Mr. Lovgren, for the past several years, had testified before various committees about the substance abuse treatment of pregnant women. He reported that the Substance Abuse Prevention and Treatment Agency's (SAPTA) compliance report, in its current block grant application, said that pregnant women enjoyed "enhanced access to treatment during 2009." Mr. Lovgren, pointed out, however, that treatment had actually dropped by 25 percent. He reported that another subgrant requirement was billing for treatment on a sliding-fee scale based on 400 percent of the federal poverty level. SAPTA, he said, prohibited programs from complying with the requirement and instead used the SAPTA sliding-fee scale. Mr. Lovgren said that SAPTA's sliding-fee scale penalized families with "increasing severity as household size increased."

Mr. Lovgren further advised that because statutes were not aligned when SAPTA transferred to MHDS in 2007, the MHDS Commission had no statutory authority to provide overview beyond SAPTA's services for co-occurring disorders. The SAPTA advisory board, he pointed out, was comprised entirely of programs dependent upon SAPTA for funding. Mr. Lovgren questioned the kind of overview the advisory board could provide in that kind of a situation.

Mr. Lovgren reported that SAPTA's block grant application named the Mental Health Planning and Advisory Council as its community advisory council. He pointed out, however, that the Mental Health Planning and Advisory Council was not authorized to advise SAPTA. Mr. Lovgren said there was so little overview of SAPTA that he had asked the Legislative Commission and the Committee on Health Care to call for a legislative review.

The Committee on Co-Occurring Disorders, he said, was not an ad hoc committee, but rather had ongoing statutory duties to provide overview of services for co-occurring disorders and to determine a method to improve services. The Committee, which provided overview of all state agencies and the criminal justice system, had attempted to coordinate services for treatment of co-occurring disorders. Yet, he said, MHDS did not provide the Committee with the staffing and logistical support it provided to its other public bodies. SAPTA, he said, ignored the Committee's recommendations by continuing the certified program providing specialty treatment for pregnant women who were substance abusers as being in compliance with draft MHDS' criteria from 2007, a draft that, he said, had not been adopted by MHDS and the MHDS' Commission.

Mr. Lovgren reported that in testimony before the Committee on Health Care, the Chair of the Committee on Co-Occurring Disorders was explicit that the Committee's work, although it remained unfinished, had been futile and largely ignored.

In closing, Mr. Lovgren said Richard Whitley's leadership, as acting Administrator, MHDS, was impressive. He pointed out, however, that dissolution of the Committee on Co-Occurring Disorders would only exacerbate SAPTA's lack of overview and make Mr. Whitley's job increasingly difficult.

Marlene Lockard, representing the Nevada Chiropractic Association, asked whether the Chair preferred that she wait to provide her comments during discussion on the regulation concerning the Chiropractic Physicians' Board of Nevada.

Chair Horsford advised that Regulation 004-12, which related to the practice of chiropractic, warranted additional discussion by the Commission and that Ms. Lockard could provide her comments during the discussion on the regulation.

Ms. Lockard reported that Dr. James Overland was attending the Commission meeting in Las Vegas and would speak on behalf of the Nevada Chiropractic Association when the regulation was brought up for discussion.

Pricilla Maloney, Labor Representative, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO Local 4041, advised that she wanted to comment on Regulation 002-12, which related to the Board of the Public Employees' Benefits Program.

Chair Horsford asked Ms. Maloney to provide her comments and when the Commission discussed Regulation 002-12, representatives of the Public Employees' Benefits Program (PEBP) would have an opportunity to respond.

In view of the United States Supreme Court's June 28, 2012, decision regarding the Affordable Healthcare Act, Ms. Maloney, on behalf of AFSCME Local 4041, asked the Commission to direct the Legislative Counsel Bureau (LCB) to review the proposed regulation changes to identify how the adoption of any or all of the proposed changes might adversely affect state employees. Ms. Maloney also requested that the LCB report to the Commission with its findings at its next scheduled meeting.

Chair Horsford asked for additional public comment and hearing none moved to the next agenda item.

II. APPROVAL OF MINUTES OF THE MAY 30, 2012 MEETING –
Senator Steven Horsford, Chair

SENATOR LEE MOVED APPROVAL OF THE MINUTES OF THE MAY 30, 2012 MEETING.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

III. LEGISLATIVE COMMISSION POLICY:

A. Approval of Language of Ballot Question – Donald O. Williams, Research Director, Legislative Counsel Bureau

Don Williams, Research Director, Legislative Counsel Bureau (LCB), provided the following information concerning the proposed ballot-question language for Assembly Joint Resolution (AJR) No. 5 of the 75th Session (2009):

Mr. Williams advised that, pursuant to *Nevada Revised Statutes* (NRS) 218D.810, LCB staff prepared the language for any proposed constitutional amendment that appeared on the General Election ballot. The language for the proposed amendment, he explained, included a condensation, an explanation, arguments for and against passage, and a fiscal note. The statute also provided that the Legislative Commission review, revise, and approve the language for delivery to the Secretary of State on or before July 1 of the year in which the general election was to be held.

On May 3, 2012, the staff made a draft of the proposed ballot materials for AJR No. 5 available for public comment. The comment period closed at 5:00 p.m. on May 11, 2012. Additionally, the LCB staff also placed information on the Legislative website that public comment would be available during the Legislative Commission's meeting on June 29, 2012. After reviewing the public comments received, the LCB staff revised the proposed ballot materials by incorporating the substance of all the suggestions submitted through public comments.

Mr. Williams provided the following information concerning the explanation language for AJR No. 5:

Under the *Nevada Constitution*, Article 5, Section 9, only the Governor had the power to convene special sessions of the Legislature. Assembly Joint Resolution No. 5 proposed to amend the *Nevada Constitution* to provide that the Legislature could call itself into special session on extraordinary occasions by petitions signed by two-thirds of the members of both the Assembly and the Senate. Extraordinary occasions might include instances in which it was necessary to address unexpected conditions or emergency situations to conduct impeachment, removal, or expulsion proceedings for misconduct in office or to reconsider bills vetoed by the governor after the adjournment of a regular session. The measure included that the Legislature could not introduce, consider, or pass a bill at a special session whether convened by the Legislature or the Governor, except for bills related to the business specified in the petition, or Governor's proclamation, and bills necessary to pay for the costs of the special session.

The measure also limited a special session to 20 consecutive calendar days unless the special session was called for the purpose of impeachment, or removal or expulsion from office. Under those circumstances, an exception was provided to allow sufficient time for due process considerations.

Currently the *Nevada Constitution* required regular sessions of the Legislature to adjourn on the final day of the session not later than "midnight Pacific standard time." When the state was observing daylight savings time on the final day of a session, the Legislature was not required to adjourn the session when the clock struck midnight but could continue the session until 1:00 a.m. Pacific daylight savings time because such time was equivalent to "midnight Pacific standard time."

Mr. Williams advised, however, that AJR No. 5 provided that both regular sessions and special sessions must be adjourned on the final day before "midnight Pacific time," which was defined to mean the actual time on the clock.

Concluding his presentation, Mr. Williams commented that the team that prepared the ballot question language for AJR No. 5 included three or more staff members each from the Research, Fiscal, and Legal Divisions of the Legislative Counsel Bureau. The team, he said, reviewed the previous ballot question on special sessions, Assembly Joint Resolution (AJR) No. 13 of the 72nd Session (2003) and prepared clear language for the public that incorporated public comment for AJR No. 5. Additionally, Mr. Williams pointed out that if the voters approved the proposal, there would be costs for convening and holding a special session of the Legislature. Those costs, however, could not be determined because of the unpredictability of the number and duration of such special sessions. Mr. Williams noted, however, that the costs to organize and hold a special session convened by the Legislature would be the same as a special session convened by the Governor.

Senator Settelmeyer asked for information concerning discussions during the 2011 Legislative Session related to AJR No. 5 giving power to the Legislature to call itself into session to increase taxes and the Nevada Supreme Court ruling that midnight Pacific standard time was equivalent to 1:00 a.m. Pacific daylight savings time.

Mr. Williams responded that the LCB team considered the various arguments made in committees and on the floor although the language concerning the taxation argument was not included in the ballot language.

Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau, responded to the second part of Senator Settelmeyer's question concerning the Supreme Court ruling that midnight meant 1:00 a.m., which she said could be included if the members so desired. Ms. Erdoes explained that there were many ways of explaining ballot questions, and the difficulty for staff was to make the questions short enough for the voters to read quickly.

Senator Settelmeyer said that the Supreme Court ruling that midnight Pacific standard time was equivalent to 1:00 a.m. Pacific daylight savings time and the costs of holding a special session should be included in the arguments against passage. The costs, he said, went far beyond the monetary cost of holding a special session citing the fact that some of the initiatives brought forward in the past were "rather extreme to the state economy."

Assemblyman McArthur disagreed with the first statement under arguments for passage. The statement, regarding the Legislature's ability to call itself into session because of extraordinary occasions when immediate action was critical, he said, did not appear to be a good argument for passage because of the difficulty it would take to get two-thirds of both houses to sign a petition to call a special session.

Assemblyman Horne, however, indicated that he believed the language concerning "extraordinary occasions when immediate action was critical" was essential in the arguments for passage. He cited the example of former Illinois Governor Blagojevich who would not have been likely to call a special session for purposes of his own possible impeachment.

Senator Roberson asked Legislative Counsel whether passage of the ballot question would allow the Legislature, with a signed petition by two-thirds of the Legislators of each House, to stay in session on a permanent or full-time basis by using the mechanism to call special sessions in continuous 20-day blocks.

Ms. Erdoes responded that as long as the Legislature continued to find extraordinary circumstances and complied with the provisions set before them, the Legislature could call one session after another.

Senator Roberson indicated that the ability of the Legislature to call continuous sessions was problematic for him.

Chair Horsford asked Legislative Counsel for information on the Commission's requirements to adopt the language based on *Nevada Revised Statutes* and to define the standard for "extraordinary occasions."

Ms. Erdoes advised that NRS 218D.810 required the Legislative Commission to provide the ballot question language to the Secretary of State on or before July 1, 2012. Specifically, under the provisions of the statute, Ms. Erdoes explained that if the first committee of reference [the committee to which a bill or joint resolution was first referred in the House of the Legislature into which it was introduced] did not provide the language, the Legislative Commission was required to submit the language to the Secretary of State.

Ms. Erdoes advised that the ballot question language provided to the Commission was the best that LCB staff could develop. Ms. Erdoes said, however, that if the Commission failed to meet its statutory requirement to submit the language to the Secretary of State, the Secretary of State would be required to develop language for the ballot. Ms. Erdoes advised that no matter what transpired, the question would appear on the ballot.

In response to the question concerning the standard for "extraordinary occasions," Ms. Erdoes advised that AJR No. 5 did not contain a definition of "extraordinary occasions." Therefore, she said court cases would use the common dictionary definition of extraordinary. Ms. Erdoes opined that given any challenges on that basis, the court would probably "tread carefully in terms of overruling the judgment of the Legislature," although she said that did not mean the Legislature would have a free hand. Ms. Erdoes advised that the language, under the provisions of the *Nevada Constitution,* would permit the Legislature to call itself into session only on extraordinary occasions, which she reiterated would hold the Legislature to a standard of using the common dictionary meaning of extraordinary that there was an extraordinary reason for calling a special session.

Chair Horsford said the reason for calling the Commission meeting was to meet the statutory requirements to adopt and forward the ballot-question language to the Secretary of State. He suggested continuing with the agenda, which would allow the members additional time to process the information that staff had provided. Additionally, Chair Horsford indicated he would be willing to entertain suggestions for modification of the language or direction to staff.

Assemblyman Stewart discussed having voted against AJR No. 5 during the 2011 Legislative Session. He said, however, that because of the July 1, 2012, deadline and because the Secretary of State would be required to develop language for the ballot question if the Commission failed to do so, he believed the Commission should continue the discussion and adopt the language submitted by the LCB staff with possible modification.

Chair Horsford, after continuing through the agenda, returned to the ballot question and asked the members of the Commission to provide concepts and suggestions for modification to the language.

Senator Settelmeyer suggested the inclusion of language in the explanation portion of the question that stated *extraordinary occasions might include raising taxes to meet revenue shortfalls*. Additionally, in the explanation portion, Senator Settelmeyer suggested citing the Nevada Supreme Court ruling in conjunction with the language concerning adjourning on the final day before "midnight Pacific standard time." Senator Settelmeyer also discussed placing language in the arguments against passage portion of the question that the fiscal note did not consider the potential impact to the state economy of measures brought to a special session.

Taking Senator Settelmeyer's suggestions in order, Chair Horsford commented that the term extraordinary circumstances could include many circumstances other than meeting to raise taxes. As previously explained by Legislative Counsel, Chair Horsford said the Legislature would be required to meet the standard on the meaning of extraordinary occasions when attempting to call itself into special session and thus, he found the suggested language problematic and did not wish to include it. The Chair did agree, however, that the Nevada Supreme Court ruling concerning "midnight Pacific standard time" could be included in the explanation portion of the ballot question.

Senator Settelmeyer commented that the most common reason the Legislature met for special sessions was to discuss budgetary problems. He said it was important for members of the public to realize the most likely reason for a special session was to meet a budgetary shortfall through either taxation or revenue cutting on which the Legislature potentially disagreed with the Governor.

Assemblywoman Smith said that while special sessions had been called in the past primarily because of budgetary problems, the Legislature had also been called into special session for medical malpractice and impeachment problems. Commenting on the need to keep a broad perspective in mind, Assemblywoman Smith said that she could agree to language that referred to meeting in special session about budget or revenue problems, but she could not agree to language that specifically referred to raising taxes.

Chair Horsford expressed agreement with Assemblywoman Smith and noted that special sessions called by the Governor for purposes the Governor deemed necessary would continue as the "lion's share" of the special-session process.

Assemblyman Hansen noted that the language concerning the fiscal note indicated that the financial effect of a special session could not be established with any degree of certainty. He pointed out, however, that at least the minimum cost-per-day to operate a special session could be included to allow the voter an opportunity to see the potential costs.

Chair Horsford agreed to consider inclusion of the concept regarding minimum costs to organize and hold a special session. He asked whether the members of the Commission had any objection to indicating the estimated average cost-per-day for a special session.

Senator Lee recalled a previous question from Senator Roberson concerning the possibility of staying in session on a permanent or full-time basis by calling special sessions in continuous 20-day blocks. Senator Lee asked Legislative Counsel whether language to the effect that neither party could use the measure as a political tool to circumvent the system could be included.

Ms. Erdoes responded that staff could not incorporate that concept into the current language for A.J.R. No. 5, which had been passed during two consecutive legislative sessions. She said, however, the concept could be incorporated into a future amendment to the *Nevada Constitution*. Additionally, she said the Legislature could add restrictions by statute, or introduce a new assembly joint resolution that would include restrictions.

Chair Horsford asked whether there were any other concepts that the members wanted to consider.

Senator Schneider noted that over his 20-year legislative career, the Legislature had given up more and more of its authority to the Executive Branch. He discussed the improbability of obtaining a two-thirds majority of each House to call a special session. He preferred, he said, to see a special session called by the Majority Leader and the Speaker, which would mean a majority of the support of each House. Additionally, he commented that he agreed with the concept of calling as many 20-day sessions as needed. Texas, he noted, was always in special session. Senator Schneider discussed the Legislature as perpetually being required to rush to get its work done and the inability to devote the time needed to adequately address proposed legislation. Additionally, he said that while it cost $50,000 a day to hold a special session, that amount was insignificant to running a multi-billion dollar business. He advised that the Legislature should operate in a more business-like rather than in a political fashion.

Chair Horsford expressed his appreciation for the comments. He said, however, that as previously indicated by Legislative Counsel, the Commission could change the language in the explanation and in the for-and-against arguments but could not change the intent of A.J.R. No. 5.

Assemblywoman Mastroluca asked Legislative Counsel to address the use of the word "tradition" in arguments against passage. Assemblywoman Mastroluca said the sentence, the "measure might move Nevada away from the tradition of a part-time Legislature" was misleading since Nevada did not have the ability to have a full-time Legislature.

Ms. Erdoes advised that she believed the theory behind the use of the word "tradition" was that the Governor, currently under the *Nevada Constitution,* could hold special sessions throughout the year at his or her choosing. Traditionally, she said, as provided in the *Nevada Constitution,* regular legislative sessions were held every other year, which might be a critical point in that tradition applied to how often the Governor called special sessions in the past.

Assemblywoman Mastroluca said the description appeared to refer to a special session rather than the part-time Legislature required under the *Nevada Constitution*. She indicated that special sessions might be more of a tradition than the part-time Legislature. Assemblywoman Mastroluca recommended that the Commission direct staff to find another description.

Chair Horsford said that perhaps the description could be more clearly stated by saying that the regular session was held every other year for 120 days, which, he said, would potentially allow for special sessions that were more frequent.

Senator Roberson said that because approval of the ballot-question language was required by July 1, 2012, he was concerned about making modifications unless the Commission could review and vote on the exact language.

Ms. Erdoes advised that members could vote on the suggested concepts but that there would be no opportunity to review the final language before submitting the question to the Office of the Secretary of State.

Senator Roberson remarked that the Legislature passed AJR No. 5 and whether or not the members liked the legislation, the ballot-question language appeared to be consistent with the legislation. Although he had concerns about the language, Senator Roberson said it was not the Commission's role to reverse legislation approved by the Legislature.

Chair Horsford asked Senator Roberson whether his recommendation was to approve the ballot language as proposed by the Legislative Counsel Bureau staff.

Senator Roberson confirmed his recommendation was to approve the ballot language as proposed and as stated in the following motion.

> SENATOR ROBERSON MOVED APPROVAL OF THE BALLOT QUESTION LANGUAGE FOR ASSEMBLY JOINT RESOLUTION NO. 5 OF THE 75TH SESSION (2009) AS SUBMITTED BY THE STAFF OF THE LEGISLATIVE COUNSEL BUREAU.
>
> ASSEMBLYMAN HORNE SECONDED THE MOTION.

Chair Horsford asked for public comment regarding the motion before calling for a vote.

Knight Allen, a private citizen, commended the LCB staff who he defined as open minded and "obsessed" with attempting to achieve balance between the arguments for and against passage. Mr. Allen stated, for the record, that he agreed with the existing language and the changes offered by those in support of the language that were incorporated in the arguments for passage and his comments, which were incorporated in the arguments against passage.

Mr. Allen observed that, in the explanation portion of the language, a "no" vote would retain the provisions of the *Nevada Constitution* and the Supreme Court's ruling of a 1:00 a.m. adjournment, which carried forward that a "yes" vote would amend the *Nevada Constitution* to adjourn on the final day not later than "midnight Pacific time." Mr. Allen suggested including a last line after "daylight savings time" in the argument against passage that stated, *affirmed as acceptable by the Nevada Supreme Court*, which, he said, would balance the Nevada Supreme Court ruling in the for and against arguments.

Chair Horsford asked if the members wanted to incorporate the language *affirmed as acceptable by the Nevada Supreme Court* into the argument against passage.

Assemblyman Stewart, who expressed his opposition to the concept of the Legislature calling itself into session and who indicated he would be working to defeat the proposal, said it was his opinion the members should follow the motion as stated.

Hearing no additional comments, Chair Horsford called for a vote on the motion.

> THE MOTION CARRIED. (Senator Settelmeyer, Senator Gustavson, and Assemblyman Hansen voted no.)

B. Review of Administrative Regulations – Brenda J. Erdoes, Legislative Counsel Legislative Counsel Bureau – The list of regulations could be accessed at the following link: http://www.leg.state.nv.us/register/Indexes/RegsReviewed.htm

Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau, advised that there were eight regulations for consideration by the Commission.

Chair Horsford asked the Legislative Commission members to identify any regulations they felt warranted additional discussion.

Chair Horsford held R002-12 and R004-12 at the request of members of the public
Senator Settelmeyer held R069-10
Assemblyman McArthur held R050-12 and R130-11

Chair Horsford indicated he would entertain a motion to approve the remainder of the regulations, which included R102-11, R012-12, and R039-12.

SENATOR SETTELMEYER MOVED APPROVAL OF R102-11, R012-12, and R039-12.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 069-10

A REGULATION relating to food establishments; revising provisions relating to the safe and hygienic handling, preparation, serving and storage of food; revising certain definitions, phrases and procedures for consistency with the *Food Code* adopted by the United States Food and Drug Administration; and providing other matters properly relating thereto

Marla McDade Williams, Deputy Administrator, Nevada State Health Division, Department of Health and Human Services, identified herself for the record and introduced Joseph Pollock, Program Manager, Consumer Protection, Nevada State Health Division, Department of Health and Human Services.

Senator Settelmeyer asked that the record reflect the 286-page regulation simply brought Nevada into compliance with the Food Code of the United States Food and Drug Administration.

Joseph Pollock, Program Manager, Consumer Protection, Nevada State Health Division, Department of Health and Human Services, confirmed that R069-10 would bring Nevada into compliance with the United States Food and Drug Administration (FDA) Food Code. He also provided the following changes R069-10 would make to the current regulation:

- Section 89 required that the person in charge of a food establishment achieve certification as a food protection manager by completing an accredited program.

- Section 106 prohibited all bare-hand contact with ready-to-eat foods. The current regulation, he said, minimized bare-hand contact.

- Section 362 exempted temporary food establishments serving certain non-potentially hazardous [low-risk] foods from permitting requirements.

- Section 440 allowed the use of a single restroom in food establishments located in a building with historical, architectural, or site restrictions that prevented installation of a second bathroom.

In response to Senator Settelmeyer's question regarding the need for food workers to wear gloves while cooking, Mr. Pollock advised that the change in Section 106 covered ready-to-eat foods [already cooked food]. Food workers who were cooking food, he said, would be using utensils. Additionally, Mr. Pollock explained that a cook could use bare-hand contact on raw meat as long as the cook's hands were washed thoroughly before handling the food.

Assemblyman Hansen asked whether Nevada was required, under law, to follow the FDA Food Code and whether Nevada's code was inadequate.

Mr. Pollock responded that Nevada was not required to adopt the FDA model food code and that Nevada's regulations had served the state well. He explained that the Health Division was striving to adopt regulations consistent with the national standard "for operators of facilities in multiple states" who wanted to move to Nevada. Mr. Pollock advised that compliance with national standards provided a smoother transition for those who wanted to operate in Nevada. Mr. Pollock said the industry would not experience a difficult transition because of the minor changes in R069-10, which, he said, clarified points in the current regulation.

Assemblyman Hansen noted in Section 108.2 that food prepared in a private home could not be sold unless the person who prepared the food was issued a permit by the health authority. Assemblyman Hansen asked whether the change in the regulation would make it necessary for mothers who prepared baked goods for a school fundraiser to obtain a permit.

Mr. Pollock advised that Section 108.2 was written for a permanent food establishment in a home in which the food preparation area was required to be separate from the living quarters. Mr. Pollock advised that currently, under the law in Nevada, nonprofit events, such as bake sales, were exempted from being required to obtain a permit.

Assemblyman Hansen asked specifically if under the new regulation, a permit would be required before baked goods prepared in a private home could be sold for a school fundraiser.

Mr. Pollock advised that he would ask for a legal interpretation.

Assemblyman Hansen questioned language in Section 125 that stated game animals *must be inspected under a voluntary inspection program.* He asked whether the inspection was mandatory since the inspection program was voluntary.

Mr. Pollock responded that the language was taken from the Game and Wild Food Code, but that he would ask for a legal interpretation.

Assemblyman Hansen questioned the language in Section 385 that required a permit holder to discontinue operations and notify the health authority if a substantial health hazard existed because of an emergency such as fire, flood, interruption of electrical or water service, or sewage backup.

Assemblyman Hansen asked whether a restaurant that had a sewage backup, for example, had to shut down until the problem was resolved and only reopen after receiving approval from the health authority. Assemblyman Hansen noted that in his 30-years of experience as a plumbing contractor, shutting a facility down until approval was received from the health authority to reopen was unrealistic and burdensome.

Chair Horsford advised that Regulation 069-10 did not require Commission approval during the June 29, 2012, meeting, and, in view of the concerns expressed by Assemblyman Hansen, asked that he and any other members of the Commission, who wished to do so, meet with agency representatives to work out the concerns before it was returned to the Commission for approval.

Assemblyman Hansen agreed to defer Regulation 069-10 to a subsequent meeting.

Senator Lee referred to Section 89 and asked for additional information concerning the need for certified food protection managers in food establishments.

Mr. Pollock advised that a program for certified food protection managers already existed in Washoe County and Clark County and that several courses were offered throughout the state as well as online. Additionally, he advised that the Health Division was attempting to ensure the person in charge of a food establishment had the necessary knowledge to safely handle food and protect public health.

Senator Lee, in an attempt to determine the ramifications of the regulation to a small business owner in a rural community, asked whether a restaurant, in Caliente, for example, would be required to close if the food protection manager was ill for a week and no one else had been trained.

Mr. Pollock responded that it was not the intent of the regulation to close an operation when a certified food protection manager became ill unless there was a discovery of gross negligence at the knowledge level. Additionally, Mr. Pollock advised that the person in charge of the food establishment as well as perhaps one other person would be encouraged to take the training.

Senator Lee addressed Section 90.2 and asked what the penalty was for persons unnecessary to the food establishment operation being caught in the food preparation or food storage areas.

Mr. Pollock advised that during inspections, there were critical and noncritical violations based on a 100-point scale, and persons unnecessary to the food establishment operation caught in food preparation or food storage areas constituted a noncritical violation that necessitated a one-point demerit. Mr. Pollock explained that a critical violation would occur if persons unnecessary to the food establishment operation were in a food preparation or storage area and created, for example, a cross contamination risk to the safety of the food. He said, however, that if persons unnecessary to the food establishment were in areas in which they were not permitted, the inspector would typically note it as a noncritical violation and move on.

In response to a request from Assemblywoman Mastroluca, Mr. Pollock reiterated that Sections 89, 106, 362, and 440 would change the current regulation.

Chair Horsford reiterated that members with concerns regarding R069-10 should meet with agency representatives to resolve their concerns before the next Commission meeting.

Chair Horsford moved to Regulation 130-11 and Regulation 050-12, which were considered simultaneously at the request of Assemblyman McArthur.

Regulation 130-11

A REGULATION relating to off-highway vehicles; setting forth the circumstances under which an off-highway vehicle dealer may become an authorized dealer; providing for the issuance of a certificate of title and registration decal for an off-highway vehicle; providing for the issuance of a certificate of title for an off-highway vehicle in beneficiary form; providing for the assignment by the Department of Motor Vehicles of an identification number for an off-highway vehicle; setting forth certain fees that the Department will charge and collect concerning an off-highway vehicle; setting forth certain grounds for the revocation of the authority of an authorized dealer or the license of an off-highway vehicle dealer, long-term lessor, short-term lessor or manufacturer; specifying the information that must be included in an off-highway vehicle dealer's report of sale; requiring a secured party who holds a certificate of title for an off-highway vehicle to deliver the certificate of title to the person legally entitled thereto after the termination or release of the security interest; providing for the expiration of the registration decal issued for an off-highway vehicle upon the transfer of ownership or the destruction of the off-highway vehicle; prohibiting an off-highway vehicle dealer from exhibiting, displaying for sale or selling an off-highway vehicle at a temporary location without first obtaining a temporary license issued by the Department; imposing certain requirements and restrictions upon the advertising of an off-highway vehicle and a security interest in an off-highway vehicle; repealing certain provisions governing certificates of operation; and providing other matters properly relating thereto

Regulation 050-12

A REGULATION relating to off-highway vehicles; setting forth the fee for the annual registration of an off-highway vehicle; and providing other matters properly relating thereto

Assemblyman McArthur asked whether the regulations included a definition for off-highway vehicles and whether off-highway vehicles had to be registered.

Ann Yukish-Lee, DMV Services Manager, Department of Motor Vehicles (DMV), advised that *Nevada Revised Statutes* (NRS) 490 provided a definition of off-highway vehicles as well as registration and titling information.

Assemblyman Hansen asked whether off-highway vehicles used for agricultural purposes were exempted from the provisions of the regulations.

Andy McCool, Management Analyst, DMV, advised that a certificate of operation was not required for an off-highway vehicle used for purposes of husbandry.

Assemblyman McArthur commented that the definition of off-highway vehicles was unspecific and asked whether the DMV required off-highway vehicles to be registered or titled.

As outlined in NRS 490, Ms. Yukish-Lee advised that any off-highway vehicle sold after July 1, 2012, required titling within 30 days. Additionally, she said that any off-highway vehicle owned prior to July 1, 2012, did not require titling but required a certificate of registration within one year, and off-highway vehicles sold between private parties required titling within 30 days.

Senator Gustavson asked whether an off-highway vehicle required titling if the vehicle was unused.

Ms. Yukish-Lee advised that an off-highway vehicle was required to be registered within one year of the July 1, 2012, implementation date, but titling within 30 days was only required if the vehicle was sold.

ASSEMBLYMAN HORNE MOVED APPROVAL OF REGULATION 130-11 AND REGULATION 050-12.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman McArthur voted no.)

Regulation 002-12

A REGULATION relating to public employees; setting forth procedures for a group of officers and employees who left the Public Employees' Benefits Program to reenter the Program; revising provisions relating to opt-out plans; setting forth procedures for appealing an adverse determination; making various other changes relating to the Program; and providing other matters properly relating thereto

Chair Horsford asked the Public Employees Benefits Program (PEBP) representative to respond to the concerns the American Federation of State, County and Municipal Employees (AFSCME) representative expressed earlier in the meeting.

Jim Wells, Executive Officer, PEBP, advised that Regulation 002-12 was drafted prior to the Supreme Court ruling that upheld the constitutionality of the Affordable Healthcare Act. He explained that the regulation was drafted in such a manner that it could be implemented no matter how the Supreme Court ruled.

Mr. Wells explained that the two specific provisions that dealt with the healthcare reform law included that young adults up to age 26 could remain on their parents' health insurance and the appeals procedure. As required under federal law, he said children up to the age of 26, were already covered. He advised that the reference to the age of eligibility for dependent children was removed in the regulation to provide flexibility if the federal law changed the required age of coverage. Additionally, Mr. Wells explained that during the 2011 Legislative Session, the appeals procedure that was included in the Affordable Healthcare Act also passed under one of the bills from the Insurance Division. Thus, he said, the appeals procedure from the insurance law was incorporated into the regulation.

Assemblyman McArthur asked for information concerning opt-out plans.

Mr. Wells advised that the opt-out provisions were for large groups of participants, not individuals. He explained that the passage of Assembly Bill (A.B.) No. 365 of the 76th Session (2011) provided authority for groups of employees to opt out of the program as a single unit to secure insurance from another source.

In response to Assemblyman McArthur's question concerning an individual opting out of the program, Mr. Wells advised that an individual could decline coverage during the open-enrollment period. He said that once an individual enrolled, the enrollment period held until the next open enrollment.

SENATOR SCHNEIDER MOVED APPROVAL OF REGULATION 002-12.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 004-12

A REGULATION relating to the practice of chiropractic; establishing the preceptor program; prescribing the application process for students and chiropractors who wish to participate in the preceptor program; establishing provisions governing supervision of students engaged in the practice of chiropractic; establishing limitations on the activities of students and chiropractors who participate in the preceptor program; revising provisions relating to the practice of chiropractic by a person who has graduated from a chiropractic college and is waiting to take an examination for licensure; providing for disciplinary action for a violation of the laws relating to the preceptor program; and providing other matters properly relating thereto

Assemblyman Stewart commented that he had received an email from chiropractic physicians indicating that Regulation 004-12 would place a hardship on them. He asked whether a representative of chiropractic physicians was available to provide additional information.

Lewis Ling, Esq., Counsel for the Chiropractic Physicians Board of Nevada, identified himself for the record and introduced Dr. Annette Zaro, a member of the Chiropractic Physicians Board of Nevada.

In response to Mr. Ling's question on how to proceed, Chair Horsford advised that he preferred to hear the industry's objections to the regulation followed by the Board's response.

Dr. James Overland, President of the Nevada Chiropractic Association, testified to the changes brought about by Assembly Bill (A.B.) 382 of the 76th Session (2011), which were reflected in the proposed regulation. Dr. Overland advised that A.B. 382, introduced by Assemblymen Hammond, Ohrenschall, Sherwood, and Woodbury, passed unanimously in the Senate and the Assembly, and Governor Sandoval signed the bill, which became effective on October 1, 2011.

Dr. Overland reported that the Association's main item of contention was whether chiropractors, who had been disciplined by the Board [or by a board of any other jurisdiction], would be required to follow a certain criteria to participate in the preceptor program.

Dr. Overland explained that the program allowed students, who had completed their course work and clinical requirements and doctors, waiting to take the examination for licensure, to work under licensed Nevada chiropractors to perform chiropractic services.

Dr. Overland stated that members of the Nevada Chiropractic Association believed the language in the regulation was "open ended" with no time constraints. He advised that there were 29 states with preceptorship programs that allowed students or applicants for licensure, under supervision, to perform chiropractic adjustments and 6 states that did not allow adjustments by students. The majority of those states, he said, required a chiropractor to be in good standing while several required 5 years of experience with no disciplinary action, and some required 2 to 3 years of experience with no disciplinary action.

Dr. Overland advised that members of the Nevada Chiropractic Association considered the proposed regulation overly restrictive because the language did not address the statute of limitations concerning disciplinary violations. Additionally, he pointed out that many chiropractors might choose not to participate in the preceptor program because the Chiropractic Physicians' Board of Nevada would be required to revisit past disciplinary violations, which, he said, presented due process problems. Additionally, Dr. Overland charged that the language lacked definition relative to the certification of a doctor to participate in the program.

Dr. Overland reported that the Association and the Board agreed to language presented in the workshop held in Reno in December 2011 and sent the agreed-to language to the Legislative Counsel Bureau. In March 2012, he said the Chiropractic Physicians' Board of Nevada reversed its decision and added different language criteria that was included in the language before the Commission. Dr. Overland charged that the Association did not agree with the new language and had no advance information concerning the changes.

In response, Mr. Ling provided the following history concerning Regulation 004-12:

- The Chiropractic Physicians Board of Nevada, at its June 2011 meeting, was aware that A.B. 382 had passed and required a regulatory measure.

- Section 3 of A.B. 382 specifically directed the Board to adopt a number of regulations, one of which was the criteria concerning eligibility requirements for the approval of a chiropractor to serve as a preceptor.

- The Board presented the first draft of the regulation at its September 10, 2011, meeting.

- Dr. Overland attended the September 2011, meeting and worked with Board members on the regulatory language.

- Eligibility criteria at the September 2011 meeting included a discussion on language that disciplinary action within the last 10 years disqualified a chiropractor from serving as a preceptor. Ultimately, the Board decided that 10 years might unnecessarily disqualify good chiropractors from serving as preceptors if they had, for example, a routine type of record-keeping violation. The Board asked staff to revise the language and to establish an approach that provided additional discretion, an ability to judge the severity of the discipline, when the discipline occurred, and the individual's history since the imposition of the discipline.

- At the Board meeting in October 2011, noticed as a formal workshop, the language used a multifactorial approach that included a review of the disciplinary action and the doctor's history, which would allow the Board to determine whether the doctor should teach the next generation of chiropractors.

- The multifactorial approach was a concern to the Association, and the Board worked with the Association to resolve those concerns.

Chair Horsford reminded Mr. Ling that it was not the Commission's role to rehear the regulation heard by the Board.

Mr. Ling agreed to provide the following abbreviated chronology:

- After the October meeting, the Board made substantial changes based on advice from the Association.

- The Board revisited the language during the December 2011, workshop. At that time, the proposed regulation required 5 years of practice, 2 of which were in Nevada, and a 2-year look-back period with no "discretion on the Board."

- During the March 2012 adoption hearing, the Board decided the language was too restrictive and did not provide the discretion needed. The Board, at that time, adopted an amendment to the regulation that used the multifactorial approach language.

In closing, Mr. Ling maintained that representatives of the Nevada Chiropractic Association had been involved in the entire regulation process and had seen all of the drafts. He said, however, the Board could not accommodate the Association's opposition to the language.

Assemblyman Horne disclosed that Dr. Overland was his chiropractor, which he said would not preclude him from participating in the discussion or voting on the regulation. Assemblyman Horne expressed concern regarding the Association's opposition to the language and lack of inclusion in the final step of the process.

As previously indicated, Mr. Ling advised that the Board held two publicly noticed workshops, in October 2011 and December 2011, and as required by the Administrative Procedures Act, an adoption hearing in March 2012. He reiterated that the Nevada Chiropractic Association participated in all workshops and hearings and assisted in developing the regulation. Although the Association disagreed with the disciplinary language portion of the regulation, he said the Board decided that the multifactorial approach provided the discretion needed to review a chiropractor's disciplinary history and to decide who should participate as a preceptor in the program.

Assemblywoman Smith expressed concern about the process and wanted to ensure there had been an opportunity for adequate discussion and participation by all involved. She asked for clarification concerning when the Board decided to move forward with the regulation currently before the Commission.

Mr. Ling reiterated that the process included two publicly noticed workshops in October 2011 and December 2011 during which the language changed from a draft the Legislative Counsel Bureau reviewed in August 2011. The final language prepared by the Legislative Counsel Bureau for the passage hearing in March 2012 included a strict 2-year no discipline look back. The Board, he said, reviewed the language during the public session in March 2012, and the Board decided the 2-year no discipline look back was not the approach it wanted to take. The Board, he said, ultimately decided on the multifactorial approach and amended the regulation to reflect that language. Mr. Ling advised that the Board sent the adopted regulation to every licensee in the state.

Assemblywoman Smith indicated that she continued to have concerns about the process and thought the Commission should return the regulation to go through a more open adoption process.

Chair Horsford called for public comment concerning the regulation before the Commission took action.

Marlene Lockard, representing, the Nevada Chiropractic Association, clarified, for the record, that the regulation rather than allowing more opportunity for chiropractors initiated a process that would open perhaps 20 years of an individual's life for a review of disciplinary action. Additionally, she said the language did not define a qualifying disciplinary action. Ms. Lockard also pointed out, as indicated in previous testimony, that at the December 2011 workshop, the Board with the support of the Association unanimously passed a proposed regulation, which was far different from the regulation before the Commission. The regulation approved at the December 2011 workshop was also presented by the Board to the February 14, 2012, meeting of the Legislative Committee on Health Care

Dr. Annette Zaro, Board Member, Chiropractic Physicians Board of Nevada, commented that the Board had worked closely with the Association and expressed appreciation for the members' participation in the process. Dr. Zaro explained that it was important to understand that the Board's charge was to protect the public. She advised that the purpose of the disqualifying discipline language was to provide the Board the opportunity to review, for example, action taken against a doctor for an inappropriate relationship with a patient and the qualifications needed by a doctor to supervise students in the preceptor program making the transition from student to doctor.

Chair Horsford called for additional public comment. Hearing none, he indicated he would accept a motion from a member of the Commission.

Assemblywoman Smith said that while she did not necessarily disagree with the language, she disagreed with the process that allowed changes to the regulation during the adoption hearing.

> ASSEMBLYWOMAN SMITH MOVED TO DEFER REGULATION 004-12 TO A SUBSEQUENT COMMISSION MEETING.

SENATOR ROBERSON SECONDED THE MOTION.

Assemblywoman Mastroluca, in her capacity as Chair of the Legislative Committee on Health Care, recalled that the Chiropractic Physicians' Board of Nevada presented Regulation 004-12 to the Committee on Health Care at its February 14, 2012 meeting. The minutes for that meeting, she said, reflected no testimony or public comment relative to the regulation and was indicative that changes had occurred between February and June. Assemblywoman Mastroluca shared Assemblywoman Smith's concern relative to the process.

Hearing no further comments, Chair Horsford called for a vote on the motion.

THE MOTION CARRIED UNANIMOUSLY.

IV. PROGRESS REPORTS AND APPOINTMENTS:

A. Appointment of Member to Commission on Ethics (NRS 281A.200) – Tammy Grace, Acting Director, Legislative Counsel, Legislative Counsel Bureau

Tammy Grace, Acting Director, Legislative Counsel Bureau, advised that James M. Shaw, who the Commission appointed to the Nevada Commission on Ethics on July 1, 2008, and whose term would expire on June 30, 2012, was the only qualified applicant for appointment to the Commission on Ethics.

Ms. Grace advised that the qualifications for appointment included requirements that the appointee was a former public officer, not a Clark County resident, and not a member of the Republican Party. The restrictions, she said, excluded an additional applicant who was a Clark County resident.

ASSEMBLYMAN HORNE MOVED APPROVAL TO APPOINT JAMES SHAW TO THE NEVADA COMMISSION ON ETHICS.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

B. Appointment of Member to National Conference of Commissioners on Uniform State Laws (NRS 219.020) – Tammy Grace, Acting Director, Legislative Counsel Bureau

Tammy Grace, Acting Director, Legislative Counsel Bureau, referenced a letter contained within the Commission's packet material from Nancy Rapoport, Interim Dean and Gordon Silver Professor of Law, University of Nevada, Las Vegas, William S. Boyd School of Law. The June 25, 2012, letter provided the names and qualifications of two nominees, Professor Christopher Blakesley and Professor Thomas Main for appointment to the National Conference of Commissioners on Uniform State Laws to succeed the vacancy created by Professor Jay Mootz.

Ms. Grace advised that Ms. Rapoport was supportive of both nominees but recommended Professor Christopher Blakesley.

SENATOR SCHNEIDER MOVED APPROVAL TO APPOINT PROFESSOR BLAKESLEY TO THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

VI. INFORMATIONAL ITEMS:

A. Interim Committee Reports

There were no questions from the members of the Commission concerning the informational item.

VIII. 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 Horsford called for public comments.

Although there were no comments from members of the public, Assemblyman Hansen recalled that during the March 29, 2012, Legislative Commission meeting, Senator Schneider requested that the Chair consider establishing a special legislative investigative committee to look into the construction defect homeowners' associations (HOA) scandal in Las Vegas. Assemblyman Hansen asked for information concerning the status of establishing that committee.

Chair Horsford advised that it was his understanding law-enforcement agencies were investigating the HOA scandal. While he understood the severity and the seriousness of the matter, Chair Horsford said that the problem was not currently within the purview of the Legislative Commission and that it was not his intention to add the item to a future agenda.

Senator Schneider suggested that perhaps Assemblyman Hansen and possibly others contact the Office of the Governor about calling a special session, which he said he would support.

Assemblyman Hansen indicated his understanding was that the purpose of establishing a special committee was for the committee members to ask the Governor to call a special session.

Senator Schneider indicated that originally he wanted the establishment of a special committee to ask the Governor to call a special session. He said, however, that perhaps some of the legislators close to the Governor could ask for consideration of a special session to change laws governing HOAs.

On behalf of the Chair and members of the Commission, Assemblywoman Smith thanked Ms. Grace for her continued good work as Acting Director during the transition to the new Director of the Legislative Counsel Bureau.

There being no further business to come before the Legislative Commission, Chair Horsford thanked the staff for their assistance and adjourned the meeting at 11:00 a.m.

Respectfully submitted,

Connie Davis, Secretary
Legislative Commission

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Senator Steven Horsford, Chair
Legislative Commission

EXHIBITS Nevada Legislative Commission Date – May 30, 2012 – Time 9:00 a.m.		
Exhibit	**Witness/Agency**	**Description**
A		Agenda
B		Guest List
C		
D		
E		
F		
G		
H		