MINUTES OF THE
LEGISLATIVE COMMISSION
NEVADA LEGISLATIVE COUNSEL BUREAU (LCB)
February 15, 2012

The first meeting in 2012 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218E.150, was held on Wednesday, February 15, 2012. The meeting began at 9:05 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 Mo Denis
Senator Don Gustavson
(alternate for Senator Elizabeth Halseth)
Senator Michael Roberson
Senator Mike Schneider
(alternate for Senator Sheila Leslie)
Senator James A. Settelmeyer
Assemblyman Marcus Conklin
Assemblyman Ira Hansen
Assemblywoman Marilyn Kirkpatrick
Assemblyman Richard McArthur
Assemblywoman Debbie Smith
Assemblyman Lynn D. Stewart

OTHER LEGISLATORS IN ATTENDANCE:

Senator Joe Hardy, Clark County Senatorial District No. 12
Senator Mike McGinness, Central Nevada Senatorial District
Assemblyman Kelvin Atkinson, Clark County District No. 17
Assemblyman Cresent Hardy, Clark County District No. 20

LEGISLATIVE COUNSEL BUREAU STAFF:

Lorne J. Malkiewich, Director
Risa B. Lang, Chief Deputy Legislative Counsel
Kevin C. Powers, Chief Litigation Counsel
Rick Combs, Assembly Fiscal Analyst
Mark Krmpotic, Senate Fiscal Analyst
Paul V. Townsend, Legislative Auditor
Donald O. Williams, Research Director
Connie Davis, Legislative Commission Secretary
Tarron Collins, Committee Assistant

Chair Horsford called the meeting to order at 9:05 a.m. and reported that weather conditions in northern Nevada had delayed some members. Exhibit A is the agenda. Exhibit B is the guest list and all other exhibits are on file in the Director's Office of the Legislative Counsel Bureau. Chair Horsford advised that certain items could be taken out of order but would be placed in agenda order in the minutes for purposes of continuity. Additionally, he advised that two or more agenda items could be combined for consideration and that an item could be removed from the agenda or discussion related to an agenda item might be delayed at any time during the meeting.

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 advised that public comment would be taken at the beginning and at the end of the meeting. He noted that a number of individuals had expressed a desire to speak concerning the incorporation of Laughlin and asked speakers to limit their comments to two minutes and to avoid repetition of previous comments.

Chair Horsford recognized Clark County Commissioner Steve Sisolak and invited him to begin his comments.

Steve Sisolak, Clark County Commissioner, District A, identified himself for the record. Commissioner Sisolak described Laughlin as a "vibrant and unique community" that had long been an important part of Clark County District A. Commissioner Sisolak expressed support for the right of the people of Laughlin to vote on whether to incorporate. Although the Clark County Board of Commissioners had not yet addressed the incorporation of Laughlin, Commissioner Sisolak pledged his support to send the question of incorporation to the ballot.

Commissioner Sisolak advised that he had reviewed the Committee on Local Government and Finance "Report on the Fiscal Feasibility of the Incorporation of Laughlin" and had noted that the presentations by the Laughlin Economic Development Corporation (LEDC) and the Nevada Department of Taxation proposed "significantly" different levels of public service. Commissioner Sisolak commented that it was the responsibility of the voters in Laughlin to educate themselves on the incorporation proposals to make an informed decision at the polls. To that end, Commissioner Sisolak advised that he had requested Clark County staff to make the proposals available on the County's website. Additionally, printed copies would be available in several Laughlin locations including, but not limited to, schools, community centers, fire stations and the Town Manager's office. Commissioner Sisolak expressed his appreciation for being given the opportunity to appear before the Commission concerning the incorporation of Laughlin and indicated he would respond to any questions the Commission members had.

Assemblywoman Kirkpatrick noted that the Clark County Commission agenda for Tuesday, February 21, 2012, included an item on the incorporation of the town of Laughlin and recalled that Senate Bill (S.B.) No. 262 of the 76th Session (2011) included a procedure for the potential incorporation. The bill required that either the Clark County Commission or the Legislative Commission make a determination concerning the feasibility of incorporation

within 90 days after receiving a fiscal feasibility report from the Committee on Local Government Finance (CLGF) and that if incorporation was determined feasible, the voters would have the opportunity to vote on the question. Assemblywoman Kirkpatrick asked whether the Clark County Commission would include additional discussion on its agenda item.

Commissioner Sisolak advised that the Clark County Commission intended to have further discussion concerning the incorporation of Laughlin and that the Legislative Commission's actions would determine how the Clark County Commission would proceed on February 21, 2012.

Commissioner Sisolak further advised that several meetings had taken place with Clark County Commission staff and the proponents of incorporation to review the "Report on the Fiscal Feasibility of the Incorporation of Laughlin." The Commissioner indicated that he had hoped for but did not receive clear direction from the Committee on Local Government Finance that analyzed the proposals from the Laughlin Economic Development Corporation (LEDC) and the Nevada Department of Taxation on the fiscal feasibility of the proposed city. Additionally, the Commissioner noted that the incorporation was a major decision on the part of the voters who needed to be kept informed and educated concerning the fiscal feasibility of incorporation.

Assemblywoman Kirkpatrick advised that she would wait to provide additional comments until the agenda item was addressed. She indicated there were several questions that required clarification so that when the ballot question was written the voters had information concerning the negative and positive aspects of incorporation.

Commissioner Sisolak advised that he had received calls from Laughlin residents who had expressed concern regarding incorporation. He indicated that while the County had pledged to provide as much information as possible, the difficulty arose in disseminating that information so that the voters could make an informed decision. Commissioner Sisolak reiterated that the decision to incorporate would be of major importance to the voters because in the event of a shortfall, the County would not have the extra resources to subsidize services in the City of Laughlin.

Senator Schneider addressed the severe budget reductions the Clark County Commission had to make over the last several years and expressed concern that a small city, whose size he compared to a homeowners' association, could operate independently, especially if the economy failed to recover.

Commissioner Sisolak expressed agreement with Senator Schneider's sentiments and explained that the finances Clark County currently provided to Laughlin were included in the overall budget as a part of unincorporated Clark County. The Commissioner reiterated that the unincorporated part of Clark County would not be able to subsidize services in the City of Laughlin in the event of a shortfall, which was the reason the report concerning the revenue and expenditure projections was so important to the voters.

Additionally, Commissioner Sisolak reported that the ENN Group Project [a proposed solar generating farm and solar panel manufacturing plant in Laughlin] that would provide

thousands of jobs had not yet come to fruition, and he wanted to be clear that jobs and the tax base connected to the project had not yet been created. The Commissioner said, however, that work was continuing on a power-purchase agreement (PPA) for the sale of the energy power so that the plant could be built.

The Commissioner expressed concern about the revenue and expenditure differences in the proposals from the LEDC and the Nevada Department of Taxation. He noted that while fire and police services to Laughlin would no longer be provided by Clark County after incorporation, the County would continue to provide fire and police service to the businesses located in the hotel and casino corridor, which was to be excluded from the City of Laughlin. He said that privatizing or outsourcing services, or initiating a memo of understanding regarding services were questions that currently remained unanswered.

After a brief exchange with the Chair, Senator Joe Hardy, Clark County Senatorial District No. 12, indicated he would wait until the Commission considered the agenda item before providing comments.

Bob Ferraro, former Mayor of Boulder City who had served in that capacity for 31 years, expressed support for the incorporation of Laughlin. Mr. Ferraro defined Laughlin as an outstanding community that could stand on its own as a city. He expressed optimism that the solar plant, mentioned earlier by Commissioner Sisolak, would be built and would provide the opportunity to collect millions of dollars per year to support local services. In closing, Mr. Ferraro reiterated his support for the incorporation of Laughlin.

Bruce Woodbury, former Clark County Commissioner, indicated that he had been privileged to represent the Laughlin community for over 28 years in his role as a Clark County Commissioner. Mr. Woodbury advised that he was before the Commission to speak on behalf of Assemblywoman Melissa Woodbury, Clark County District No. 23, which included the town of Laughlin. Assemblywoman Woodbury was unable to attend the Commission meeting but asked that Mr. Woodbury, express her views on incorporation to the members of the Legislative Commission.

Mr. Woodbury advised that a natural desire for more home rule had always existed in Laughlin, which was approximately 80 miles from the Clark County government center. He said the same was true of the town of Mesquite in the 1980s, which he had represented as well. Mesquite, he said, had successfully incorporated in the mid 1980s and had thrived despite a population and tax base smaller than currently existed in Laughlin. Mr. Woodbury recalled that a smooth transition had been negotiated between the county and the new City of Mesquite, and he was unaware that anyone had regretted the move to create a city.

Additionally, Mr. Woodbury said that public infrastructure in Laughlin, paid for by the people of Laughlin through higher tax and utility rates, as well as through some funding from the Fort Mohave Development Fund, could support a much larger population than currently existed. Mr. Woodbury said that during his 28 years as a Commissioner, he had repeatedly promised the citizens of Laughlin that when they were ready to make the decision to incorporate, he would support their right to vote on the question. He said the people of Laughlin were intelligent and knowledgeable enough to evaluate the proposals, and he was certain that all of

the information would be disseminated by the proponents and the opponents so that the voters could make an informed decision.

On behalf of Assemblywoman Woodbury, Mr. Woodbury asked the members of the Legislative Commission to determine the feasibility of incorporation and allow the people of Laughlin the right to vote on whether to incorporate.

Assemblywoman Kirkpatrick disclosed that she no longer visited Laughlin with any regularity because the town was not in her personal work territory. She noted that Laughlin had a justice court building and asked who would take over the operation of the buildings if the town was incorporated.

Additionally, Assemblywoman Kirkpatrick expressed concern about the distribution of monies from the consolidated tax (CTX) because the numbers appeared high in the "Report on the Feasibility of the Incorporation of Laughlin." Assemblywoman Kirkpatrick reported that North Las Vegas' residents had expressed dissatisfaction that their allocation of CTX was not a fair share of the distribution and because of not receiving the amount anticipated, a budget deficit existed. Assemblywoman Kirkpatrick indicated that while the residents had a right to vote on incorporation, they also needed to be aware that they might be required to pay for more services than they were currently paying.

Mr. Woodbury indicated that while the proposals would be available for review and considerable debate would occur, some questions would not be answered before the vote took place. He said, however, a transition period would occur when Clark County representatives and representatives of the new city would be required to negotiate to ensure the orderly transfer of existing infrastructure, facilities, and services. Mr. Woodbury explained that the distribution of tax revenues would be the same as for any other city although the Fort Mohave Development Fund would provide a strong backup funding mechanism for infrastructure improvements, which he indicated could require "legislative fine tuning."

In response to a question Assemblywoman Kirkpatrick asked concerning the length of the incorporation process once the vote had taken place, Mr. Woodbury explained that it would take about six months to work out most of the issues. He recalled a number of meetings and discussions concerning the incorporation of Mesquite and that Clark County had been very generous in turning over the existing infrastructure to the new city. Additionally, Mr. Woodbury advised that local agreements concerning public safety services could be required until the new city began to operate.

Mr. Woodbury envisioned challenges ahead that would need to be brought to the attention of the voters, who he reiterated were intelligent, knowledgeable, and capable of deciding a ballot question.

II. APPROVAL OF MINUTES OF THE AUGUST 24, 2011, MEETING – Senator Steven Horsford, Chair

ASSEMBLYMAN CONKLIN MOVED APPROVAL OF THE MINUTES OF THE AUGUST 24, 2011, MEETING.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (Senator Schneider, and Assemblymen Hansen and Smith were not present for the vote.)

III. APPROVAL OF MINUTES OF THE OCTOBER 26, 2011, MEETING – Senator Steven Horsford, Chair

ASSEMBLYMAN CONKLIN MOVED APPROVAL OF THE MINUTES OF THE OCTOBER 26, 2011, MEETING.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (Senator Schneider, and Assemblymen Hansen and Smith were not present for the vote.)

IV. LEGISLATIVE AUDITOR:

A. Summary of Audit Reports Presented to Legislative Commission's Audit Subcommittee, *Nevada Revised Statutes* (NRS) 218G.240 – Paul V. Townsend, Legislative Auditor

Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau, identified himself for the record.

Mr. Townsend advised that a letter from Senator Sheila Leslie, Chair of the Audit Subcommittee, concerning the summary of audit reports was contained within Volume I of the meeting packet. The letter reported that on February 2, 2012, four audit reports were presented to the Audit Subcommittee.

Mr. Townsend provided the Legislative Commission an overview of the audits for the following state agencies:

- Office of the Governor, Office of Energy
- Department of Administration, Buildings and Grounds Section
- Department of Administration, Division of Enterprise Information Technology Services
- Department of Motor Vehicles

<u>Office of Energy</u>

Mr. Townsend reported that the audit found that the Office of Energy could improve its oversight of energy grants. Periodic reports from subrecipients were infrequent and unsupported, and when reports were provided, information was not always complete or reliable. In addition, the Office of Energy had not developed a site monitoring schedule to ensure that projects complied with grant requirements.

The audit also found that the Office's energy reduction planning and project selection processes could be improved. The Office needed to ensure that planned solar projects at

state agency sites adequately protected the state's interest and resulted in lower energy costs.

Additionally, Mr. Townsend said that the Office could take steps to improve the reliability and effectiveness of its performance measures.

Mr. Townsend reported that the audit report contained 14 recommendations; the Office accepted 12 and rejected 2 recommendations.

The rejected recommendations related to the recent state contract with a vendor to allow state agencies to enter into agreements to build vendor-owned solar energy systems. The vendor would pay the costs to construct, operate, and maintain the solar energy systems and sell energy generated from the solar panels to state agencies. Savings or losses would not be known for many years because the contracts to purchase power from the vendor could last 20 years or more. Therefore, Mr. Townsend noted that careful review was needed before entering into agreements with the vendor.

The audit recommended that the Office, because of its expertise, develop a comprehensive solar-project checklist that would address important items that should be considered by state agencies when entering into agreements. Additionally, the audit recommended that the Office track and record cost savings from solar-energy projects by comparing solar costs to grid-based costs. The Office of Energy rejected both recommendations.

Mr. Townsend reported that the members of the Audit Subcommittee suggested the agency reconsider their position on the recommendations during the audit follow-up process. The 60-day plan for corrective action was due at the end of April, and the agency indicated they would work with the Audit Division auditors toward a resolution on the recommendations.

Buildings and Grounds

Mr. Townsend explained that Senate Bill (S.B.) No. 427 of the 76th Session (2011) reclassified Buildings and Grounds from a division to a section within the State Public Works Division organized under the Department of Administration.

The audit found that the Buildings and Grounds Section could improve its oversight of activities related to the proper administration of performance measures, leasing, and procurement card activities.

Mr. Townsend provided the following information:

- Results for performance measures were not always reliable because of errors that were made regarding calculations and classifications.

- Administration and documentation over certain leasing activities could be improved. Buildings and Grounds did not always analyze its documents during certain facets of lease negotiations. As a result, the audit could not always determine whether the leases were advantageous to the state.

- Purchase card transactions were not always in compliance with Buildings and Grounds' or statewide policies and procedures. Audit testing revealed transactions exceeded established limits, improper transaction approvals, incomplete agreements, as well as several other errors. Although the audit did not discover instances of fraud or abuse, items purchased could be easily converted to personal use making proper and effective controls necessary.

Mr. Townsend reported that the audit report contained ten recommendations that were all accepted by the Buildings and Grounds Section.

Division of Enterprise Information Technology Services, Department of Administration

Mr. Townsend explained that legislation, passed during the 2011 Legislative Session, changed the Department of Information Technology to the Division of Enterprise Information Technology Services and transferred the Division to the Department of Administration.

Mr. Townsend reported that the audit discovered that the Division needed to strengthen information system controls to ensure adequate protection over systems and data. He said that the availability of key state information could be better ensured by updating and testing the state's primary computing facilities and emergency plans. Additionally, the security of confidential personal information could be improved with better security oversight of occupational licensing agencies or boards. The audit also discovered that former employees had current network access and that better controls were needed over the computing facility access cards.

The audit contained 15 recommendations all of which were accepted by the Division, and Mr. Townsend said that, in most cases, corrective action was immediately taken.

Department of Motor Vehicles

Mr. Townsend reported that the Department could improve its control procedures over vehicle registration decals and reconciliation of its internal records to the state's accounting system. Additional improvements were needed to controls over the issuance of drivers' licenses and access to the DMV information system. Enhancements in those areas, he said, would help to reduce risk of loss, fraud, or abuse.

Mr. Townsend advised that the Department should also enhance its performance management system. The audit found that records used to account for vehicle registration decals were inaccurate and unreliable in 13 of 14 months tested, and some decals could not be readily accounted for. Additionally, forecasts used to determine future needs were inaccurate and contributed to overproduction of decals. Department records indicated that more than one million decals were overproduced at a cost of about $250,000 for fiscal years 2008 through 2011.

The audit also discovered that the Department's Motor Carrier Division had not assessed administrative fines timely on some motor carriers. As of December 31, 2010, the backlog of citations was more than 1,500 valued at an estimated $600,000 in billable assessments. Improved timeliness in issuing assessments, Mr. Townsend said, should result in increased probability of collections.

The audit report contained 16 recommendations all of which Mr. Townsend said were accepted by the Department of Motor Vehicles. The Department, he said, began corrective actions, in many cases, as problems were discovered.

Mr. Townsend advised that Senator Leslie, Chair of the Audit Subcommittee recommended that the Legislative Commission accept the Audit reports.

There were no questions from the members of the Legislative Commission, and Chair Horsford indicated he would accept a motion for approval of the Audit reports.

SENATOR DENIS MOVED APPROVAL OF THE AUDIT REPORTS.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

B. Summary of Six-month Status Reports on the Implementation of the Audit Recommendations by the Legislative Auditor as Submitted to the Audit Subcommittee, *Nevada Revised Statutes* (NRS) 218G.270 – Paul V. Townsend, Legislative Auditor

Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau, identified himself for the record.

Mr. Townsend advised that a letter from Senator Sheila Leslie, Chair of the Audit Subcommittee, concerning the summary of the six-month status reports was contained within Volume I of the meeting packet. The letter reported that on February 2, 2012, two six-month reports were presented to the Audit Subcommittee and that the Subcommittee heard testimony from an agency representative on a previously unimplemented recommendation.

Mr. Townsend referenced Schedule 1, which accompanied the letter, and indicated that the Gaming Control Board had fully implemented all five of its recommendations, and the Office of the Labor Commissioner had fully implemented nine recommendations, and three recommendations had been partially implemented. Mr. Townsend advised that the partially-implemented recommendations would continue to be monitored and noted that the Labor Commissioner was making good progress on the issues brought forward in its audit.

Mr. Townsend referenced Schedule 2 concerning the Motor Pool Division and one recommendation that had not been implemented from a previous audit. The agency representative testified that the Division was working to implement the remaining recommendation and would return to the next Audit Subcommittee meeting to report on implementation.

Mr. Townsend advised that the Audit Division was monitoring the recommendations to help ensure implementation by the agencies. He further advised that the Chair of the Audit Subcommittee recommended that the Legislative Commission accept the two six-month status reports.

Chair Horsford indicated he would accept a motion for approval.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL TO ACCEPT THE TWO SIX-MONTH STATUS REPORTS.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

C. Review of Proposal for Performance Audit of State Board of Medical Examiners by Federation of State Medical Boards of the United States, Inc. – Paul V. Townsend, Legislative Auditor

Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau, advised that a proposal submitted by the Federation of State Medical Boards (FSMB) was contained within Volume I of the meeting packet.

Mr. Townsend reported that at the Legislative Commission's October 26, 2011, meeting, he was directed to prepare a request for proposal (RFP) for the Federation of State Medical Boards (FSMB) to conduct a performance audit of the Nevada State Board of Medical Examiners. The audit, required by statute, was to be performed every eight years or whenever ordered by the Legislative Commission. The last audit was conducted in 2003.

Mr. Townsend discussed key areas of the proposal and provided the following information:

- Page 4 included an overview and objectives of the audit as provided in statute, followed by an executive summary and some identifying information.

- Page 10 included a section that indicated there was no conflict of interest that could result in disqualification.

- Page 11 included technical and background information, which noted that FSMB represented the 70 medical boards within the United States and its territories. Additionally, FSMB's mission was "to lead by promoting excellence in medical practice, licensure, and regulation as the national resource and voice on behalf of state medical boards in their protection of the public."

  The information on page 11 also indicated that FSMB was frequently called upon to develop policy and research and to identify best practices in medical regulation. Accordingly, FSMB had compiled an expansive research database and portfolio of reports, guidelines, and policies, which would empower the audit team to conduct the performance audit accurately and efficiently.

- Page 12 described FSMB's capabilities including performing the 2003 audit as well as numerous evaluations of other boards since that time.

- Page 13 included cost information, which totaled $20,967 and, under provisions of statute, would be paid by the Nevada State Board of Medical Examiners.

- Pages 14 through 16 discussed the work plan and methodology.

- Pages 17 through 20 provided information on staffing and a background of team members.

- Page 21 provided additional representations regarding confidentiality and responsibilities.

Having concluded his presentation, Mr. Townsend advised that if the FSMB proposal was approved, the Audit Division would move forward with a contract.

There were no questions from members of the Commission, and Chair Horsford indicated he would entertain a motion for approval.

> SENATOR DENIS MOVED APPROVAL OF THE PERFORMANCE AUDIT OF THE STATE BOARD OF MEDICAL EXAMINERS BY THE FEDERATION OF STATE MEDICAL BOARDS OF THE UNITED STATES, INC.
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> SENATOR SCHNEIDER SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

V. PROGRESS REPORTS AND APPOINTMENTS:

A. Litigation Currently in Progress – Kevin C. Powers, Chief Litigation Counsel

Kevin Powers, Chief Litigation Counsel, Legal Division, Legislative Counsel Bureau, provided the following information on litigation currently in progress.

1) Teijeiro v. Schneider
Redistricting cases regarding the unequal population of current districts were filed in state and federal courts. Once the state case was resolved, the plaintiffs in the federal case filed a voluntary dismissal, and the case was dismissed.

2) Mining Claim Fee Enacted During the 26th Special Session (2010) *Nevada Revised Statutes* (NRS) 517.187
On May 31, 2011, the First Judicial District Court in Carson City held that a bill enacted during the Special Session in 2010 to impose a fee on mining claims was unconstitutional. The State of Nevada and the Legislature appealed, and, during the 2011 Legislative Session, the Legislature repealed the amendment to the statute. The case, which was pending on appeal, was dismissed by the Nevada Supreme Court as moot.

3) Red Rock Canyon and Adjacent Lands Act

The Red Rock Canyon case was in the United States Court of Appeals for the Ninth Circuit and currently pending in the Nevada Supreme Court. The Legislature filed an amicus brief asking that the case be certified to the Nevada Supreme Court because it only involved state constitutional issues. The Ninth Circuit Court of Appeals agreed and on October 31, 2011, the Court certified questions to the Nevada Supreme Court. The Nevada Supreme Court accepted the certified questions, did not allow for additional briefing, and indicated it would rely on the briefs filed by the parties in the Ninth Circuit.

4) Carrigan v. Commission on Ethics
Carrigan v. the Commission on Ethics involved the statute that required certain public officers to disclose conflicts of interest and to abstain under certain circumstances. In July 2010, the Nevada Supreme Court struck down the statute as violating First Amendment rights. The Commission on Ethics appealed the decision to the United States Supreme Court and in June 2011, the United States Supreme Court reversed the decision and returned the case to the Nevada Supreme Court. The Nevada Supreme Court requested supplemental briefing, which had been filed, and the Nevada Supreme Court set oral arguments for March 5, 2012.

5) Elsinore, LLC v. State of Nevada, ex.rel. the Nevada Legislature
The case of Elsinore, LLC v. State of Nevada, ex.rel. the Nevada Legislature involved NRS 38.310, the arbitration statute, that required homeowner association disputes to go to arbitration before an action could be filed in a district court. The plaintiffs said that requiring arbitration before the action was filed in district court violated the separation of powers. The Legislature filed a motion to dismiss, and a hearing was set in Clark County District Court on March 5, 2012, to hear the motion.

6) Arena Initiative
The Arena Initiative case involved Senate Bill (S.B.) No. 495 of the 76th Session (2011). Senate Bill 495 was proposed by the Legislature as a competing measure to the statutory initiative sponsored by the Arena Initiative Committee and was intended to be placed on the 2012 General Election ballot. The plaintiffs claimed that S.B. 495 was not on the same subject as the initiative petition and, therefore, could not appear on the ballot. The Legislature filed a brief in the Carson City District Court on February 14, 2012, and an oral argument would be held on March 20 in the Carson City District Court.

Mr. Powers advised that that one of the claims in the case was that S.B. 495 in addition to not being the same subject as the initiative petition was that it violated the single subject rule in the *Constitution of the State of Nevada*, Article 4, Section 17. Mr. Powers further advised that one of the reasons the Legislature was participating in the case was that the issue of whether a bill violated a single subject rule affected all legislation enacted by the Legislature.

7) The People's Legislature v. Secretary of State
In the case of the People's Legislature v. Secretary of State in the Clark County District Court, the plaintiffs claimed that two bills enacted by the Legislature violated the single subject rule in the *Constitution of the State of Nevada*, Article 4, Section 17. The plaintiffs challenged S.B. 224, passed in 2005, that created the statutory single subject

rule for initiatives and challenged A.B. 81, passed in 2011, that created the petition districts for gathering signatures for initiatives.

Mr. Powers advised that the Legislature would take action to intervene in the People's Legislature v. Secretary of State Case to defend the legislation enacted in 2005 and 2011.

In response to Senator Schneider who asked for additional information in the case concerning homeowner association disputes going to arbitration, Mr. Powers advised that NRS 38.310 required a claim involving the covenants, conditions, or restrictions in a homeowners' association be submitted to arbitration before the plaintiff could bring a cause of action in district court. He said, however, the statute did not require binding arbitration.

Mr. Powers explained that the first step in a dispute resolution process was arbitration. If either party was dissatisfied and wanted to go to district court following arbitration, they could seek a trial de novo. The plaintiffs in the case of Elsinore, LLC v. State of Nevada, ex.rel. the Nevada Legislature, he said, claimed that the statute violated the separation of powers because it divested the judiciary of its power to make certain determinations. In particular, the plaintiffs claimed that arbitrators could not make decisions based on statutory interpretation and that those decisions could only be made by courts. Mr. Powers said, however, that case law supported the Legislature's statute that so long as the parties were entitled to judicial review after the arbitrator's decision, an arbitrator could decide issues of statutory interpretation.

In summary, Mr. Powers said the statute provided for a trial de novo in district court after arbitration, and the Legislature was in strong position to defend the constitutionality of the statute.

B. Report on Early Intervention Services and Administrative Complaint Filed by Nevada Disability Advocacy & Law Center – Mary Liveratti, Deputy Director, Department of Health and Human Services

Mary Liveratti, Deputy Director, Department of Health and Human Services, appeared before the Commission to address the administrative complaint concerning Nevada Early Intervention Services submitted by the Nevada Disability Advocacy Law Center (NDALC).

Ms. Liveratti advised that the complaint was investigated by the Department of Health and Human Resources' Aging and Disability Services Division Part C Office. The investigation, she said, was to have been completed by December 10, 2011, but because of "a number of circumstances" the NDALC granted an extension.

Ms. Liveratti explained that the complaint, made on behalf of seven specifically identified children and also on behalf of all infants and toddlers similarly situated, presented "a very broad scope" for investigation. She advised that a sampling of 108 records, or 5 percent of the total enrollment at the time, covered three regions of the state and included Nevada Early Intervention Services, under the Health Division, and private contractors that provided services. The actual percentage for each one of the entities, she said, varied from a 3 percent to an 8 percent review of the records.

The review and investigation resulted in the following compliance percentages:

- Procedural safeguards at 77 percent
- Evaluation and eligibility at 62 percent
- The Individualized Family Service Plan (IFSP) development and review at 62 percent
- Natural Environment at 71 percent
- Timely initiation of services at 48 percent
- Frequency and intensity of services on IFSP at 60 percent

Ms. Liveratti reported that after each review was completed, the investigators met with program staff for an exit interview. Findings for each entity were discussed and staff was provided with a list of the records that had been reviewed and the records that showed being out of compliance. The programs then initiated the process of scheduling IFSP meetings with families to begin corrective action.

Ms. Liveratti advised that the process to schedule meetings with families to review individualized family service plans had already begun. She said the time line for corrective action was that within 30 days of issuance of the report, each office had to schedule an IFSP meeting with the affected families. Within 60 days, new agreements for correction had to be written for each family, and copies of those agreements sent to the Part C Office to verify that corrective action had been taken.

Additionally, Ms. Liveratti reported that some system corrections were identified. She explained that within six weeks of the report, staff from each program would meet with the Part C office staff to create or update their corrective action plan. The newly created or updated corrective action plan would address areas of noncompliance, which were required to be corrected within one year.

In response to Chair Horsford's request, Ms. Liveratti advised that upon completion she would provide the full report of findings to the members of the Legislative Commission.

In response to Chair Horsford's questions concerning the federally mandated requirements of timeliness and frequency of services, Ms. Liveratti advised that states had some flexibility to establish a reasonable time frame for the provision of services. She explained that within 30 days following a referral, a meeting would take place with a family to assess needs and eligibility for the program. Following the family meeting and development of a service plan, Ms. Liveratti said that Nevada Early Intervention Services (NEIS) had 45 days to initiate service, which meant NEIS was not in compliance.

Chair Horsford asked whether the underlying issue of not being in compliance with the 45-day initiation of services was the result of a lack of funding and staff to provide services.

In response, Ms. Liveratti advised that not being in compliance was based on a number of factors. She explained that services for a family could be initiated, but if not all of the services on a plan or the intensity of the services required could be provided, the NEIS was considered noncompliant with initiating the service. Ms. Liveratti said, for example, that problems sometimes occurred with certain therapies, such as speech therapy for which there was some difficulty in securing enough providers in southern Nevada.

Additionally, Ms. Liveratti indicated that funding was always a problem. She recalled that during the 2011 Legislative Session budget hearings, a shortfall occurred in the NEIS' budget when it was projected that more demand for services would occur than was built into the budget. Ms. Liveratti reported that a team was being established for the next budget cycle to review caseload projections for accuracy.

Chair Horsford asked for information concerning the 108 families that were receiving corrective action as opposed to a review for all of the families enrolled in the program.

Ms. Liveratti advised that the first response was to the 108 families whose records were reviewed. She said, however, that staff met with all families to review service plans every six months.

In response to Chair Horsford's questions concerning the state's legal liability because of noncompliance, Ms Liveratti advised that the state had been out of compliance with timeliness of services for several years and on a corrective action plan since 2008. Ms. Liveratti said that it was her understanding that the federal government would be flexible as long as progress toward compliance was being made. Ms. Liveratti reasoned that the NDALC could bring suit against the state to provide services more timely or for any of the other items that were out of compliance but said she could not answer the question concerning the state's legal liability.

Chair Horsford commented that a risk existed based on the state's inability and failure to comply since 2008, and he added that NDALC or any individual could sue the state for failure to meet its requirements under federal law.

As a member of the Nevada Early Intervention Interagency Coordinating Council (ICC), Chair Horsford indicated he was aware of the many concerns regarding how state budget reductions had negatively affected the families and children in need of Early Intervention Services.

Chair Horsford indicated that legislators would bring attention to the problem and work with representatives of the Department to establish a plan for the 2013 Legislative Session that would ensure families and children in need of Early Intervention Services were not harmed. Chair Horsford recalled the debates regarding restoration of funding during the 2011 Legislative Session and commented that because funding was not restored, the state faced a potential risk of being sued for noncompliance. The Chair noted that as elected officials, a fiduciary responsibility existed, which he hoped would not be brushed aside.

Ms. Liveratti advised that Department staff took the concerns very seriously and were reviewing ways to improve the delivery of service as quickly as possible.

Senator Horsford asked whether staff was being increased in the Part C Office and whether additional resources and support was being requested in the next budget cycle.

Mary Liveratti advised that she did not believe increased staffing would be brought to the Part C Office. She said, however, additional funding would be requested to provide direct services to the children projected to be on the caseload for the next two years in the biennial cycle.

In response to Chair Horsford's request for information on the waiting lists, Ms. Liveratti advised that while she did not have waiting list numbers with her, she would provide them to the Chair.

C. Appointment of Host Committee for 2013 Annual Meeting of the Council of State Governments-West (CSG-WEST) –
Assemblyman Kelvin Atkinson, Chair-Elect, CSG-WEST

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that Assemblyman Kelvin Atkinson as the Chair-Elect of the Council of State Governments-West (CSG-WEST) had the privilege of determining the location of the next annual meeting of CSG-WEST, which in 2013 would take place in Las Vegas.

Mr. Malkiewich reported that Assemblyman Atkinson was currently working with staff from CSG-WEST and LCB to prepare for the 2013 Annual Meeting. Additionally, he said that a suggested list of legislators, who had expressed an interest in being appointed to the Host Committee, was contained under Tab V.C in Volume 1 of the meeting packet.

Assemblyman Kelvin D. Atkinson, Clark County Assembly District No. 17, expressed his thanks to the members of the Commission for their consideration of the appointments to the CSG-WEST Host Committee.

Mr. Atkinson reported that a great deal of work had already been accomplished in preparation for the CSG-WEST Annual Meeting and that CSG-WEST staff would be in Las Vegas the following week to tour five or six viable properties in which to hold the conference. The appointment of the Host Committee, he said, would be timely since those legislators would be invited to accompany staff on the tour to determine, which Las Vegas property could best "showcase" the state. Assemblyman Atkinson reported that the Meeting usually attracted 800 to 1,200 attendees from the western states, and he wanted to ensure that dignitaries and attendees from other states would see Nevada as a state to which they would like to return.

Senator Schneider commended Assemblyman Atkinson on the time and effort he had put into the preparations for the CSG-WEST Annual Meeting.

SENATOR SCHNEIDER MOVED APPROVAL OF THE LEGISLATORS LISTED IN THE COMMISSION PACKET.

The following legislators were proposed for appointment:

Assemblyman Kelvin Atkinson, Chair

Assemblyman David Bobzien
Assemblyman Pat Hickey
Assemblywoman Marilyn Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Lynn D. Stewart
Senator Mo Denis
Senator Joseph P. (Joe) Hardy, M.D.
Senator Ben Kieckhefer
Senator Sheila Leslie, who later resigned from the Senate

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Horsford also commended Assemblyman Atkinson's work on preparations for the CSG-WEST Annual Meeting.

D. Appointment of Members to Advisory Council on Mortgage Investments and Mortgage Lending (NRS 645B.860) – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that a letter from James Westrin, Commissioner, Division of Mortgage Lending, Department of Business and Industry, regarding the reappointment of three members to the Advisory Council on Mortgage Investments and Mortgage Lending was contained within Volume 1 Tab V. D of the meeting packet. Mr. Malkiewich further advised that the three of the persons on the list were current members who had expressed an interest in being reappointed to the Council.

Assemblywoman Kirkpatrick reported that she had received a number of calls from persons wishing to serve on the Advisory Council on Mortgage Investments and Mortgage Lending. Those persons, she said, had submitted applications for appointment, but their names did not appear on the list included in the meeting packet. Assemblywoman Kirkpatrick asked for information that she could pass on to her constituents on how the process for appointment worked.

Mr. Malkiewich advised that NRS 645B.860 required that the Commissioner of the Division of Mortgage Lending submit names for appointment to the Advisory Council. Mr. Malkiewich indicated that the method of the appointment in the statute could be amended, or the Commissioner could be asked to submit additional names from which the Legislative Commission could make its choices.

Chair Horsford said that, for reasons of transparency, the complete list of names of those who had applied for appointment to an advisory council appointed by the Legislative Commission and the recommendations of the appointing entity should be provided in the future.

Assemblywoman Kirkpatrick said that because those continually applying for appointment had become frustrated with the process, she agreed with the Chair's recommendation.

Chair Horsford indicated he would entertain a motion for approval with the understanding that in the future all of the names submitted for appointment to any council for appointment by the Legislative Commission should be provided for the Commission's review.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO APPROVE THE APPLICANTS FOR THE ADVISORY COUNCIL ON MORTGAGE INVESTMENTS AND MORTGAGE LENDING AS RECOMMENDED WITH THE STIPULATION THAT IN THE FUTURE A FULL LIST OF NAMES FOR APPOINTMENT TO ANY COUNCIL APPOINTED BY THE LEGISLATIVE COMMISSION WOULD BE SUBMITTED FOR REVIEW.

The following applicants were recommended:
Clay Duncan
Cindy Stephens
Michelle Johnson

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

E. Appointment of Members to Nevada Commission on Minority Affairs (NRS 232.852 – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Council Bureau, advised that a letter from Christina Fuentes, Ombudsman of Minority Affairs, Department of Business and Industry, regarding the reappointment of three members to the Commission on Minority Affairs was contained within in Volume 1, Tab V. E of the meeting packet. Assemblywoman Kirkpatrick's concern about the process of appointments, he said, also related to the appointments to the Nevada Commission on Minority Affairs. Mr. Malkiewich noted that Ms. Fuentes and Terry Johnson, Director, Department of Business and Industry, were present and available to respond to questions.

Mr. Malkiewich advised that while three names were recommended for membership to the Commission, the letter also included statements of interest and resume highlights from several other interested candidates.

Senator Denis commented that he also shared the concerns expressed by Assemblywoman Kirkpatrick in the previous agenda item. Senator Denis asked for information on the process used for selection of the nominees and who they would replace.

Terry Johnson, Direction, Department of Business and Industry identified himself for the record and was joined at the witness table by Christina Fuentes, Ombudsman of Minority Affairs.

Mr. Johnson advised that the outreach process to solicit nominations was conducted by Ms. Fuentes who directly contacted some individuals, who had an interest in serving based on their background, experiences, and involvement in the community. Additionally, Mr. Johnson

said that the list contained in the meeting packet included those persons in total who had asked to be considered as well as recommendations of three members to the Commission. Mr. Johnson indicated that the key in bringing forth the recommendations was to maintain fidelity to the statute in terms of the composition of the Commission on Minority Affairs and to find persons whose interests, experiences, and background reflected requirements of the statute for the composition of the Commission.

Mr. Johnson explained that the Commission on Minority Affairs, after having been dormant for the last year and a half, held its first meeting in January 2012. He said there were five members currently serving on the Commission, and the three recommendations currently before the Legislative Commission would bring the membership up to eight. Additionally, he said there would be additional recommendations at the following meeting of the Legislative Commission to fill the ninth slot.

Mr. Johnson said that at its January meeting the Commission on Minority Affairs identified some goals and started the process of strategic planning concerning where the Commission wanted to direct its efforts and how its focus should be narrowed to achieve maximum effectiveness to accomplish its vision. Mr. Johnson advised that he had committed to ensuring the Commission's success going forward and planned to attend each meeting to lend support to the Commission's efforts.

Senator Denis asked who the suggested nominees would replace on the Commission.

Mr. Johnson said that although he did not have the names of those persons being replaced, he recalled that in attempting to contact individuals who had served, it was learned that some members were no longer available, and one member had passed away.

Senator Denis asked Mr. Johnson to comment on how the list was narrowed down to the names submitted to the Legislative Commission.

Mr. Johnson said the list was narrowed to the three selections based on background, interest, and experience as well as demography or ethnicity to provide for the diversity of representation required by the provisions of the statute.

In response to a question from Assemblyman Stewart, Mr. Johnson confirmed that the Commission on Minority Affairs would have a complement of nine members once all of the appointments were made.

Assemblyman Stewart asked for information concerning the statute's provisions for the breakdown on ethnicity.

Mr. Johnson advised that the provisions of NRS 232.852 included the creation of the Commission and its composition in terms of being representative of a variety of minority groups that reflected the general population of the state.

In response to Assemblyman Stewart, who asked whether the Commission included Asian members, Mr. Johnson advised that one of the persons recommend in the letter was Asian

and with the addition of that member, the Commission would currently be comprised of 25 percent Asians.

In response to Senator Denis who asked for the date of the next meeting, Mr. Johnson said the next meeting of the Commission on Minority Affairs was tentatively scheduled for March 5, 2012.

Senator Denis discussed deferring the appointments until the next Legislative Commission meeting and asked how often the Commission on Minority Affairs met.

Mr. Johnson advised that it was planned to ask the Commission to meet quarterly, but because it had been dormant for so long it was decided meetings should take place more frequently the first several months. The Commission, he said, initially met in January and a meeting had been contemplated for February, but since the calendar did not work out, the second meeting was tentatively scheduled for the first week in March. Mr. Johnson said that after all appointments were made and goals and strategies identified, he expected meetings to occur quarterly.

Chair Horsford advised that, without objection, the appointments to the Commission on Minority Affairs would be deferred to the next Legislative Commission meeting. Additionally, Chair Horsford suggested that Mr. Johnson meet with Senator Denis concerning any remaining questions he had. Subsequently, the Chair returned to the agenda item after Senator Denis advised that he had spoken with the Director of the Department of Business and Industry and was in agreement with the recommendations that had been made.

> SENATOR DENIS MOVED APPROVAL OF THE RECOMMENDATIONS FOR APPOINTMENT TO THE COMMISSION ON MINORITY AFFAIRS.
>
> The following applicants were recommended:
> Anna Siefert
> Elisabet Romero
> Paul S. Padda, Esq.
>
> SENATOR SCHNEIDER SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Assemblyman Conklin was not present for the vote.)

F. Appointment of Member to Commission on Ethics (NRS 281A.200 – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that the Commission members had received handouts related to Items V. F, G, H, and I. He explained that the information was not received in sufficient time to be included in the packet.

Mr. Malkiewich referenced the handout for Item V. F, (Exhibit C) which was information regarding an appointment to the Commission on Ethics to replace former

Assemblyman John Marvel who had resigned. Had there been more time, Mr. Malkiewich indicated a stronger outreach effort would have been made.

Mr. Malkiewich provided the following information concerning the complex formula for appointments to the Commission on Ethics:

- Not than four members could be from one county
- Not more than four members could be from the same political party
- Members could not be current public officers or employees
- Of the Legislative Commission's four appointments, two were required to be former public officers, and at least one was required to be an attorney

Mr. Malkiewich advised that Mr. Marvel was one of the two former public officers appointed by the Legislative Commission, and a former public officer was needed to replace him. Mr. Malkiewich further advised that were currently four Democrats and four residents of Clark County on the Commission. Thus, the new appointee could not be a Democrat or a resident of Clark County. Mr. Malkiewich reported that because the qualifications were identical to those in 2008 when Mr. Marvel was appointed, he contacted previous applicants, Sue Camp and Jim Weston, who indicated they would be willing to serve, if appointed.

Mr. Malkiewich advised that Mr. Marvel and Caren Jenkins, Executive Director, Nevada Commission on Ethics, had suggested the appointment of former Assemblyman John Carpenter. Mr. Carpenter was contacted and indicated he would also be willing to serve if the members of the Legislative Commission wished to select him. Mr. Malkiewich apologized for the short notice and advised that if the members so desired, the decision on the appointment could be deferred to the next meeting.

Assemblywoman Kirkpatrick noted that most members of the Commission were well acquainted with Mr. Carpenter and that because of his thoroughness and work ethic, he would be a great asset to the Commission on Ethics.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL TO APPOINT FORMER ASSEMBLYMAN JOHN CARPENTER TO THE NEVADA COMMISSION ON ETHICS.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

G. Appointment of Member to Legislative Committee on Health Care (NRS 439B.200) – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, referenced the handout for Item V. G (Exhibit D) and advised that Assemblywoman Peggy Pierce had resigned from the Legislative Committee on Health Care. The handout reflected the requirements for the

appointment of members.

Assemblyman Conklin advised that Assemblywoman Pierce resigned because of work conflicts.

> ASSEMBLYMAN CONKLIN MOVED APPROVAL FOR THE APPOINTMENT OF ASSEMBLYWOMAN CARLTON TO THE COMMITTEE ON HEALTH CARE.
>
> SENATOR DENIS SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

H. Appointment of Member to Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System (NRS 218E.555) – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that Assemblywoman Peggy Pierce had resigned from the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System. The handout related to V. H (Exhibit E) reflected the requirements for appointment to the Committee.

> ASSEMBLYMAN CONKLIN MOVED APPROVAL TO APPOINT ASSEMBLYWOMAN TERESA BENITEZ-THOMPSON 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.

I. Appointment of Member to Legislative Commission's Subcommittee to Study the Allocation of Money Distributed from the Local Government Tax Distribution Account (A.B. 71) – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that there was no handout for V. I. He explained that the appointment to the Subcommittee to Study the Allocation of Money Distributed from the Local Government Tax Distribution Account (CTX) was initially placed on the agenda because of uncertainty that one of the Senate members would continue to serve. Mr. Malkiewich advised that he had been working with Senator McGinness on the issue but was not sure that a replacement was currently needed. The appointment, he said, was placed on the agenda at the last minute in the event a change was required.

Assemblywoman Kirkpatrick, Chair of the Subcommittee, indicated staff had experienced difficulty in reaching Senator Halseth about attending the meetings. She further indicated that the attendance of all members of the Subcommittee was required for thorough discussions to

take place and because she would not allow votes to be taken on important action items without the Republican member.

Senator Roberson advised that, based on his last correspondence with Senator Mike McGinness, although Senator Halseth had missed several meetings, because of personal reasons, there was currently no need to appoint a replacement.

Chair Horsford discussed the obligation of legislators to meet the responsibility of their office both during legislative sessions and the interim periods, and he pointed out that it appeared the Senator was not meeting her interim responsibilities.

Senator Roberson indicated that many members of the Legislature had missed interim meetings and he opinioned that a debate about why one of his colleagues had not attended a particular meeting should not take place during a public meeting.

Assemblywoman Kirkpatrick agreed that the reasons concerning a possible replacement to the Subcommittee should not take place in a public forum. She noted, however, the CTX would be a "big part" of the discussion on the incorporation of Laughlin that would occur later in the meeting. The next CTX meeting, she said, was scheduled for March 15, 2012, at 3:00 p.m. and asked that Senate Republicans have a representative in attendance.

Chair Horsford advised that while a protocol existed to appoint alternates to fill in for sitting members of the Legislative Commission and the Interim Finance Committee, the same process did not exist for interim studies. Chair Horsford explained that while the Chair of the Subcommittee to Study the Allocation of Money Distributed from the Local Government Tax Distribution Account could allow another member of the Legislature to sit in on a meeting, that legislator could not act on agenda items.

Senator Roberson advised that he would look into the issue and that it would be addressed.

Chair Horsford reiterated that it was necessary for all members of the Legislature to meet their responsibilities during the interim between legislative sessions. Additionally, he pointed out that a lack of responsiveness and attendance on the part of one member affected the work of the Subcommittee.

Senator Schneider suggested that since the next meeting of the Subcommittee had been scheduled for March 15, the minority side should, perhaps, discuss a replacement if, in fact, Senator Halseth was unable to fulfill her duty.

Assemblywoman Kirkpatrick reiterated that she wanted to be certain Senate Republicans were represented and had a voice in CTX discussions during the four remaining meetings.

Senator Roberson asked whether it was appropriate to make a motion to appoint several alternates to the Subcommittee.

Chair Horsford advised that the rules did not allow the appointment of alternates for interim studies. He said, however, that the item could be deferred and would only be brought up again if Senator Halseth was unable to attend the Subcommittee meetings.

SENATOR SETTELMEYER MOVED TO DEFER THE APPOINTMENT OF A MEMBER TO THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE ALLOCATION OF MONEY DISTRIBUTED FROM THE LOCAL GOVERNMENT TAX DISTRIBUTION ACCOUNT.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

VI. LEGISLATIVE COMMISSION POLICY:

A. Review of Administrative Regulations –
Risa B. Lang, Chief Deputy Legislative Counsel
Please see attached list of regulations to be considered or access list electronically at http://www.leg.state.nv.us/register/Indexes/RegsReviewed.htm

Chair Horsford announced that the Commission had been provided an updated list of regulations (Exhibit F) and that Regulation 080-11 would be taken out of order to be considered first by the Commission.

Regulation 080-11

A REGULATION relating to business licenses; adopting provisions relating to state business licenses issued by the Secretary of State; and providing other matters properly relating thereto

Chair Horsford welcomed Secretary of State Ross Miller to the meeting.

Secretary of State Ross Miller, Office of the Secretary of State, identified himself for the record and introduced Scott Anderson, Deputy Secretary of State, Commercial Recordings, Office of the Secretary of State.

The Secretary expressed his thanks to the Commission for the opportunity to present Regulation 080-11, which, if approved, would reinstitute a 2003 policy regarding state business license fees. He explained that the regulation would close a "loophole" that would no longer allow LLCs [limited liability companies] to claim an exemption to the $200 business license fee.

The Secretary advised that the proposed regulation clarified language that a "natural person" who operated a home-based business that earned $27,000 a year or less was entitled to an exemption from the $200 annual business license fee. He explained that the regulation would reinstate the policy that was in place from 2003 to 2009 and close a loophole so that "shell companies" could no longer fraudulently claim being a home-based business earning less than $27,000 per year with entitlement to the exemption from the yearly $200 fee.

Secretary Miller provided the following history concerning the need for Regulation 080-11:

The state business license created in 2003 statutorily required every business in the state to pay an annual fee for a business license with certain limited exemptions for entities operating out of their home if the business earned less than $27,000 a year. He said the exemption was created for the benefit of direct sellers such as, representatives of, for example, Avon, Mary Kay, and Pampered Chef, and an understanding existed that the exemption would not apply to LLCs, corporations, and shell companies.

The Secretary advised that in late 2003, the Department of Taxation adopted a regulation "essentially identical" to the proposed regulation currently before the Commission. The 2003 regulation clarified language in the statute that to qualify for the exemption, a natural person, operating out of their home, could claim the exemption and that the exemption would not apply to an LLC, corporation, or shell companies. That regulation was approved by the Legislature and signed by former Governor Guinn. Additionally, the regulation was discussed at length by members of the Tax Commission and "on the record" that the regulation did not apply to LLCs, corporations, and shell companies.

The Secretary pointed out that there was "implicit acknowledgement" from the Legislature concerning the intended policy of the state because legislation had never been proposed that expanded the definition that the home-based business exemption included anyone other than a natural person.

Secretary Miller explained that in 2009, the Legislature transferred the authority of collecting the business license fee from the Department of Taxation to the Office of the Secretary of State. The Office of the Secretary of State, he said, was given a short time to prepare for administering the state business license and exemptions. The Secretary acknowledged that at the time, he made a mistake that allowed LLCs, corporations, and shell companies to claim the home-based business exemption. As a result, a significant shortfall in projected revenue occurred, and shell companies, he said, received a windfall by claiming exemptions to which they were not entitled.

The Secretary advised that legislation, introduced during the 2011 Legislative Session, attempted to clarify the law with essentially the same language the Department of Taxation used in its 2003 regulation. The legislation, he said, passed through both houses of the Legislature but ultimately was not signed into law by the Governor.

The Secretary asked the Commission to consider that shell companies, LLCs, and corporations had inadvertently been provided a windfall by claiming the exemption to the $200 business license fee to which they were not entitled. He reported that Nevada had been identified in numerous reports by the Department of Treasury, the Internal Revenue Service, the Department of Justice, in congressional hearings, and in the national media as being a haven for shell companies involved in illicit activities. Additionally, he pointed out that the federal reports and national publicity had brought unwanted attention to Nevada's commercial recording practices. Secretary Miller advised that the cable television business news channel, CNBC, was scheduled to present a one-hour program entitled, "Filthy Money," which

focused on shell companies alleged to be involved in illicit activities and that claimed an exemption to the yearly fee.

The Secretary further advised that the Office of the Secretary of State, under the current interpretation of the law, was required to enforce the statutes and bring action against those companies that were noncompliant. Secretary Miller reported that numerous audits revealed that the entities claiming they were based out of their homes and earned less than $27,000 might be doing so fraudulently. The Executive Branch Audit Committee, Division of Internal Audits, Department of Administration, an independent agency from the Office of the Secretary of State, in an extensive investigation, he said, could not find one instance of entities on file in the Office of the Secretary of State that had legitimately claimed the home-based business exemption. Additionally, he said the Office of the Secretary of State conducted its own internal audit and found that 73 percent of the entities that claimed the exemption appeared to have done so fraudulently or without proper basis. Those entities, he said, included businesses such as bowling alleys and nail salons. The Secretary noted, for the record, that those individuals selling, for example, Mary Kay, Avon, or Tupperware products out of there homes would continue to be entitled to claim the home-based business exemption. He advised that Regulation 080-11 simply clarified language that the exemption applied to a natural person and would no longer apply to LLCs and corporations.

Continuing his presentation, Secretary Miller advised that his Office had attempted to streamline the process for businesses to file for a business license. He said, however, the Office had been placed in the position of forcing entities that wanted to claim a home-based business exemption to submit a notarized paper form affirming that they had a residential address and earnings of less than $27,000. The form, he said, provided information that would hold the filer accountable if involved in a fraudulent operation.

The Secretary advised that during the 2011 Legislative Session, testimony from the opposition indicated that rather than closing the loophole, a better approach would be for the Office of the Secretary of State to focus on enforcement actions against those who fraudulently claimed the exemption. The same opponents, he said, had filed a lawsuit in district court asking that the court overturn the Office of the Secretary of State's practice of asking those entities for any information at all. The opponents he said, in essence, were asking that entities fraudulently claiming an exemption continue to be provided the ability to receive a windfall that was never intended when the statute was enacted in 2003. Additionally, he said the opponents asked that that the Office of the Secretary of State not be permitted to ask for any information that would allow verification of or enforcement actions against those who were not entitled to the exemption.

The Secretary pointed out that the honor system would not work for the state business license and that the proposed regulation would "level the playing field" because it created consistent practices across the state. He said any other alternative was not fair to the compliant businesses that paid the $200 yearly fee. For those reasons, the Secretary said the proposed regulation had the broad support of many industry groups including the Las Vegas Chamber of Commerce, the Retail Association of Nevada, and the Nevada Taxpayers Association.

The Secretary reiterated that passage of the regulation would go a long way toward leveling the playing field and the collection of $10 million that had been identified tied to Title 7 entities that had claimed the exemption to the yearly fee.

In closing the Secretary asked for the Commission's favorable consideration of approval of Regulation 080-11.

Chair Horsford asked Secretary Miller to provide a review of his authority to enact changes by regulation, the time line, and the reasons for the gap in the enforcement of authority.

Secretary Miller provided the following information:

- The state business license requirement became effective in 2003, under the provisions of Nevada Revised Statutes (NRS) 360.780.

- The statute, in effect since 2003, exempted certain business from the requirement to obtain a state business license.

- Soon after the enactment of the law in 2003, representatives of the Department of Taxation, who at that time administered the state business license process, saw a potential interpretation they believed was "outside of the spirit of the law."

- In 2004, the Department of Taxation, through the Tax Commission, passed an emergency regulation that was signed by Governor Guinn. That regulation, he said, was nearly identical to Regulation 080-11 currently before the Commission.

Secretary Miller advised that the current process for adopting regulations was the same process that existed in 2004, which necessitated first obtaining approval from the Office of the Attorney General and the Legislative Counsel Bureau. He pointed out that if there had been any concerns about the authority to adopt the regulation, those concerns would have surfaced in 2004.

Secretary Miller further advised that when the Office of the Secretary of State began the administration of the state business license in 2009, he and his staff noted that businesses, based out of a home and earning less than $27,000 a year, might be entitled to an exemption. Rather than reviewing the history behind the administration of the law, his Office, he said, allowed "anyone" to claim the exemption. The error in interpreting the statute was discovered only when it was realized that revenue projections were not being met. Secretary Miller acknowledged that he, "unilaterally and without authority," changed the long-standing policy of the state but that his mistake should not obligate him to continue that error into the future. The Secretary advised that Regulation 080-11, if approved, would clarify and reinstate the policy concerning the original intent of the law.

Senator Roberson, a member of the Legislative Commission's Subcommittee to Review Regulations, recalled the same discussion concerning Regulation 080-11 had taken place during the Subcommittee's December 29, 2011, meeting. Senator Roberson expressed disagreement with the Secretary's reasons for adoption of Regulation 080-11, which he indicated he would comment on if the Chair so desired.

Chair Horsford indicated he wanted to first take questions that would clarify the previous testimony.

Assemblyman Stewart noted that the Office of the Secretary of State currently had the authority to investigate those businesses not be in compliance and asked whether there was sufficient staff to conduct investigations.

Secretary of State Miller advised that his Office had the authority to initiate investigations into abuse of the law that had been revealed by numerous audits. He said, however, the ability to conduct investigations was limited because there were 60,000 entities currently claiming to be home-based earning less than $27,000 a year. The Secretary advised that resources had been shifted and investigators pulled from other cases to address the problem.

Senator Denis also recalled having heard the testimony concerning Regulation 080-11 in an earlier Subcommittee meeting and asked the Secretary to elaborate on how adoption would make enforcement of the law easier. Additionally, he asked for information on whether there were any differences between Regulation 080-11 and the regulation that was adopted in 2004.

Secretary Miller responded that passage of Regulation 080-11 would make oversight of the process easier because, rather than collecting information from 60,000 entities, a bright-line rule [a clearly defined rule or standard that left little or no room for varying interpretation] would apply. Only "natural persons" could claim the exemption, which in comparison, he said would only constitute a small number of individuals.

The Secretary also advised that the differences in the 2004 and 2012 regulations were minor. He advised that one difference, however, was in response to concerns by registered agents, based on the Department of Taxation's 2004 regulation, that Regulation 080-11 would not be workable because of the current scale of entities claiming the exemption.

In response to Senator Schneider who asked whether the regulation would only affect, LLCs, Secretary Miller advised that the regulation would affect Title 7 entities, which included corporations and LLCs.

Senator Schneider commented that he had LLCs for tax and estate planning purposes. He advised that even though a business license might not be required under the current statutes, because he was operating out of his home, he had been paying the $200 annual business license fee.

Secretary Miller reiterated that the way in which the statute was currently being enforced, a home-based business earning less than $27,000 a year net would be exempt from the need to obtain a business license.

Senator Schneider expressed agreement with adoption of the regulation.

Senator Roberson commented that currently, under the provisions of the statute, a home-based business defined as an LLC or other Title 7 entity, earning less than $27,000 would not

be required to pay the $200 annual business license fee. Senator Roberson, said, however, that under the provisions of Regulation R080-11 a home-based LLC, perhaps earning nothing, would be required to make a decision to forego the protections offered by "Nevada's LLC statute" or face a $200 annual business license fee.

Secretary Miller responded that adoption of Regulation 080-11 would reinstate the original 2003 policy that excluded Title 7 entities including LLCs, and corporations from claiming the exemption. 11:05:27 AM

In response to Senator Roberson's question concerning whether a home-based LLC would be required to pay a $200 annual business license fee, Secretary Miller said the policy established by the legislative body would be reinstated.

Senator Roberson opined that the Tax Commission had been wrong to initiate adoption of the regulation in 2004 and the Secretary was wrong to ask the Commission to adopt Regulation 080-11 in 2012. Senator Roberson noted that the Secretary's response appeared to indicate that he was in agreement that the regulation would change the current practice and the plain language of the statute. He indicated that businesses should be encouraged to come to Nevada and access its "great LLC statute," and that the regulation would force small home-based businesses to either give up the legal protection an LLC provided or pay an annual $200 fee that a struggling business might not be able to afford.

Secretary Miller advised that he simply wanted to reinstate the policy that existed from 2003 to 2009. He said, however, that it was the Senator's prerogative to sponsor a bill, if he wished, that extended an exemption to LLCs and corporations under the belief that such legislation would lure more businesses to the state.

Senator Roberson reiterated that he did not believe the Secretary had the authority to bring the regulation forward and asked why, if he believed he had the authority, had he brought Assembly Bill (A.B.)78 forward during the 2011 Legislature.

Secretary Miller advised that it was always preferable to work through the Legislature, and at the time he had not anticipated that there would be any controversy because of simply reinstituting a long-standing state policy. The Secretary indicated that the Legislative Counsel Bureau and the Office of the Attorney General agreed that he had the authority to bring the same regulation forward that the Tax Commission adopted in 2004. He pointed out that if he had lacked the authority to bring Regulation 080-11 forward, he would have been precluded from appearing before the Commission.

In a brief recap, Chair Horsford noted that Senator Roberson had indicated he was not in agreement with the policy, which had been established by the 2003 Legislature. The Chair indicated that whether or not there was agreement, a responsibility existed to carry out the law. He pointed out that the problem arose when the Office of the Secretary of State assumed the responsibility in 2009 and inadvertently misinterpreted the law, which he was attempting to correct.

Assemblyman Hansen asked for information concerning the enforcement mechanism and rate of compliance with the Tax Commission policy administered from 2003 to 2009.

Assemblyman Hansen asked whether that policy had been based on the honor system and whether the Secretary was attempting to limit the exemption to natural persons who operated sole-proprietor businesses.

Secretary Miller responded that Regulation 080-11 would apply to natural persons, sole proprietors, and general partners. Additionally, he said that from 2004 to 2009 when the Department of Taxation was responsible for enforcement, the policy was based on the honor system, and the reason for transferring administration to the Office of the Secretary of State was based on the knowledge that there was substantial noncompliance with payment of the business license fee. The fee, he said, should have been collected from all sole proprietors and general partners on file. At the time he said there were approximately 300,000 Title 7 entities in addition to 40,000 sole proprietors and general partners on file. Secretary Miller said that during the period from 2004 to 2009, the Department of Taxation had been collecting from approximately 155,000 companies, or a little over 50 percent.

Assemblyman Hansen asked for information concerning the penalty for failing to comply with the law.

Secretary Miller responded that penalties depended on the nature of the violation. He said that a fraudulent filing or deliberate criminal intent could carry a criminal violation and that civil penalties could also be applied.

Assemblyman Hansen recalled the Secretary had mentioned a 73 percent noncompliance rate and asked whether the policy had been enforced on that basis.

Secretary Miller responded that the number of fraudulent filings was huge and could not be ignored. He reiterated that that although resources had been shifted, the investigative staff was insufficient to specifically assign to fraudulent filings. The Secretary advised that the most efficient method of addressing the problem would be to clarify and reinstitute the old policy.

In response to Assemblyman Hansen, Secretary Miller confirmed that a sole proprietor home-based plumbing business that earned less than $27,000 a year would qualify for the exemption but that the same business if operated as an LLC would not qualify.

In response to Senator Roberson, who asked whether the regulation, if adopted, would be applied retroactively or prospectively, Secretary Miller advised that it would be applied prospectively.

Senator Roberson asked how the revenue that was anticipated by adoption of the regulation would be used since it was not a part of the budget and the Secretary had no authorization to use the funds.

Secretary Miller advised that the funds would be balanced forward to the General Fund as would a surplus of any other projected revenue. He explained that, if for example, an upturn in the economy provided a surplus in revenue from the number of projected business filings, that surplus would be balanced forward to the General Fund. He pointed out that the Office of the Secretary of State had an $11 million operating budget but brought in about $150

million for the General Fund to pay for essential services that would be determined by the Legislature in the next budget cycle

Senator Roberson commented that because the adoption of Regulation 080-11 was contentious, with many persons on both sides of the issue, a debate should be delayed until the 2013 Legislative Session.

Secretary Miller pointed out again that Regulation 080-11 was nearly identical to the "clear policy" regulation proposed and adopted by the Department of Taxation in 2004. He said he did not have the "unilateral authority to reverse the policy of the Legislature." The Secretary again acknowledged that he made a mistake and now had an obligation to correct the mistake and enforce the policy the Legislature intended. He said that the Legislative body could sponsor legislation that reversed that policy to create exemptions for Title 7 entities if they believed it would lead to economic growth.

Chair Horsford commented that he did not believe existing state law could be ignored.

Senator Denis asked for information concerning the number of entities currently claiming the exemption that were not entitled to it prior to 2009.

Secretary Miller advised that approximately 60,000 entities that claimed the exemption in 2011 would no longer be entitled to it if the regulation was adopted. The Secretary advised, however, of the unavailability of an accurate figure on the number of entities out of the 60,000 that were "definitively not entitled to claim the exemption." He said that, as previously indicated, an extensive audit conducted by the Executive Branch's Audit Committee was unable to verify that a single entity was legitimately claiming the exemption. Additionally, he said the Secretary of State's internal audit showed the number was about 73 percent. The Secretary advised that a lack of resources prevented verification of the information.

Senator Denis commented that the policy should be reestablished because it appeared that the original intent had been to collect the projected revenue from the annual fee.

Secretary Miller advised that in 2009 the business license fee was increased from $100 a year to $200 a year and there were many concerns raised by the community of registered agents that the increase would put Nevada at a competitive disadvantage in relation to other incorporation states. He pointed out, however, that what transpired was not an increase because, in effect, those entities went from paying $100 to paying nothing because there were permitted to claim an exemption to which they were not entitled. The Secretary explained that the intent in 2003 was that entities operating as limited liability companies were provided benefits under statute as well as a level of protection for its officers and directors that should be paid for through an annual business license fee whereas a college student mowing 50 lawns a month should be given a break.

Chair Horsford noted that the arguments were reminiscent of the deduction on net proceeds of minerals addressed during the 2011 Legislative Session wherein entities were not following the full intent of the law. The Chair noted that it appeared that the Secretary was attempting to fulfill his duties concerning the requirements of the business license component and needed the tools to carry out that job.

Sam McMullen, representing the Las Vegas Chamber of Commerce, identified himself for the record. Mr. McMullen reported that the testimony he was about to deliver in support of Regulation 080-11 was similar to testimony he provided in support of A.B. 78 during the 2011 Legislative Session.

Mr. McMullen testified that the position of the Las Vegas Chamber of Commerce since 2003 was that all businesses should be placed on the same level playing field and pay the same fees.

Mr. McMullen advised that the Las Vegas Chamber of Commerce agreed with the Department of Taxation's 2004 interpretation and not with the changes brought about by Secretary Miller's interpretation of the law in 2009. He reported that the position of the Chamber and that of the business community was that anyone doing business in Nevada should obtain a business license.

Mr. McMullen said that in 2003 some members of the Legislature argued for an exemption for home-based businesses such Mary Kay. Although the Chamber, he said, wanted the business license to apply to all businesses in an effort to capture information that would provide a strong database for analyzing the effect of taxes on Nevada businesses, the Chamber agreed that a minimal exemption could be applied to home-based businesses. Mr. McMullen, pointed out, however, that the Chamber's position regarding exemptions did not apply to organized businesses and not to those businesses that had taken advantage of the protections offered under *Nevada Revised Statutes* for LLCs, or other Title 7 entities. Mr. McMullen stated that it was the Chamber's position to hold to the original intent of the 2003 legislation and the 2004 interpretation by the Department of Taxation.

Mr. McMullen advised that accurate information regarding all Nevada businesses was required by the Chamber for purposes of analysis, which he said was tied to the annual fee. The problem, he pointed out, for the Chamber was that there was no information gathered for entities that did not pay an annual fee.

Additionally, Mr. McMullen advised that in 2002, Carole Vilardo, President of the Nevada Taxpayers Association, discussed the need for state agencies to share information about fees and taxes for businesses in Nevada. Sharing that information between state agencies, he said, would provide a mechanism to capture information about those businesses that were avoiding payment of the fee. Mr. McMullen reiterated that the Chamber's position was that all businesses in Nevada should pay the same fees.

In closing, Mr. McMullen asked for the Commission's favorable consideration of Regulation 080-11 and to return the policy interpretation to the Department of Taxation's 2004 interpretation.

Assemblyman Conklin thanked Mr. McMullen for his testimony, which he said appeared to indicate an undue advantage was provided to some businesses as a result of the 2009 interpretation and that the Chamber wanted to see a fair playing field.

Mr. McMullen confirmed that the Chamber's message was in support of a fair playing field for businesses similarly situated, which he said did not apply to individuals operating a home-based business earning under $27,000.

Matthew Taylor, President, Nevada Registered Agent Association, identified himself for the record, and, on behalf of the Association, expressed opposition to Regulation 080-11. He reported that Association representatives had also testified in opposition to A.B. 78 during the 2011 Legislative Session.

Mr. Taylor expressed concern that Secretary Miller was attempting to make the proposed changes through regulation because A.B. 78 was not signed into law. He said that the terms for "person" and "natural person" were clearly defined in statute and pointed out that Section 5 (2) of the digest attached to Regulation 080-11 changed the definition of the term, "person who operated a business from his or her home." The Secretary, he said, recognized at the time A.B. 78 was proposed that the language would require a change in statute. Mr. Taylor pointed out that administrative regulations had no authority to change the meaning of statutory language. He reiterated that the term "person" was clearly defined, and he said that A.B. 78 had been the correct format to propose a change.

Additionally, Mr. Taylor indicated that the Secretary was attempting to broaden the definition of a business to include home-based businesses that operated from homes outside of Nevada or companies that opened their homes to the public if such actions required a local business license. Mr. Taylor indicated that a state standard was being applied to a variable that had no continuity from county to county or from state to state. He further indicated that the language in Regulation 080-11 exceeded the definition of a home-based business that existed in statute and created an uneven application throughout the state and outside of the state because of the lack of consistency.

Additionally, Mr. Taylor commented that the Secretary had exceeded his authority and was attempting to circumvent the legislative process and that a lawsuit had been filed against the Secretary in the First District Court of Nevada. Mr. Taylor said that it was the responsibility of business owners and citizens to review the actions of government officials who exceeded their authority.

Mr. Taylor also indicated that the regulation was unnecessary because the definition was clear that a home-based business earning less than $27,000 a year qualified for the exemption and a business outside of that definition did not.

Mr. Taylor also advised that had he been President of the Nevada Registered Agent Association in 2004, he would have challenged the Department of Taxation's interpretation of the law. Additionally, he expressed concern that changing the status quo that allowed corporations and LLCs to claim an exemption as home-based businesses was based on the computation of a fee, which the Secretary had earlier indicated could raise $10 million in revenue.

In closing, Mr. Taylor reiterated his concern, on behalf of the Nevada Registered Agent Association, on whether the Commission and the Secretary had the authority to adopt the

regulation without the two third vote required by both houses of the Legislature and approval by the Governor.

Chair Horsford compared the proposed regulation to the Tax Commission's recently adopted regulation on deductions allowed to mining companies on the net proceeds of minerals and asked Mr. Taylor why he thought the Secretary did not have the authority to adopt a regulation that clarified a definition in current statute.

Mr. Taylor responded that the issue was whether the Secretary had the authority to change "a very clear definition in *Nevada Revised Statutes*."

Chair Horsford asked the Chief Deputy Legislative Counsel whether the terms in Regulation 080-11 had been reviewed and were in compliance with *Nevada Revised Statutes*.

Risa B. Lang, Chief Deputy Legislative Counsel, Legislative Counsel Bureau, advised that Legal Division staff drafts and reviews all regulations and informs the Commission if an agency exceeds its statutory authority. Ms. Lang advised that the Secretary of State had the authority to adopt regulations to carry out the law regarding state business licenses. She advised that agencies frequently further define terms or provide additional explanation on how laws were to be applied, and the Commission could determine whether Regulation 080-11 was within legislative intent.

In response to Chair Horsford, Ms. Lang confirmed that the Legal Division had determined that the Office of the Secretary of State had the authority to adopt Regulation 080-11 and the terms proposed therein.

Assemblywoman Kirkpatrick asked Mr. Taylor to discuss whether the annual $200 business license fee would cause businesses to leave the state.

Mr. Taylor advised of concerns that an undue burden placed on small businesses would bring no revenue to the state. Additionally, he said that the Secretary's interpretation differed from the way the Department of Taxation enforced the business license requirement on single-member LLCs. He indicated that single member LLCs or entities that were not conducting an active business had not been required by the Department of Taxation to obtain a business license.

Assemblywoman Kirkpatrick compared a recent personal cost to fax documents to her attorney and indicated that the $200 cost to obtain a business license was worth the legal protection provided to Title 7 entities. The Assemblywoman cautioned that clear intent should always be placed on the record during a legislative session.

Assemblywoman Kirkpatrick indicated that while she did not have the institutional knowledge of what occurred in 2003, she did recall that in 2007 members of the resident agents community threatened to leave the state if the business license fee increased from $100 to $200. Assemblywoman Kirkpatrick indicated that business should pay their fair share and create jobs to put to Nevadans back to work.

Chair Horsford asked Mr. Taylor whether he or the entities he was involved with had encouraged businesses to relocate to other states.

Mr. Taylor first responded to Assemblywoman Kirkpatrick's concern and said that he had not come forward because of a mass exodus of businesses but rather to testify that LLCs were not "getting a free ride."

In response to Chair Horsford, Mr. Taylor reported that he was aware that some registered agents and commercial incorporators had started promoting the benefit of other states over Nevada based on fees and the loss of stability.

Chair Horsford asked Mr. Taylor to address the disincentive to existing businesses that abided by the law because of other businesses unfairly taking an exemption to which they were not entitled.

Mr. Taylor indicated his concern was about the Department of Taxation unfairly collecting the fee from 2004 to 2009.

Chair Horsford pointed out that the Legislative Commission was considering Regulation 080-11 not the Tax Commission's regulation. The Chair indicated that established laws had to be followed and that members of the Nevada Registered Agent Association were not "playing by the rules based on the law."

In response, Mr. Taylor said he did not believe that any member of the Nevada Registered Agent Association had improperly advised or promoted clients into skirting the law.

In response to Chair Horsford's question concerning his previous testimony about encouraging clients to relocate to other states, Mr. Taylor said there was a difference between promoting a more marketable product and promoting incorporating in another state. Mr. Taylor advised once again that adoption of Regulation 080-11 would create a disincentive for "fledgling" small businesses to form a corporation or an LLC because of the annual fees.

Hearing no other questions concerning Regulation 080-11, Chair Horsford recessed the meeting at 11:43 a.m.

Chair Horsford reconvened the meeting at 11:56 a.m. and asked the members of the Commission to identify any of the remaining regulations they felt required additional discussion.

The following regulations were held:

R066-11 and R109-11 were held by Assemblyman Stewart
R063-11 was held by Senator Settelmeyer

Senator Roberson asked whether there would be additional discussion on R080-11.

Chair Horsford advised that action would not be taken on R080-11.

Senator Roberson noted that R080-11 had been considered by the Legislative Commission's Subcommittee to Review Regulations on December 29, 2011 and expressed objection that a vote would not be taken by the Legislative Commission.

Chair Horsford thanked Senator Roberson for expressing his opinion.

Chair Horsford announced again that no action would be taken on R080-11 and that R063-11, R066-11, and R109-11 would be held for further discussion.

Chair Horsford entertained a motion to approve the regulations that were not held.

> ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL OF R065-11, R084-11, R095-11, AND R112-11.
>
> SENATOR DENIS SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Regulation 63-11

A REGULATION relating to energy; revising provisions relating to the administration of the Account for Renewable Energy, Energy Efficiency and Energy Conservation Loans; revising the scope of projects for which loans from the Account may be made; revising certain provisions relating to applications for loans from the Account; and providing other matters properly relating thereto

Senator Settelmeyer asked for information on the funding currently available in the Account for Renewable Energy, Energy Efficiency and Energy Conservation Loans.

Robert Nellis, Energy Program Manager, Nevada State Office of Energy, Office of the Governor, advised that there was $12 million in the Account, and a work program was being processed to add $900,000.

In response to a question from Assemblywoman Kirkpatrick concerning the $900,000, Mr. Nellis reported that the $900,000 was from excess administrative funds that would go directly into the Account for loans on projects.

Assemblywoman Kirkpatrick recalled an IFC meeting in which 20 energy projects were approved and asked how many of those projects had begun making payments to the Account on the revolving loan.

Mr. Nellis reported that all projects have begun repayment according to their schedules and thus were all in various phases of repayment.

Assemblywoman Kirkpatrick commended the Office of Energy and noted that the available funding in the Account for Renewable Energy, Energy Efficiency and Energy Conservation Loans would continue to provide jobs and energy projects for the long term.

Mr. Nellis reported that the average length of a loan was approximately 42 months and that some were as short as 6 months. He also reported that approximately $700,000 had revolved in and out of the Account for energy projects.

SENATOR SETTELMEYER MOVED APPROVAL FOR THE ADOPTION OF R063-11.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 66-11

A REGULATION relating to dentistry; establishing fees for clinical examinations in dentistry and dental hygiene; revising provisions governing permits issued by the Board of Dental Examiners of Nevada; and providing other matters properly relating thereto

Assemblyman Stewart asked for information concerning the dentistry application fees and the $2,090 fee for administering a clinical examination, which he indicated appeared to be excessive.

Kathleen Kelly, Executive Director, Nevada State Board of Dental Examiners, explained that the $2,090 fee was for the American Board of Dental Examiners (ADEX) clinical examination administered by the Nevada Dental Board in conjunction with the North East Regional Board of Dental Examiners, Inc. Ms. Kelly explained that the clinical examination was administered to candidates seeking to obtain licensure either in the state of Nevada or in 42 other states.

Ms. Kelly advised that the application fees that Assemblyman Stewart mentioned could apply to candidates, who had taken the Western Regional examination rather than the ADEX examination and were applying for licensure in Nevada. The University of Nevada, Las Vegas (UNLV) students, who took the ADEX examination, she said, could apply for licensure with the UNLV examination results and no additional fee.

In response to questions Assemblyman Stewart asked concerning whether an examination fee was always required, Ms. Kelly explained that there was always a fee to take the clinical examination administered by the Nevada Dental Board. Ms. Kelly advised that currently $1,500 was collected for the Nevada State Board of Dental Examiners and $475 for the North East Regional Board of Dental Examiners' computerized portion of the examination.

Ms. Kelly advised that the examination included:

- Diagnostic skills
- Computerized questions
- Clinical examination of patients that included demonstrations of endodontics, prosthodontics, periodontics, and restorative procedures

Assemblywoman Kirkpatrick referenced Assembly Bill (A.B.) 55 of the 76th Session (2011) that made various changes related to dentistry and Assembly Bill (A.B.) 1 of the 76th Session (2011) that required periodic reporting of financial information by occupational licensing

boards. Assemblywoman Kirkpatrick referenced page 1 (Exhibit G) located behind Tab VII C 2 in Volume II of the meeting packet. Page 1 reflected financial information required pursuant to Assembly Bill A.B. 1 of the 76th Session (2011) for occupational boards including the Nevada State Board of Dental Examiners.

Assemblywoman Kirkpatrick asked for information on the collection of fees reflected in the financial information report for the Nevada State Board of Dental Examiners.

Ms. Kelly advised that the proposed regulation, if adopted, would increase the existing fee as authorized in A.B. 55 during the Legislature in 2011. She further advised that the Nevada State Board of Dental Examiners and other testing agencies agreed by contract to administer the examination for the same fee. Ms. Kelly also advised that the Nevada State Board of Dental Examiners reported all fees that were collected for examinations, permits or licensure.

Assemblywoman Kirkpatrick indicated that she would follow up with Ms. Kelly subsequent to the meeting on additional questions she had concerning the information reported for the Nevada State Board of Dental Examiners in the Occupational Licensing Boards Financial Information.

Ms. Kelly advised that she would be happy to respond.

> ASSEMBLYMAN STEWART MOVED APPROVAL FOR THE ADOPTION OF R066-11.
>
> SENATOR DENIS SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Assemblymen Hansen and McArthur, and Senators Gustavson, Roberson, and Settelmeyer voted no.)

Regulation 109-11

A REGULATION relating to educational personnel; revising provisions governing single subject majors and minors in foreign languages; and providing other matters properly relating thereto

Assemblyman Stewart noted on page 1 of the regulation that eight semester credits of supervised student teaching in a designated level of middle school or junior high school was required for licensure to teach in a middle school or junior high school. Assemblyman Stewart asked whether the same supervised student teaching in a high school would qualify an individual to teach in a middle or junior high school.

Jerry Barbee, Administrator, Teacher Licensing, Nevada Department of Education, responded that student teaching at the high school level would qualify for licensure to teach at the middle or junior high school level.

Assemblyman Stewart referenced page 3 of the regulation and the list of subjects recognized for an endorsement of a license to teach middle or junior high school. Assemblyman Stewart asked whether it was an oversight that computer science was not included in the list.

Mr. Barbee indicated that computer science was taught at the middle and junior high school level and that an oversight might have occurred since it was not included on the list. He explained, however, that computer science was taught in many middle and secondary schools under the career and technical education section and could, most likely, be found within another section of *Nevada Administrative Code* (NAC).

In response to Assemblyman Stewart, Mr. Barbee advised that computer science would be recognized as an endorsement for licensure to teach middle or junior high school.

ASSEMBLYMAN STEWART MOVED APPROVAL FOR THE ADOPTION OF R109-11.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

B. Determination of Feasibility of Incorporation of Laughlin Pursuant to Senate Bill No. 262 of the 76th Session (2011) – Terry E. Rubald, Chief Division of Assessment Standards, Department of Taxation

Terry Rubald, Chief, Division of Assessment Standards, Department of Taxation, thanked the members of the Commission for the opportunity to provide the Department's presentation of the "Report on the Fiscal Feasibility of the Incorporation of Laughlin" (Exhibit H).

Ms. Rubald reported that in August 2011, Department of Taxation staff began work with representatives of the Laughlin Economic Development Corporation (LEDC), the Clark County Department of Finance, and other Clark County agencies to collect and analyze information to prepare the "Report on the Fiscal Feasibility of the Incorporation of Laughlin."

Ms. Rubald advised that the Committee on Local Government Finance (CLGF) appointed a subcommittee to oversee the process, review the materials, and propose findings. The subcommittee met once in October and once in November before a final presentation of the report was made to the full CLGF in December. Ms. Rubald expressed the collective appreciation of the Department's staff for the cooperation received from LEDC and Clark County representatives in preparation of the study and for the observations and advice received from the CLGF.

Ms. Rubald reported that under the provisions of Senate Bill (S.B.) 262, 76th Session (2011), the Committee on Local Government Finance was charged with preparing a feasibility study that included the following:

- An analysis on the impact of incorporation on Clark County's tax revenue
- The impact on the revenues to the town of Laughlin before and after incorporation
- A comparison of expenditures made by the town of Laughlin with the projected expenditures of the proposed city
- Expenditures that would be made by Clark County for the support of the town of Laughlin that might be affected by incorporation

Ms. Rubald advised that the "Report on the Fiscal Feasibility of the Incorporation of Laughlin" included the following four main sections:

- The Executive Summary on pages 1 to 9 was prepared after the LEDC and the Department of Taxation prepared independent feasibility studies. Additionally, the Executive Summary included findings of the Subcommittee on Local Government Finance, chaired by Michael Alastuey, and ultimately adopted on December 14, 2011 by the full Committee on Local Government Finance, chaired by Marvin Leavitt.
- The Detailed Feasibility Analysis (DFA) on pages 10 to 62 was prepared by Economic Planning & Systems, Inc. on behalf of the LEDC.
- The Feasibility Study for the Incorporation of Laughlin on pages 63 to 94 was prepared by the Department of Taxation.
- Exhibits that supported the Department of Taxation's analysis were on pages 95 to 250.

Ms. Rubald pointed out some of the principal considerations that went into the Department of Taxation's study. She explained that to analyze the tax revenues available to the proposed city, the Department used similar procedures to those used to forecast revenues for all of the local governments and by local governments to establish their budgets.

Ms. Rubald advised that in the case of revenue from sources, such as real and personal property taxes, franchise fees, and fines and forfeitures, the Department generally relied on

information provided by the Clark County Assessor and other offices that reflected the status of existing conditions. Each revenue source, she said, was considered separately, and each forecast was made as if the proposed city was in existence for the 2012 fiscal year.

Ms. Rubald said that the Department did not rely on information about certain future events such as the ENN Mojave Energy solar project currently in the planning stages of development. Additionally, she reported that it was not yet clear whether the project would be centrally or locally assessed for property tax purposes or whether the project would be eligible for a substantial property and sales tax abatement.

Ms. Rubald advised that the Department's analysis assumed that the newly created City of Laughlin would request a CTX allocation and that it would provide police protection and one or more of the other services required to be eligible for a new CTX allocation. The Department, she said, also assumed that all services to the hotel corridor would be provided by Clark County as the hotel corridor remained outside of the city limits of the new proposed city. Ms. Rubald explained that if the town of Laughlin remained an entity, the percentage distribution of CTX, among the various local governments in Clark County, including the proposed City of Laughlin could change. Thus, she said the Department's analysis did not assume that the town of Laughlin would continue. Ms. Rubald advised, however, that the Clark County Commission would make a determination concerning whether a separate town of Laughlin entity would remain even after the creation of the city.

Ms. Rubald referenced Table A (Exhibit I) on pages 90 and 91, which outlined the projected revenue and expenditures of the proposed City of Laughlin. Ms. Rubald provided the following information:

- Column 1 reflected the revenues and expenditures of the current town taken from the 2009-2010 Clark County Audit

- Columns 2 through 7 reflected the various iterations of the study

- Column 8 reflected the Laughlin Economic Development Corporation's projection of revenue and expenditures

- Column 9 reflected the Department of Taxation's projection of revenue and expenditures

- Column 10 reflected the variance between the two studies

Ms. Rubald pointed out that with regard to property taxes [columns 8 and 9] there was little difference between the two studies, both hovering around the $2 million projection.

Ms. Rubald advised that the estimated assessed value of the new city was about $194 million to which a tax rate of $3.34, "a little more than that per hundred," was applied to derive a total property tax. The Department, she said, made some assumptions on the tax rate. Currently, the overlapping tax rate in Laughlin included a 28 cent levy by the Las Vegas Metropolitan Police Department (Metro), which would no longer apply if Laughlin was incorporated because the proposed city would provide its own police protection. Ms. Rubald said that the

Department, however, assumed that the new city would want to pick up the available 28 cents for its own uses. Thus, she said the Department's analysis was that the tax rate would remain the same for incorporation as prior to incorporation.

Ms. Rubald reported that revenue from licenses and permits were similar under both studies as was the base estimate for the consolidated tax. However, she pointed out that the Laughlin Economic Development Corporation's study and the Department's study varied significantly concerning how much additional consolidated tax (CTX), would be available to the new city to cover functions the new city would absorb, such as police services, detention, public works, and parks and recreation. Ms. Rubald explained that the base CTX received by the town of Laughlin in fiscal year 2011 was about $5.6 million. That amount, she said, had to be reapportioned to reflect the amount of CTX that should be distributed to the new City of Laughlin and the amount that should remain with Clark County for the hotel corridor.

Ms. Rubald advised that the Department allocated the CTX based on the percent of assessed value calculated for the proposed city compared with the total assessed value of the Town of Laughlin. She pointed out that the hotel corridor represented 56 percent, and the proposed city represented about 44 percent of the total assessed value of the Town of Laughlin. That ratio was applied to the base CTX amount received by the Town of Laughlin and resulted in an allocated amount of $2,471,291 for the new city. Ms. Rubald advised that the base amount of CTX needed to be further adjusted upward to reflect the new services, such as police services, detention, public works, and parks and recreation that the City of Laughlin would provide.

Ms. Rubald explained that Metro currently provided the town of Laughlin police protection, which the City of Laughlin would assume with incorporation. She reported, however, that Metro did not directly receive any distribution from the CTX account. Additionally, she said that although Clark County did not pay for Laughlin's police protection directly out of the General Fund, it contributed to Metro's annual budget through fund transfers from its General Fund.

To calculate the way the base CTX should be adjusted, Ms. Rubald explained that it was first necessary to determine how much of the police service cost was paid for by CTX. Ms. Rubald said that usually in governmental budgeting, the entity received funds from several different sources, which was placed in the General Fund from which expenditures were made. Ms. Rubald pointed out that since CTX was not a dedicated source of funds for one type of expenditure, the percentage of Metro's payments that represented CTX had to be determined. Department staff, she said, consulted with representatives of the Office of the Attorney General concerning the appropriate methodology to calculate CTX. Ms. Rubald advised that the Office of the Attorney General confirmed that it was appropriate to apply the formula found in *Nevada Revised Statutes* (NRS) 354.598747 even though the statute that authorized a share of CTX for a new city was NRS 360.740. Ms. Rubald explained that the formula in NRS 354 applied in all instances in which a local government had assumed functions previously provided by a different local government whether the local government was assuming the functions as new, such as the City of Laughlin or an already established entity.

Ms. Rubald advised that the Department estimated additional revenue available from CTX would amount to $977,466 while LEDC estimated that the additional revenue would amount to $3,274,776 (Exhibit I, line 18, page 90) The Department, she said, calculated an amount that represented a portion of the funds, as previously mentioned, that currently transferred to Metro for police services based on the proportion of the revenue stream that CTX represented to the whole revenue stream used to fund transfers from Clark County to Metro.

Ms. Rubald advised that currently the total cost of Metro's police service to Laughlin was about $8.5 million, and, of that, the Department estimated that 43 percent, or about $3.6 million, represented the cost of police service to the new city. The Department then estimated that about $433,000 of the $3.6 million of the police service costs would be paid for by CTX. The calculation was reflected on pages 177 and 178 of the "Report on the Fiscal Feasibility of Incorporation of Laughlin" (Exhibit H). A similar calculation and upward adjustment of $543,000 was made to the base amount of CTX to account for the absorption of other services, such as detention, public works, and parks and recreation to arrive at the projected $977,466 reflected on page 90, line 18 of Table A.

Ms. Rubald explained that the other revenue streams from charges for services, fines, and forfeitures were fairly similar between the two studies. Ultimately though, as reflected on page 90, line 39 of Table A, Ms. Rubald said that the Department projected a total revenue stream from all sources of $9,648,654 while the Laughlin Economic Development Corporation projected a total revenue stream of $12,475,678.

Ms. Rubald referenced the projected expenditures that were reflected in Table A, on page 91 and pointed out that the Department's study and the LEDC study were similar in most categories. One exception was reflected on lines 53 through 56 under the public safety item in which the Department estimated total expenditures of $7,575,351 and the LEDC estimated expenditures of $5,461,155, a difference of $2,114,196. Ms. Rubald explained the principal reasons for the difference was that the Department used a proportion of current costs experienced by Metro on behalf of the Town of Laughlin while LEDC projected lower salary levels, fewer calls for service, and a reduced staffing level.

Additionally, Ms. Rubald reported that line 78 of Table A reflected that the Department estimated total expenditures for all services at $11,160,453 compared to the LEDC analysis of $9,070,698. When the total expenditures were subtracted from total revenues, the Department estimated a negative ending fund balance of $1,511,799 compared to the LEDC estimate of a positive $3,404,980.

Ms. Rubald reported that the LEDC study stated that the proposed city would be able to cut costs because it assumed the city would not need to sustain the same level of services as Metro provided. The Department's study, she said, did not make that assumption since the philosophy throughout the Department's study was to project costs on the basis of current actual costs. The LEDC study also assumed there would be sufficient interim funding to carry the city until the availability of more permanent sources of taxes. Ms. Rubald explained that the Department's study, for example, did not show any transfer from the Fort Mohave Development Fund for operating costs because the Fund was generally limited to capital costs and because the Clark County Commission would make the decision to support the

operating costs of the new city. Additionally, Ms. Rubald said that the Department's study did not assume that land values would increase in the short term for purposes of the property tax.

Ms. Rubald explained that the results of the analysis were reflected in the shaded columns of the table (Exhibit J) on page 8 of the Executive Summary. The table also reflected the effects on the other entities shown in the column identified as the Remaining Laughlin Town, which would be supported by Clark County, and in the column identified as the Remaining Metro. Ms. Rubald advised that the table provided the analysis of the effects on all of the entities.

Chair Horsford asked why there were two studies and which of the two the Commission should rely on to determine the feasibility of incorporation.

Ms. Rubald responded that the Committee on Local Government Finance (CLGF) considered the information in both studies and made its final conclusions in the Executive Summary, which she indicated Mike Alastuey, Chair of the Subcommittee on Local Government Finance was prepared to discuss.

Speaking from her perspective as Chair of the Legislative Commission's Subcommittee to Study the Allocation of Money Distributed from the Local Government Tax Distribution, Assemblywoman Kirkpatrick reiterated her earlier concern about the emphasis being placed on the distribution of CTX for the proposed City of Laughlin. Assemblywoman Kirkpatrick pointed out that currently entities that incorporated after the formula for CTX was established were not receiving what they had anticipated was a fair share of the distribution. Assemblywoman Kirkpatrick asked for information concerning the tax responsibility of Laughlin residents after incorporation.

Ms. Rubald commented that currently under the provisions of NRS 367.40, a new entity could request an amount from the CTX account and if the Subcommittee adopted a new formula for distribution, the process for requesting a CTX distribution would continue to exist. Ms. Rubald explained that under the provisions of NRS 367.40, the Executive Director of the Department of Taxation would consider a request from a new entity in the context of not only the amount requested but how the request would affect all entities that shared in the distribution.

Assemblywoman Kirkpatrick said that the feasibility of the incorporation of Laughlin was a major decision and because she lived in a city that had struggled economically and counted on CTX as a large portion of its budget, she wanted the record to be clear that there was no going back for the citizens of Laughlin if the amount of the projected CTX distribution was not realized after incorporation.

Assemblywoman Kirkpatrick asked for additional information concerning Clark County's responsibility concerning the assets in Laughlin after incorporation and how the process would be affected if the ENN solar energy project did not go forward.

Ms. Rubald said that in regard to the current assets in Laughlin, it was her understanding that the government building there was owned by Clark County. She said that the building was in the hotel corridor, and the City of Laughlin would, most likely, negotiate with Clark County since the building would also provide space necessary for the city and for the hotel corridor.

Ms. Rubald advised that certain assets would, presumably, be purchased, although the study had not isolated all of the purchases that might be necessary.

In response to Assemblywoman Kirkpatrick who asked about other revenue sources, Ms. Rubald advised that the principal revenue sources included property tax, CTX, franchise fees, fines and forfeitures and other charges for services.

In response to questions Assemblywoman Kirkpatrick asked concerning how the newly incorporated city would receive its initial funding, Ms. Rubald advised that the Department estimated that initial funding would be provided from the beginning fund balance of $2,823,504. Additionally, she said that for the first fiscal year of the city's existence, there would be a distribution from the property tax. Ms. Rubald explained that the beginning fund balance would be based on the amount the town of Laughlin currently received, and a portion of the ending fund balance would become the beginning fund balance for the new city with a portion distributed to Clark County.

In response to questions Assemblywoman Kirkpatrick asked concerning the ending fund balance, Ms. Rubald referenced page 8 of the Executive Summary (Exhibit J) and pointed out that the Department estimated that $2,823,504 of the ending fund balance of the town of Laughlin would be distributed to the new City of Laughlin and that the remaining town of Laughlin would receive $3,992,766.

Assemblywoman Kirkpatrick indicated that if the question of incorporation was placed on the ballot, Clark County would be required to appoint a committee to write the questions as well as the "for and against arguments" for the ballot. Assemblywoman Kirkpatrick asked for information concerning public safety services for special events held in Laughlin, such as the River Run and whether a memo of understanding would be required to provide the additional public-safety coverage that might be required.

Ms. Rubald advised that it was her understanding that the new City of Laughlin would have its own police department but that Clark County would continue to maintain its Metro services for the hotel corridor. Ms. Rubald indicated that for special events, such as the River Run, each entity would provide public-safety services, which would be negotiated with the County through a memo of understanding

Chair Horsford asked Commissioner Sisolak if he wanted to respond to any of Assemblywoman Kirkpatrick's questions.

Steve Sisolak, Clark County Commissioner, District A, pointed out that the $2,823,504 ending balance was an assumption that the County could not guarantee.

Additionally, Mr. Sisolak advised that the Laughlin River Run event took place in the hotel corridor, which would be the unincorporated part of the new city and Clark County's responsibility. He further advised that the same first responder reciprocal agreements Clark County had with the cities of North Las Vegas and Las Vegas would apply to the new City of Laughlin.

In response to questions Assemblywoman Kirkpatrick asked concerning the facilities located in Laughlin, Commissioner Sisolak said there were a significant number of capital assets in Laughlin for which remuneration decisions would be required. He advised, however, that the Big Bend Water District (BBWD) served the citizens in Laughlin, and those assets would remain separate from the Las Vegas Valley Water District.

Assemblywoman Kirkpatrick suggested that when the Clark County Commission met to address the incorporation of Laughlin, they should address similar questions to those raised during the current Legislative Commission hearing. Assemblywoman Kirkpatrick pointed out that if the question was placed on the ballot, the committee appointed by the Clark County Commission to write the arguments for and against the question would have an opportunity to review the record.

Mr. Sisolak agreed that questions would be made available to the Board of County Commissioners. He said, however, that the Board wanted to provide the members of the Legislative Commission the first opportunity to determine feasibility before weighing in on the matter.

Chair Horsford asked Senator Hardy to discuss the provisions in S.B. 262 that made the incorporation of Laughlin contingent upon the determination of fiscal feasibility by the Clark County Commission or the Legislative Commission. The Chair asked specifically for clarification concerning the Legislative Commission's role in the process since many of the questions that had been raised during the meeting were based on the County's current responsibilities to the residents in Laughlin.

Senator Joe Hardy, Clark County Senatorial District No. 12, advised the members of the Commission that the citizens of Laughlin looked forward to working with Clark County representatives as cooperative partners in the process of incorporation. Senator Hardy reported that when the incorporation of Laughlin was presented to the Legislature during the 2009 Session, the legislation failed because of the concerns of gaming properties. He explained that when S.B. 262 was presented to the Legislature in 2011, the gaming properties within the "hotel corridor" were excluded from being incorporated into the proposed City of Laughlin.

In response to the Chair's questions concerning the Legislative Commission's role in the process, Senator Hardy advised that the legislation was subject to determination on whether incorporation was fiscally feasible. Thus, he said Clark County was integral to determining how to fund and operate the City of Laughlin. He explained, however, that if the City of Laughlin became a reality and ultimately faced financial difficulty, the state would be required to address the problem.

Senator Hardy advised that while there were issues that could not be resolved during the current meeting, the major concern was whether the residents of Laughlin could be trusted to make a decision concerning their own entity and to whom they were ultimately going to answer. He said the incorporation of Laughlin was not a secession from Clark County, and, as previously stated, the residents looked forward to continuing to work with the County.

Senator Hardy reported that, as previously stated, the transition of the structures would be negotiated through memos of understanding concerning how resources would be shared and that the Fort Mohave Development Fund, used to fund capital projects in Laughlin, would be included in the negotiation discussions. Senator Hardy told the members of the Commission that the current meeting was about whether the process should go forward and if it was to go forward, a "yes" vote by the Commission was needed to allow Laughlin residents the right to vote on incorporation. Senator Hardy noted that if incorporation was determined to be fiscally feasible, the primary election in June would also include voting on mayoral and city council candidates.

Senator Hardy commended Ms. Rubald, the Department of Taxation staff, and the Laughlin Economic Development Corporation for the work they contributed to the feasibility study. Senator Hardy said that although he understood why the Department of Taxation's study did not include the proposed $6 billion ENN solar energy project, all of the involved entities wanted the project to become a reality. The increase in tax revenue accompanying the project, he said, would provide an economic benefit to the entire state. Senator Hardy also spoke of the support that had emerged from Nevada's Congressional delegation, state legislative leaders, political groups, and building and construction trade unions for the right of Laughlin residents to vote on incorporation.

In closing, Senator Hardy discussed Exhibit 6, contained within the *Laughlin Incorporation Summary* (Exhibit K), which he said provided a variety of funding sources that would help the city through the transition phase.

Chair Horsford noted that the feasibility of incorporation was the primary issue and asked that Mike Alastuey provide additional information concerning the "net loss" reported in one of the studies.

Mike Alastuey, Chair of the Subcommittee on Local Government Finance, referenced the table on page 8 of the Executive Summary (Exhibit J). Mr. Alastuey pointed out the three highlighted columns and the column entitled, Proposed City of Laughlin After Incorporation – Taxation Estimates. That column, he said, included the estimates that Ms. Rubald had previously described.

Mr. Alastuey pointed out that under the Revenue and Other Sources column on the line for CTX Total, $3.5 million appeared in the middle highlighted column and $5.7 million appeared in the right most highlighted column, a difference of $2.2 million.

Additionally, he pointed out that under Expenditures and Other Uses for Public Safety - a total of the three numbers in the middle highlighted column for Fire, Detention, and Police compared to the numbers in the right most highlighted column totaled a difference of $2.1 million.

Mr. Alastuey pointed out that the Department of Taxation's estimates, in the middle highlighted column, reflected a drop from a $2.8 million beginning balance to -$1.5 million, a $4.3 million swing or the net loss to which the Chair had referred. He also pointed out that estimates brought forward by proponents of incorporation were more optimistic ending with a solid budget and a slight surplus.

In response to Chair Horsford's request for additional information concerning the driving factors of the difference, Mr. Alastuey advised that there were only a few, which included the following:

- A $2.2 million difference existed in the amount of CTX the Department of Taxation estimated and the CTX calculated by the Laughlin Economic Development Corporation (LEDC).

- A $2.1 million difference existed in public safety expenses that the Department of Taxation estimated and those that the LEDC estimated.

Additionally, Mr. Alastuey advised that local governments were required to file a five-year rolling capital plan that reflected all revenue sources expected to be received and all disbursements by projects. He said, however, that plan and level of detail was not yet developed although, as previously stated by others, negotiations would be required for the allocation of assets. Mr. Alastuey also indicated that he believed the LEDC had correctly represented that the entirety of the Mohave Development Fund would be available for transitional expenses and any capital needs going forward. Under current law, he said, the disposition of those funds was under the control of the Board of County Commissioners.

Mr. Alastuey also advised that if Laughlin was incorporated and established its own police force, an issue could develop between other elected officials, principally the sheriff and Metropolitan Police Department. He said that if, for example, the sheriff took a position that a proportion of officers would be redeployed to another place in the County rather than be displaced, a situation would exit in which costs that devolved to the city would not necessarily dissolve to the County. He explained that additional Metro officers released or redeployed throughout the County might become part of the cost-sharing formula that currently existed between Clark County and the City of Las Vegas.

Chair Horsford asked whether County officials and proponents of incorporation were considering the positive or negative effects of the variables or whether those determinations would be made after the residents of Laughlin voted on incorporation.

Drawing from previously presented comments, Mr. Alastuey indicated that much of the process was yet to come.

Assemblywoman Kirkpatrick said that the residents of Laughlin should have the right to vote on incorporation but at the same time she wanted to ensure the residents understood their involvement in the costs for the new city. Assemblywoman Kirkpatrick asked for additional information concerning the transitional process and on the pros and cons of incorporation.

Senator Hardy advised that Clark County officials and proponents of incorporation in Laughlin had met and would continue to meet for discussions concerning the process. He advised that the ballot question would be written to include information that city expenses would differ from county expenses and county expenses would be ongoing. Additionally, he said that although city expenses might not be less expensive for the residents, greater

opportunities would be available to the City of Laughlin and its residents than had been available to the Town of Laughlin.

Assemblyman Stewart noted that Mesquite had successfully incorporated 25 years ago and asked whether Mesquite's transitional process had been reviewed.

Senator Hardy advised that Mesquite had been used as a model for the incorporation of Laughlin. Mesquite, he said, had 1,200 residents, when they incorporated and its own police and fire departments, and city hall.

Chair Horsford invited the Laughlin Economic Development Corporation (LEDC) representative to provide his presentation on the feasibility of incorporation.

Jim Shaw, representing the LEDC, identified himself for the record, and advised that before making his presentation he wanted to clarify the time line for completion of the transitional process. He explained that the process would begin with voter approval of incorporation in the June 2012 special election, election of the mayor and city council in the November 2012 General Election followed by "drafting of budgets, ordinances, and tax levies."

Additionally, Mr. Shaw explained that after the November election, application could be made to the Department of Taxation for the CTX allocation. Mr. Shaw pointed out that while discussions were currently taking place, actual negotiations could only begin in November after election of the city council.

As previous speakers had stated, Mr. Shaw said that the main differences between the LEDC and Department of Taxation reports were the additional CTX allocation and public safety services. Beginning with public safety services, Mr. Shaw advised that Metro Police and the Clark County Fire Department had allocated existing services based on what they believed the cost to the city would be, and those costs were used in the Department of Taxation report.

Mr. Shaw said that the new City of Laughlin would control public safety services and that the costs for new city departments were based on a review of other cities, including Mesquite and Boulder City. Additionally, he said that after discussions with representatives of Metro Police and the Clark County Fire Department, it appeared that contracts for existing public safety services could be more costly than for the new city departments. He advised that the current 20 percent "out-of-town expense" applied to the Laughlin fire and police services represented a 20 percent reduction to public safety services for the new city. He said it was recognized that the current level of services could not be provided at the budgeted amount, but the goal was that between November and July, the City of Laughlin would establish a separate department for public safety services and work with Metro Police and the Clark County Fire to continue services with a budget that "worked" for the City of Laughlin.

Mr. Shaw advised, however, that the CTX allocation, the other half of the $4.3 million difference between the two reports, would be controlled by the Department of Taxation. He said, however, that under the provisions of NRS 360.740, a newly created local government could request an allocation from the Department of Taxation. Mr. Shaw reported that

language in the statute stated that if a newly created local government was to provide a service previously provided by another local government, the amount allocated to the local government that previously provided the service must be decreased by the amount allocated to the new local government. Mr. Shaw advised that the additional allocation of CTX was tied to the cost of services transferred from Clark County to the City of Laughlin and thus, Clark County would transfer services to the new City of Laughlin and at the same time transfer "additional" CTX. Mr. Shaw pointed out that the Department of Taxation had estimated that $5.5 million worth of services would be transferred and that it appeared reasonable that Clark County should allocate $5.5 million of CTX to offset the transfer of services.

Chair Horsford pointed out that Clark County could not make a determination concerning CTX and that assumptions not based on fact should be avoided.

In response to Chair Horsford's question regarding the CTX allocation to the new city, Mr. Shaw explained that the Department of Taxation determined the availability of a $1 million offset for the $5.5 million public safety services expense, which he indicated was a $4.5 million windfall for Clark County. He explained that LEDC's initial financial analysis requested $3.2 million for the cost for public services, which still left the County with $2.2 million.

Assemblywoman Kirkpatrick pointed out that the County would receive no windfall because the first tier of the total amount of CTX available for distribution was allocated among the 17 counties and then distributed among 175 local entities. Assemblywoman Kirkpatrick expressed some uneasiness about making CTX a major portion of a revenue source for incorporation. She pointed out that the new city's share of CTX might not materialize in the amount expected as had been experienced by the cities of North Las Vegas and Fernley.

Mr. Shaw expressed his apology and advised that during discussions concerning incorporation, the Township of Laughlin had been identified as the County and that the County had not been discussed for an allocation of CTX from the First Tier. He advised that the discussion concerned the difference between the City and the Township and again apologized for using the term County incorrectly.

Chair Horsford asked Mr. Shaw to continue his presentation and to conclude with any other arguments concerning why the LEDC portion of the feasibility study arrived at a different result than the Department of Taxation.

In summary, Mr. Shaw said that the LEDC study requested a portion of the resources for services for which the new city would be responsible and that it was "not a matter of fact" but rather "a matter of the amount." Although the Department of Taxation had agreed that $1 million was appropriate, Mr. Shaw said the formula was not clearly stated in NRS and that the amount should be more closely related to the services being transferred. That discussion, he said, would occur after the November election between the newly formed city council and representatives of the Department of Taxation followed with a determination by the Director of the Department of Taxation.

Mr. Alastuey commented that with respect to remarks Mr. Shaw made concerning the first and second tier distribution of CTX, the costs transferred to the city would not necessarily be taken away from Clark County. As previously stated, Mr. Alastuey explained that Clark County had arrangements with the Las Vegas Metropolitan Police, and representatives of Metro had indicated that there was "no appetite" to displace public safety officers to create savings.

Mr. Shaw expressed agreement with Mr. Alastuey and said that discussions had taken place with Clark County representatives concerning how the second tier distribution of CTX might be dealt with in the future.

Chair Horsford asked for information concerning what would occur if the result of negotiations were counter to the conclusions in the LEDC feasibility report.

In response to Chair Horsford's question, Mr. Shaw referenced Exhibit 6 contained within the report entitled, *Laughlin Incorporation Summary* (Exhibit K). The Summary included the existing fund balance and operating reserves and a list of initial new city start-up funding sources.

Mr. Shaw noted that the LEDC study had been defined as optimistic. He suggested, however, that the Department of Taxation's study was overly conservative, and he described the LEDC study as "more realistic."

Mr. Shaw presented the following brief summary of the start-up funding sources:

- Initial levels of service could be adjusted with funding from the $9.25 million expense budget

- The Fort Mohave Development Fund would provide funding for capital expenditures

- Local banks and other private funding sources were interested in providing lines of credit and interim financing secured by the anticipated ENN Solar Project and future tax revenues

- The transfer of existing assets to the new City would occur upon incorporation

- Temporary additional CTX allocations with a "sunset" provision tied to future levels of the ENN Solar Project property tax revenues

In regard to the temporary additional CTX allocations, Chair Horsford asked Mr. Shaw whether an assumption was being made in the LEDC study that the Laughlin City Council could effect a temporary allocation through an agreement with the County. The Chair pointed out that CTX allocations were administered through the Department of Taxation.

Mr. Shaw advised of a statute that allowed, through a memorandum of understanding, allocations between entities, an opportunity, he said, that could be used if a funding shortfall occurred.

Continuing his presentation on start-up funding sources, Mr. Shaw provided the following information:

- NRS 354.740 allowed for the use of lease-purchase and installment purchase agreements

- NRS 354.750 provided an alternative method for a local government to borrow money or purchase or lease property through loans from the County using the Fort Mohave Development Fund as collateral

- County transitional services could be provided by one or more existing County [township portion] service providers such as police, fire, public works until alternative services were established and sufficient funds were generated.

- Temporary staff and some professional staff for some city administration positions could initially be required on a contract or volunteer basis.

Concluding his presentation, Mr. Shaw advised that many viable alternatives were available if funding shortfalls were to occur.

Senator Hardy expressed his thanks to the members of the Legislative Commission, to the Governor, and to Assemblywoman Kirkpatrick for her work in providing a charter for the City of Laughlin. Additionally, Senator Hardy thanked the citizens of Laughlin and asked if those in the audience still supported the concept of voting.

Several residents of Laughlin stood and expressed their support of placing the incorporation of Laughlin on the ballot.

Senator Hardy indicated that he believed the issues of concern that had been brought forward would be resolved, and he expressed his appreciation for everyone's patience.

Chair Horsford thanked the Laughlin residents who attended the meeting and asked for additional public comment concerning the feasibility of the incorporation of Laughlin.

Jordan Ross, a 30-year resident and Constable of Laughlin, expressed his appreciation to the Commission and especially to Assemblywoman Kirkpatrick for bringing the discussion of the feasibility of incorporation forward on a bipartisan level. Mr. Ross commented that the cost of public safety was a major concern with a diversity of opinions on how an incorporated Laughlin could manage those expenses including having separate departments and contracting out to a variety of other providers. Mr. Ross asked that the Commission "keep an open mind" concerning public safety costs and that favorable consideration be given to allowing the residents of Laughlin to vote on incorporation.

Herm Walker, a resident of Laughlin, advised that he had testified before several committees in opposition to the incorporation of Laughlin but said that he was in favor of the right to vote despite assertions that had been made to the contrary. Mr. Walker said, however, that the right to vote was collateral and that the primary concern was whether incorporation was feasible.

Mr. Walker pointed out that the Department of Taxation's report reflected a $4.3 million revenue shortfall if Laughlin was incorporated and that the projected tax revenue from the ENN Solar Project was remote and speculative with no contemplation concerning the possibility of tax abatements. Additionally, Mr. Walker reported that Laughlin residents were concerned about public safety and the response time for medical emergencies especially because the LEDC report had indicated first responder services could be reduced.

Concluding his testimony, Mr. Walker advised that voting was premature because of too many unanswered questions concerning the feasibility of incorporation.

James Vincent, a thirty-year resident of the tri-state area as well as a long-time community advocate and member of the Laughlin Town Advisory Board, testified before the Commission to express his concerns regarding the feasibility of incorporation. Mr. Vincent indicated that he had read the "Report on the Feasibility of the Incorporation of Laughlin" and that he was aware of the support expressed by members of Nevada's political community. He said, however, there had been no expressions by members of the political community concerning whether incorporation was feasible.

Mr. Vincent pointed out that the continuing economic slump left little room for error and that he believed the move toward incorporation was probably three to four years premature. It was Mr. Vincent's opinion that incorporation could be delayed until the ENN Project was in operation with real rather than speculative revenues that could be studied.

Concluding his remarks, Mr. Vincent asked the members of the Legislative Commission to determine whether the incorporation of Laughlin was feasible based on the information provided by the Department of Taxation and LEDC reports.

Michael Bekoff, a Laughlin Town Advisory Board member, Cochair of the Community Development Committee, and former Cochair of the Public Works Committee, testified in opposition to the feasibility of the incorporation of Laughlin.

Mr. Bekoff said that the proponents for incorporation compared the cost of governing Laughlin to Fallon and Boulder City. Fallon, he pointed out, was the County Seat of Churchill County and the center of a large, fertile agricultural region. The nearby Naval Air Station, major super markets, shopping centers, automobile dealerships along U.S. Highway 50, and several casinos, he said contributed enormous sales tax revenue to Fallon's economy.

Mr. Bekoff described Boulder City as a "flourishing" corridor of restaurants, fast-food shops, and gift stores along U.S. Highway 93, with a "bustling" downtown district of antique stores and restaurants.

Mr. Bekoff pointed out that the proposed City of Laughlin with two gasoline stations, one small market, one restaurant, three fast-food establishments, and four bars would not provide enough sales tax revenue to support the proposed city.

Additionally, Mr. Bekoff pointed out that the depressed housing market in Nevada and decrease in assessed valuations had reduced property tax revenues that would be available to the city. The high vacancy factor, he said, would only increase because a number of homeowners had indicated they would place their homes on the market if faced with the prospect of increased property tax and fire insurance coverage. Mr. Bekoff also suggested that the proposed city would a suffer significant reduction in services currently provided to residents and that roads and infrastructure would deteriorate because of a lack of funds, equipment, and personnel needed for maintenance.

Mr. Bekoff commented that the Department of Taxation's report included information that all revenues and the beginning fund balance would be consumed in less than one year, and the newly incorporated city would be faced with a significant negative fund balance at the end of the first year of operation. Additionally, he pointed out that an analysis by the Clark County Water Reclamation District included information that, "incorporation would require an allocation of the current debt service to the new City of Laughlin." The estimated annual service, he said, was $3,784,400 per year. Mr. Bekoff theorized that with no previous credit rating, the new City of Laughlin would be unable to obtain funding at reasonable rates of interest. Additionally, he said that because the Fort Mohave Development Fund was legally required to be used only for capital improvement projects, it could not be used for operating or maintenance expenses or to guarantee a loan.

Concluding his remarks, Mr. Bekoff asked the Commission to consider whether it was fiscally feasible for Laughlin to incorporate based on a careful review of the Department of Taxation's report. At some point in the future with a better economy and a significant increase in population, businesses, and tax revenues, Mr. Bekoff said he believed Laughlin would successfully incorporate.

Richard Bullock, Chair of the Laughlin Democratic Club, commented that he had written a letter and jointly signed another letter with the Chair of the Laughlin Women's Republican Club to the Legislative Commission in favor of voting to incorporate Laughlin.

Mr. Bullock who described himself as a community activist, attorney, accountant, and actuary said he had read and analyzed the Department of Taxation and the LEDC reports in detail. He recalled Assemblywoman Kirkpatrick asking about the pros and cons of incorporation and said that if the state's report was to be believed, then incorporation was infeasible, but if the LEDC report was to be believed, incorporation was "very" feasible.

Mr. Bullock explained that the letters he had written to the Legislative Commission in support of incorporation were sent after an extensive debate and that the residents who engaged in that debate were "very" knowledgeable about the information contained in the reports. Mr. Bullock advised that the voters in Laughlin were educated enough to decide whether to rely on the LEDC's positive report or the Department of Taxation's negative report and that in the coming weeks forums would be held to provide additional education to Laughlin residents concerning the feasibility of incorporation. Concluding his remarks, Mr. Bullock asked for the Commission's favorable consideration to allow the residents of Laughlin vote on incorporation.

Pastor Gene Lee, Laughlin Community Church, testified in support of incorporation. Pastor Lee, who was soon to celebrate his 49th anniversary as a pastor, the past 15 years of which had been in Laughlin, said he had seen his congregation grow from a handful of people to several hundred members. Pastor Lee discussed being impressed with the education and intelligence of those in his congregation as well as in the entire community.

Pastor Lee said he had placed his trust in the intelligence and judgment of the residents of Laughlin to evaluate the pros and cons of incorporation. Concluding his remarks, Pastor Lee asked the Commission to also trust the citizens of Laughlin to intelligently determine their own best interests because they were the ones most concerned about fiscal feasibility.

Assemblyman Crescent Hardy, Clark County District No. 20, who expressed agreement with the previous two speakers, testified in support of incorporation.

Assemblyman Hardy, a resident of Mesquite, recalled hearing in 1984 that Mesquite could not financially afford to incorporate but pointed out Mesquite's success over the past twenty years. Although Mesquite had faced challenges, he said the city had established full-time police, fire and, public works departments as well as an airport that operated with a budget at 30 percent of county operations.

Concluding his remarks, Assemblyman Hardy asked the Commission to provide the residents of Laughlin, who were willing to work to sustain the community no matter what the cost, the opportunity to choose whether to incorporate.

Chair Horsford agreed that the residents of Laughlin had the right to vote. He said, however, that the question was one of feasibility, and, thus, he wanted to defer action to allow the Clark County Commission an opportunity to respond to some of the questions and concerns expressed by members of the Legislative Commission. The Clark County Commission, he said, had placed the question of feasibility on its agenda to be considered on Tuesday, February 21, 2012.

Senator Roberson said that he wanted to see the Commission take a stand and vote to determine the feasibility of incorporation during the current meeting. Senator Roberson expressed concern that the Clark County Commission would also defer action on the feasibility of incorporation, the 90-day period would lapse, and that the will of the people of Laughlin would be denied.

Chair Horsford thanked Senator Roberson for his comments but said that it was the Chair's prerogative to determine whether any action would be taken. He said he would not entertain a motion on the feasibility of incorporation, and the Commission would move forward to the next agenda item.

C. Approval for the Committee to Study the Structure and Operations of the Nevada Legislature (A.C.R. 12) to Meet Later than June 30, 2012 – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, referred to Item VI. C in Volume I of the meeting packet and advised that Assemblyman Segerblom, Chair of the Committee to

Study the Structure and Operations of the Nevada Legislature, had requested approval to meet after the June 30, 2012 deadline. Mr. Malkiewich explained that the Committee was planning a trip later in the month, at the expense of the members, to review legislative operations in Oregon.

> SENATOR DENIS MOVED APPROVAL FOR THE COMMITTEE TO STUDY THE STRUCTURE AND OPERATIONS OF THE NEVADA LEGISLATURE TO MEET AFTER THE JUNE 30, 2012, DEADLINE.
>
> ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.
>
> THE MOTION CARRIED (Assemblyman Conklin was not present for the vote.)

D. Approval for the Committee Studying a New Method for Funding Public Schools (S.B. 11) to Meet Later than June 30, 2012 – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, referred to Item VI. D in Volume I of the meeting packet, which he explained was a request to extend the meeting deadline for the Committee Studying a New Method for Funding Public Schools (S.B. 11). Mr. Malkiewich pointed out that the Committee was required to carry out its duties only to the extent of the availability of financing. He explained that an extension of time to receive funding from "gifts, grants, and donations," had already been provided at the Committee's first meeting, which had delayed activities by "at least a month." If funding was found, Mr. Malkiewich said that the Committee had requested approval to extend its work deadline to September 30, 2012. Mr. Malkiewich, mentioned, however, that it was possible the work would not go forward if financing was not found.

Chair Horsford noted that it appeared that the financing would be available and that he would entertain a motion for approval to allow the extension.

> ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL FOR THE COMMITTEE STUDYING A NEW METHOD FOR FUNDING PUBLIC SCHOOLS (S.B. 11) TO MEET AFTER THE JUNE 30, 2012, DEADLINE.
>
> SENATOR SCHNEIDER SECONDED THE MOTION.
>
> THE MOTION CARRIED (Assemblyman Conklin was not present for the vote.)

E. Approval for Members of Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System (NRS 218E.555) to be Reimbursed for Travel to California – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, referred to Item VI. E in Volume I of the meeting packet and reported that at the beginning of the interim, the Legislative Commission extended its prohibition against reimbursing legislators for out-of-state travel.

Mr. Malkiewich advised that the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System (Committee) had requested an exception to the policy because Senate Bill (S.B.) 271 of the 76th Session (2011) required the creation of a delegation to meet with a comparable delegation from California. Mr. Malkiewich explained that it was possible that a meeting with the California delegation would occur either on the California side of Lake Tahoe or in Sacramento. He advised that the Committee Chair had requested an exception to the prohibition that would allow some of the Committee's in-state travel money to be used if a meeting or meetings were to be held in California.

Assemblywoman Kirkpatrick, a member of the Committee, indicated she did not recall a conversation concerning reimbursement for out-of-state travel expenses and asked Senator Settelmeyer, also a member of the Committee, whether he recalled a discussion concerning reimbursement.

Senator Settelmeyer recalled a discussion concerning travel to California because meeting with the California delegation, he said, was required under the provisions of S.B. 271. Senator Settelmeyer pointed out that being from the northern part of the state and in closer proximity to Sacramento and to Lake Tahoe, he was more fortunate than other members of the Committee. He said, however, the California delegation first had to agree to meet with the Nevada delegation and that since reimbursement would come from the Committee's already established budget, he supported the request.

As a member of the Committee, Assemblywoman Kirkpatrick indicated that she did not want to set a precedent for others to request an exception to the prohibition for reimbursement.

Chair Horsford indicated that the difference from the standard "no exception rule" was that S.B. 271 required the delegations to meet, and the question was whether it was a legitimate-enough requirement based on the legislation.

Assemblywoman Smith noted that the provisions of the bill were clear and that if legislators were required to travel to California, reimbursement of expenses should be accommodated.

> ASSEMBLYWOMAN SMITH MOVED APPROVAL FOR THE LEGISLATIVE COMMITTEE FOR THE REVIEW AND OVERSIGHT OF THE TAHOE REGIONAL PLANNING AGENCY AND THE MARLETTE LAKE WATER SYSTEM TO BE REIMBURSED FOR TRAVEL EXPENSES TO CALIFORNIA.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED (Assemblyman Conklin was not present for the vote, and Assemblyman Stewart and Senator Roberson voted no.)

F. Approval for Members of Legislative Committee on Public Lands (NRS 218E.510) to be Reimbursed for Travel to Washington, D.C. – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, referred to Item VI. F in Volume I of the meeting packet and advised the Commission members that Assemblywoman Maggie Carlton, Chair of the Committee on Public Lands, had requested approval to provide a specific exception to the prohibition against reimbursing legislators for out-of-state travel expenses to the extent the Committee could generate savings.

Mr. Malkiewich advised that historically the Committee on Public Lands had taken a trip to Washington, D.C. to meet with the Congressional delegation and federal officers on matters related to public lands. Assemblywoman Carlton requested the exception to allow members of the Committee to travel to Washington for that purpose. Mr. Malkiewich explained that the Committee's in-state travel budget was higher than most committee budgets because of the remote areas to which the members had to travel for meetings. He said, however, that the budget would not be increased and reiterated that reimbursement from in-state travel funds would be provided only to the extent that sufficient budget savings could be generated.

Senator Schneider asked for information concerning how budgets were established for the interim committees.

Mr. Malkiewich advised that the Legislative Commission approved budgets for all interim studies at the beginning of each interim and occasionally was requested to allocate unspent funding.

Assemblywoman Kirkpatrick reiterated her statement in the previous item concerning setting a precedent.

Not hearing a motion, Chair Horsford moved on to the next agenda item.

G. Review of Amendment to Rules and Policies of the Legislative Counsel Bureau Concerning Access to Public Records Requests – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that the Legislative Commission at its August 24, 2011, meeting approved the policy concerning charges for public records requests. The intent of the public records policy, he said, was to set forth the law and the procedure and to establish the authority to collect fees. Mr. Malkiewich expressed his apology to the members of the Commission and advised that there had been no intent in the policy, proposed and approved in August, of closing access to public records or to expose members of the Commission to criticism for accepting his recommendation.

Mr. Malkiewich advised that the proposed Policy on Access to Public Records (Exhibit L), currently before the Commission, simply removed the language in question. He explained, however, that removing the language did not change the fact that the law must be read as interpreted by the Nevada Supreme Court unless *Marbury* v. *Madison* (1803) was to be reversed. Mr. Malkiewich advised that the law meant what it said and that placing language in the policy contrary to the Nevada Supreme Court ruling would not change Supreme Court precedent and removing the language did not mean that Supreme Court precedent was not applicable.

Mr. Malkiewich further advised that in December 2011, the Supreme Court ruled in the *Reno Newspapers* case that the limitations on disclosure must be based on a broad balancing of the interests involved and that the state entity had to bear the burden to prove that its interest in nondisclosure clearly outweighed the public's interest in access. That balancing test, he said, almost always resulted in an agency determining for public disclosure, but that did not mean that the test or the law could be disregarded.

Mr. Malkiewich advised that the standard had evolved beginning with the original *Donrey of Nevada v. Bradshaw* case, which involved law enforcement and that the public interest was to be balanced against the privacy or law enforcement justification in nondisclosure. That case, he said, also mentioned the private or government interest promoting confidentiality or nondisclosure, and he reiterated that the December 2011 ruling in the *Reno Newspapers* case referred to the state entity's interest in nondisclosure.

Mr. Malkiewich advised that he proposed removing the language to eliminate provisions that had raised objections but indicated that he expected more guidance would follow. The *Reno Newspapers Inc*. case, he explained, had been remanded, which would likely bring additional changes.

Mr. Malkiewich proposed that the fee language in the policy remain unchanged, which, he said, was the reason for the policy in the first place. He explained that, if for example, a request for 6,000 pages of paper was received, the requestor would be charged a fee of five cents ($.05) a page.

Additionally, Mr. Malkiewich advised that he had spoken to Barry Smith, Executive Director of the Nevada Press Association, and Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada (ACLU), who were in agreement with the language changes and with the fact that the Supreme Court interpretation would continue to apply.

In closing Mr. Malkiewich advised that his intent had not been to close access to public records and again expressed his apology for any difficulty that had been caused.

SENATOR DENIS MOVED APPROVAL OF THE POLICY CHANGES CONCERNING ACCESS TO REQUESTS FOR PUBLIC RECORDS.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Conklin was not present for the vote.)

H. Approval of Early Session Hires for Information Technology Services Unit for the 2013 Legislative Session – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, referred to Item VI. H in Volume I of the meeting packet regarding the request for approval of early hires for the Informational Technology Services (ITS) Unit for the 2013 Legislative Session

Mr. Malkiewich explained that although it was early to add session hires, budget reductions over the past few years had limited the number of ITS staff. He reported that continued development of the Nevada Electronic Legislative Information System (NELIS) project would be conducted within the Legislative Counsel Bureau's ITS Unit and other technology projects requested for the 2013 Session would be developed as well. Rather than adding permanent staff, Mr. Malkiewich advised that hiring two developers for the ITS Unit was believed to be the most appropriate approach to take.

Mr. Malkiewich advised that the two developers would be hired to work on updating the Nevada Legislature's website including redesigning the Assembly website as well as designing the website for accessing information with mobile devices. Mr. Malkiewich explained that each of the positions would be hired at either a grade 37 or 39, which was comparable to current programmer levels.

In response to Senator Denis who asked whether the positions would become permanent, Mr. Malkiewich advised that the new hires would be informed that they would only be employed through the end of the 2013 Legislative Session.

Senator Denis asked whether the permanent members of the staff would be trained to maintain the work developed by the session hires.

Mr. Malkiewich advised that he would ensure that the session hires would work with permanent staff to retain the knowledge of developments that had occurred during their employment.

In response to Assemblyman McArthur's question concerning funding for the session hires, Mr. Malkiewich advised that the cost for the two positions would be charged to the 2013 Legislative Session. Mr. Malkiewich explained that the money saved in the budget remained in the Legislative Fund and was used for startup costs for the following session.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL OF EARLY SESSION HIRES FOR INFORMATION TECHNOLOGY SERVICES UNIT FOR THE 2013 LEGISLATIVE SESSION.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Conklin was not present for the vote.)

Chair Horsford advised that unless requested by a member of the Commission, the informational items would not be heard.

VII. INFORMATIONAL ITEMS:

A. Legislative Committee Reports

B. Summary of Quarterly Reports on Disciplinary Action from the Licensing Boards and State Agencies

C. Miscellaneous Reports or Correspondence from State Agencies and Others:

1. Department of Business and Industry, Division of Insurance – Pursuant to NRS 686B.177 – National Council on Compensation Insurance, Inc. Revisions to Employers' Liability and Admiralty or FELA Coverage Increased-Limits Percentages and Factors

2. Occupational Licensing Boards' Financial Information Pursuant to Assembly Bill No. 1 of the 76th Session (2011)

3. Department of Health and Human Services, Grants Management Unit Annual Report July 1, 2010 – June 30, 2011

4. Department of Health and Human Services, Division of Welfare and Supportive Services and Department of Business and Industry, Housing Division – Report Concerning the Annual Evaluation of Programs of Energy Assistance Pursuant to NRS 702.280(2)©

D. Nevada State Board of Medical Examiners – Pursuant to NRS 630.127 Performance Audit of the Board of Medical Examiners

E. Public Utilities Commission (PUC) – Pursuant to NRS 704.0692(2), the PUC Conducted Consumer Sessions of General Interest Concerning NV Energy's Smart Meter Program and the Reid Gardner Power Plant –
1. Docket No. 11-07006
2. Docket No. 11-07005

F. Nevada Office of Veterans' Services – Pursuant to NRS 417.105 – Review of Report of Preferences for Local Businesses Owned by Veterans with Service-Connected Disabilities

G. Seventeenth Annual Report of the Las Vegas Office of the LCB

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.)

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada (ACLU) expressed her apologies to the Chair and indicated that she had not heard a call for public comment concerning the approval of the Pharmacy Board Regulation and the rule concerning access to public records.

On behalf of the ACLU, Ms. Gasca expressed disappointment with Legislative Commission's decision to approve the Pharmacy Board's Regulation 065-11 that would reschedule synthetic cocaine ("bath salts") as a Schedule 1 drug [drugs with a high tendency for abuse and no accepted medical use].

Ms. Gasca advised that the members of the Legislative Commission to be aware of the unintended consequences that came with approval of the Regulation that included a young person found with 4 grams of "bath salts" would be subject to a Class B felony [Class B felonies were serious crimes with severe penalties] conviction. Ms. Gasca pointed out that the war on drugs was failing because behavior concerning drug abuse was criminalized rather than being treated as a public health problem.

Ms. Gasca asked the members of the Commission for future consideration on the importance of shifting away from criminalizing behavior and toward providing assistance for substance abuse problems.

With respect to the LCB policy concerning access to public records, Ms. Gasca, on behalf of the ACLU, expressed support for the change in policy. Ms. Gasca also agreed that for each request for access to public records that came before the Legislature or any state entity, each entity would be required to prove to the Court that their nondisclosure outweighed the public interest.

In closing Ms. Gasca praised Mr. Malkiewich for his service to the state and particularly his leadership in promoting changes, such as in the last request to create new technologies, that would help to engage the public in the legislative process. In working with colleagues across the nation, Ms. Gasca said she had learned that the Legislative Counsel Bureau's technological advances were ahead of its counterparts in other states and again expressed her thanks to Mr. Malkiewich and members of the Commission.

Chair Horsford thanked Ms. Gasca for her comments. He advised that public comment had been taken at the beginning of the meeting and apologized that the Commission had not heard her concerns regarding the Pharmacy Board regulation at that time.

Chair Horsford also expressed his thanks to the staff for their work in putting the meeting together.

In response to public concern regarding the installation of NV Energy's smart meters, Assembly Hansen asked that the use of smart meters be placed on the next Legislative Commission agenda for discussion.

Chair Horsford thanked the members for their patience and time commitment and adjourned the meeting at 2:27 p.m.

Respectfully submitted,

Connie Davis, Secretary
Legislative Commission

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Senator Steven Horsford, Chair
Legislative Commission

EXHIBITS ON FILE IN THE DIRECTOR'S OFFICE Nevada Legislative Commission Date – February 15, 2012 – Time 9:05 a.m.		
Exhibit	**Witness/Agency**	**Description**
A		Agenda
B		Guest List
C	Lorne Malkiewich	Appointment to the Commission on Ethics
D	Lorne Malkiewich	Appointment to Legislative Committee on Health Care
E	Lorne Malkiewich	Appointment to Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System
F	Debra Corp	Updated List of Regulations
G	Fiscal Analysis Division, Legislative Counsel Bureau	Occupational Licensing Boards Financial Information
H	Terry Rubald, Department of Taxation	"Report on the Fiscal Feasibility of the Incorporation of Laughlin"
I	Terry Rubald, Department of Taxation	Pages 90 and 91 of the "Report on the Fiscal Feasibility of the Incorporation of Laughlin"
J	Terry Rubald, Department of Taxation	Pages 8 and 9 of the "Report on the Fiscal Feasibility of the Incorporation of Laughlin" Executive Summary
K	Senator Joseph Hardy	Laughlin Incorporation Summary Exhibit 6
L	Lorne Malkiewich	Policy on Access to Public Records