



MINUTES OF THE  
LEGISLATIVE COMMISSION  
NEVADA LEGISLATIVE COUNSEL BUREAU  
*Nevada Revised Statutes (NRS) 218E.150*

The Legislative Commission held its third meeting in Calendar Year 2016 on Tuesday, June 28, 2016. The meeting began at 9:24 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and was videoconferenced to Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada.

**COMMISSION MEMBERS PRESENT:**

Senator Michael Roberson, Chair  
Senator James A. Settelmeyer, Vice Chair  
Senator Kelvin D. Atkinson  
Senator Moises (Mo) Denis  
Senator Ben Kieckhefer  
Senator Joyce Woodhouse for Senator Aaron D. Ford  
Assemblywoman Teresa Benitez-Thompson  
Assemblywoman Irene Bustamante Adams  
Assemblyman Edgar R. Flores for Assemblyman Nelson Araujo  
Assemblyman Ira Hansen  
Assemblyman John Hambrick  
Assemblyman Lynn D. Stewart

**OTHER LEGISLATOR PRESENT:**

Assemblyman Jim Wheeler, Assembly District No. 39

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Rick Combs, Director  
Rocky J. Cooper, Legislative Auditor, Audit Division  
Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division  
Brenda J. Erdoes, Legislative Counsel, Legal Division  
Risa B. Lang, Chief Deputy Legislative Counsel, Legal Division  
Susan E. Scholley, Research Director, Research Division  
Debbie Gleason, Secretary for Minutes, Research Division  
Sylvia A. Wiese, Executive Assistant, Administrative Division

Items taken out of sequence during the meeting have been placed in agenda order.

## **AGENDA ITEM I—ROLL CALL**

Chair Roberson called the meeting to order.

## **AGENDA ITEM II—PUBLIC COMMENT**

Chair Roberson called for public comment.

Sally Summers, Founder and Executive Director, Horse Power (HP), provided testimony ([Agenda Item II A](#)) pertaining to Horse Power's mission. She spoke in response to a request by Assemblyman Wheeler, previously identified, Chair, Nevada Legislature's Commission on Special License Plates (NRS 482.367004), for an audit of HP. Ms. Summers claims four letters submitted to Assemblyman Wheeler constitute another frivolous and libelous attack on HP and appear to be part of an attempt to force a special audit in addition to its regularly scheduled yearly audit.

Knight Allen, resident, Las Vegas, Nevada, commented on testimony given by Council Members of the City of Las Vegas (City) during the February 19, 2016, Commission meeting concerning Assembly Bill 176 (Chapter 279, *Statutes of Nevada 2015*), transportation network companies (TNCs), and taxes versus fees. He stated the City was of the opinion that words mean only what it wants them to mean, and the City was going to administer the law the way it wanted, regardless of the Commission's position or Dillon's Rule. Mr. Allen referred to a statement made by one of the Council Members who concluded there are differing attorney opinions and a judge should decide concerning taxes versus fees. He cautioned against this, noting the relationship between the Commission and local governments is 100 percent "the turf" of the Commission. Mr. Allen emphasized TNCs should be answering to the Legislature through the Nevada Transportation Authority (NTA), Department of Business and Industry (DBI). He said the Legislature should decide how to allocate revenue among local governments, and if anything suggests local governments have a right to TNC revenue, that language should be removed and the Legislature should start over with subsection 2 of Section 44 of A.B. 176. Mr. Allen concluded by suggesting A.B. 493 (Chapter 465, *Statutes of Nevada 2015*) should be repealed and Dillon's Rule should be reinstated to its proper place as the only legitimate effective check on local governments' abuse of power and arrogance inherent in their governing structure.

Adrienne Sutherland, Clinical Director, Community Chest, Virginia City, Nevada, and licensed clinical professional counselor (CLC), testified regarding *Nevada Administrative Code* 641A, Legislative Counsel Bureau (LCB) File No. R091-14 ([Agenda Item IV A-5](#)). She said the Board of Examiners for Marriage and

Family Therapists and Clinical Professional Counselors (Board of Examiners) is proposing unnecessary restrictions to increase the scope of practice for CPCs. Ms. Sutherland stated the Board of Examiners is disorganized and does not allow Open Meeting Laws to take precedence, and the proposed regulations, if passed, would be very time-consuming and costly. In her opinion, the regulation would be a disservice to the public in a state with limited mental health services.

Andrea Johnson, M.A., Psychotherapist, Great Basin Behavioral Health and Wellness, Reno, Nevada, commented on R091-14 ([Agenda Item II B](#)), ([Agenda Item IV A-5](#)). She said the proposed regulation is cumbersome and unnecessary, and there are only two states that require additional training to treat couples and families. In her opinion, the Board of Examiner's interpretation of legislative language is far-reaching because CPCs are already competent and able to treat couples and families without additional requirements. Ms. Johnson stated the Board of Examiner's office is unorganized because it took 14 months for it to license her when she was already licensed in another state; adding more paperwork would only make it more difficult for it to keep up.

Jinan Barghouti, Community Chest, Virginia City, Nevada, and University of Nevada, Reno, graduate, said it is unclear whether the six courses and 500 internship hours with families and couples proposed in R091-14 is required before or after a master's degree is conferred, and recommended the regulation be resubmitted with more clarity. Ms. Barghouti explained the additional requirements make it more difficult for mental health professionals to practice couples and family counseling in rural areas where there is already a shortage of such professionals.

Jake Wiskerchen, Founder, Chief Executive Officer, marriage and family therapist (MFT), Zephyr Wellness, a mental health outpatient agency, testified that the requirements in R091-14 are astronomically high. He said the regulation requires CPCs to reenroll in an educational program that will cost far too much money and time, which inadvertently causes a roadblock to serving the community. Mr. Wiskerchen stated that during the Board of Examiners' hearings, none of the meeting minutes were available in a timely manner, and the public was kept from participating in the process. He said he attended the April 29, 2016, meeting and not only was public comment dismissively accepted, the Board of Examiners failed to take into account any suggestions or recommendations to loosen the process. The only amendment accepted was to reduce the internship hours from 750 to 500, which does nothing to address the course work requirement to treat couples and families. Noting that Nevada is nearly last in its access to mental health care, he said it needs to do a better job. One way to address that problem is to open the door to people who are already certified in some capacity to expand their scope of competence and practice. Mr. Wiskerchen expressed concern if R091-14 were passed that it would create unnecessary obstacles and would need to be undone later. It would be much cleaner if the Commission were to reject

R091-14 ([Agenda Item IV A-5](#)) for clarification and better articulated policies and procedures by the Board of Examiners.

**AGENDA ITEM III—APPROVAL OF MINUTES OF THE APRIL 4, 2016 MEETING—**  
Senator Michael Roberson, Chair

**MOTION:** Senator Atkinson moved approval of the minutes of the April 4, 2016, meeting. Assemblyman Stewart seconded the motion. The motion carried.

**AGENDA ITEM IV—LEGISLATIVE COMMISSION POLICY:**

- A. Review of Administrative Regulations – Brenda J. Erdoes, Legislative Counsel
1. Adopted Regulations Submitted Pursuant to NRS 233B.067
  2. Adopted Regulations Resubmitted Pursuant to NRS 233B.0675
  3. Adopted Regulation Submitted for Early Review Pursuant to NRS 233B.0681

Please see attached list of regulations to be considered or access list electronically at: [http://www.leg.state.nv.us/Register/IndexesRegsReviewed/LCMtg\\_List\\_2016\\_June28.pdf](http://www.leg.state.nv.us/Register/IndexesRegsReviewed/LCMtg_List_2016_June28.pdf).

Referring to the list of State agency regulations to be reviewed by the Commission ([Agenda Item IV A-1](#)), Chair Roberson asked the members to identify which regulations they would like held for discussion.

Assemblyman Stewart referred to a past discussion between Marilyn Kirkpatrick, former Nevada State Assemblywoman, Chair, Legislative Commission, and Assemblyman Hansen concerning the purpose of regulations. He said he has tagged many of the regulations for discussion and questioned their purpose. Assemblyman Stewart encouraged the agencies to make their regulations clear and concise; he asked for the following regulations be held for discussion: R091-14, R034-15, R060-15, R110-15, R140-15, R016-16, R029-16, and R050-16.

Assemblyman Hansen explained that he and Chair Kirkpatrick worked together to pass legislation that ensures the Commission has a clear and concise understanding of why regulations are necessary; prior to that, many regulations were simply being “rubberstamped.” He stated the constant expansion of regulations and policies has dramatically affected small businesses, and it is the Commission’s job to keep those regulations in check. Assemblyman Hansen requested the following regulations be held for discussion: R132-14, R115-15, R119-15, R135-15, R151-15, R050-16, R064-16, R088-14, and R144-13. He noted he asked to hold R144-13 because there is no small business impact statement.

Assemblywoman Bustamante Adams asked for R068-15 and R123-15 to be held.

Senator Kieckhefer requested R036-16 be pulled.

Assemblywoman Benitez-Thompson asked that R143-15 and R005-16 be pulled for discussion.

Chair Roberson asked for a motion to approve the following regulations: R050-14, R093-14, R127-14, R136-14, R065-15, R125-15, R127-15, R129-15, R134-15, R138-15, R139-15, R150-15, R152-, 15, R153-15, R154-15, R001-16, R002-16, R006-16, R007-16, R008-16, R009-16, R010-16, R018-16, R025-16, R026-16, R046-16, R047-16, R051-16, R060-16, R031-15, R045-15, and R069-15.

**MOTION:** Senator Denis moved approval of the regulations noted by Chair Roberson as not requiring discussion. Assemblyman Stewart seconded the motion. The motion carried.

#### Regulation 144-13

A REGULATION relating to the control of radiation; prescribing certain disciplinary actions that the Division of Public and Behavioral Health of the Department of Health and Human Services is authorized to take against an applicant for or holder of a license or registration authorizing the possession and use of radioactive materials; requiring certain applicants for such a license to appoint a radiation safety officer; prescribing the training and experience requirements for such radiation safety officers; adopting by reference certain federal regulations; requiring certain applicants for a license or renewal of a license authorizing the possession and use of radioactive materials to report additional details with regard to the cost estimate for decommissioning; requiring certain licensees to conduct operations to minimize the introduction of residual radioactivity into an area; requiring certain licensees and registrants to perform surveys as necessary to determine whether subsurface residual radioactivity is present and to retain records of those surveys; prescribing the fee for certain specific licenses for the use or possession of radioactive materials; and providing other matters properly relating thereto ([Agenda Item IV A-2](#)).

Assemblyman Hansen reminded the Commission he had asked that R144-13 be pulled because there was no small business impact statement, but he had since discussed the matter with the State Board of Health, Division of Public and Behavioral Health (DPBH), Department of Health and Human Services (DHHS), and has no further questions.

Brenda J. Erdoes, previously identified, clarified R144-13 is an advance approval of the regulation, and the DPBH will only be able to file it if it adopts and files exactly what is before the Commission today.

**MOTION:** Assemblyman Hansen moved approval of R144-13 as presented to the LCB. Senator Denis seconded the motion. The motion carried.

#### Regulation 088-14

A REGULATION relating to wildlife; increasing the number of demerit points that the Department of Wildlife must assess for certain wildlife violations; expanding the wildlife violations for which the Department must assess demerit points; and providing other matters properly relating thereto ([Agenda Item IV A-3](#)).

Assemblyman Hansen explained one of the primary purposes of the Commission is to ensure the agencies are in compliance with legislative intent. As he pointed out in the Commission's last meeting, he is extremely familiar with the legislative intent regarding the demerit points system. He said he wrote the legislation that passed during the 1995 Session, which has remained the same since that time, when he served on the committee that established the system. In his opinion, R088-14 goes beyond legislative intent. Assemblyman Hansen clarified he was not serving in the Legislature in 1995; however, he did write the bill and walked it through the process. He stated the legislation has worked extremely well, and the current citations issued for trespassing for fishing, hunting, or trapping on private property have averaged only about one per year—22 total citations issued since 2000—arguing there is no need to change the regulations.

Assemblyman Hansen said when R088-14 went through the public review process, several associations, bureaus, clubs, and coalitions, in addition to 14 out of 15 citizens advisory boards, all said "no" to R088-14, and yet, the public has been circumvented. The one case that stimulated the increase in the demerit points system involved a trapper who went onto private property and grossly violated the law. The warden who issued the citation to the trapper set bail at \$195. At that time, under Nevada law, if the violation was that egregious, the warden could have taken the trapper before a magistrate and had the trapper arrested. The problem is not that the demerit points system is inadequate; rather, the warden decided it was not that big of a deal. Testimony from the individuals involved in the matter said the warden came to them to ask that they be lenient on the trapper. He questioned why suddenly after 16 years of averaging only one citation per year, and after 20 years of legislation, the penalties are being bumped up, and in opposition to every sportsmen's group in the State and citizens advisory boards.

Assemblyman Hansen continued when all of this information was presented to the Commission during its last meeting, not one member made a motion, there was no second, and nobody wanted it. He emphasized the Commission was essentially hearing from the prosecution side of the issue. As Chair of the Assembly Judiciary Committee (AJC) during the 2015 Session, he said he learned a valuable lesson. The Committee nearly eliminated an extremely important part of the checks and balances between the prosecution and the defense. He continued 16 out of the 17 district attorneys, and the chair of the Senate Judiciary Committee advised him what the AJC was considering was a good thing. It was not until he spoke with members of the Nevada Supreme Court, and others, did he realize the necessity to be very careful when only the prosecution's side of something is heard—cautioning

there is the chance of adopting a very distorted opinion regarding penalties, and how severe the law was violated.

Assemblyman Hansen argued there are no extenuating circumstances allowed in the demerit points system process. For example, if someone violates the law, that person receives six demerit points; however, if that person appears before a judge, the judge might just slap the person's wrist because it may be a minor violation. The demerit points system does not do that; it is an "all or nothing" situation. When the current demerit points system was created in 1995, it was a fair and sensible demerit system because it recognized extenuating circumstances were not allowed under the law. Even if a judge lets someone off, that person still receives the maximum number of demerit penalties. When adding up everything and looking at the number of laws that have been broken, it must be recognized that it needs to be left alone. Nobody wants it changed except for a couple of people on the Board of Wildlife Commissioners (BWC), Department of Wildlife (NDOW), who have ramrodded through the regulation in the face of opposition, and when nobody supports it.

Assemblyman Hansen stressed the Commission should honor the will of the people. If there is a problem with a massive amount of people hunting, fishing, and trapping on private property, and existing penalties are insufficient, then bumping up the penalties should be considered. He urged his colleagues to allow R088-14 to die because it is not in compliance with legislative intent, and there is no need for it. Assemblyman Hansen emphasized R088-14 is redundant, ultimately harmful, and opposed by the people whom the Commission represents.

Jack Robb, Deputy Director, NDOW, explained the rationale behind R088-14 ([Agenda Item IV A-3](#)). He disclosed he was the Chairman of the BWC when the subject of increasing the DPS came about. In 2011, the Legislature gave the BWC the charge of looking at trails in close proximity to urban centers such as Las Vegas and Reno. The BWC then made some changes, which did not appease parties on either side of the issue. In 2013, Senate Bill 213 (Chapter 231, *Statutes of Nevada*) charged the BWC with reviewing trap-check visitation, trap identification, and setbacks in urban centers. Thereafter, the BWC appointed a committee, which held multiple meetings: one in Elko; two in Las Vegas; and two in Reno—in all, the committee heard over 40 hours of testimony. Throughout the hearings, multiple testifiers recounted trespassing cases, demerit violations, and repeated and late trap-check visitations. Mr. Robb pointed out R088-14 increases the demerit points from 3 to 6 for a trap-check violation for trappers who go beyond the 48-hour recommended period, which will keep repeated offenders out of the system. He commented some trappers are given 7 to 8 trap-check violations, yet, the BWC cannot revoke their license. Mr. Robb stated Assemblyman Hansen was accurate when he said everyone was opposed to the original 12 demerit points for trespassing language, of which he himself was pushing due to some very egregious trespassing violations. He said he strived for a



6 and 12 demerit system to allow for lesser violations and for extreme circumstances, such as shooting at deer in a cultivated field while also aiming at an occupied house. However, Mr. Robb said David Newton, Senior Deputy Attorney General, Office of the Attorney General, advised the BWC it could not have both systems because trespass is a willful act, which would require splitting the trespass laws and a change in NRS. The BWC recommended a 12 demerit system in the Fallon meeting, which was opposed by everyone because they did not think someone should lose their rights for one violation. The BWC listened and as a result made a compromise and changed the demerit points to 9, to which not everyone was opposed. He clarified Nevada's trespass laws do not allow for "mistaken trespassing." A person must knowingly be in the wrong place to be charged with trespass. Mr. Robb mentioned during the past year NDOW was called on eight different occasions for trespass violations and was only able to site one due to current trespass laws.

Tyler Turnipseed, Chief Game Warden, NDOW, explained there was much support at the Fallon meeting for a two-category demerit points system: 6 demerit points for trespass while fishing; and 12 demerit points for trespass while hunting big game and for trapping violations—the 9 demerit points ultimately arrived at was a compromise. He gave a breakdown of citations issued since 2008: 2008 (5); 2010 (5); 2012 (4); and 2013 (6). Mr. Turnipseed said NRS 503.240 makes it unlawful to hunt, trap, or fish upon certain private property without permission. It also cites the general trespassing statute, NRS 207.200, which makes it illegal for any person who goes upon the land or into any building of another with intent to vex or annoy, or willfully goes or remains upon any land or in any building after having been warned by the owner or occupant thereof not to trespass. He emphasized testifiers did not want high demerits for someone accidentally travelling across open rangeland and unknowingly crossing a fence. Mr. Turnipseed noted that particular situation would not violate NRS 207.200. He gave specific examples of how the law does or does not work in these cases.

Senator Atkinson stated for the record R088-14 does not affect his district. He asked for clarification of the changes.

Mr. Turnipseed clarified the first portion concerns fishing on private land, which had not previously been mentioned in regulations. He said NDOW currently issues 3 demerit points in such cases, and R088-14 changes that to 9 demerit points. The hunting or trapping on private property is currently a 6-demerit point violation, and R088-14 changes that to 9 demerit points as well. The second portion pertains to failing to visit trap snares or similar devices 48 hours, or more, after the required period for visitation. That means, with the exception of the two urban areas in the Las Vegas Valley and Reno, the trap-check time is 96 hours. The demerits assessed for missing that visitation time has always been 3—R088-14 stipulates if that time is missed by under 48 hours, the demerit points



assessed is 3; however, if the trap-check visitation is missed by 48 hours, or longer, the violation is assessed at 6 demerit points.

Senator Atkinson questioned the recourse for someone who has been issued a trespass citation when that person does not agree with the citation.

Mr. Turnipseed stated a person can make a “not guilty” plea in court, and demerit points are assessed only when there has been a conviction. If a person is found guilty, NDOW administratively assesses the demerit points. If a person is assessed 12 demerits within a 16-month period, NDOW revokes that person’s hunting, fishing, and trapping license. He said a person may appeal a revocation to the BWC. Beyond that, there is an appeal process where the case may be taken before a district court judge. If a person has accumulated a maximum of 9 demerit points, a hunter education course is available whereby, if taken, 4 demerit points may be removed from the record.

Senator Atkinson questioned the duration of the revocation period and the period a person must wait to reapply for a license.

Mr. Turnipseed replied there are varying levels of revocation periods. He surmised those periods were no more than three years for a misdemeanor, five years for a gross misdemeanor, and ten years for a felony.

Vice Chair Settlemeyer noted he appreciates the two delays of R088-14, and yet, he has not been contacted by anyone regarding the regulation. He expressed concern over what is and is not considered trespassing and commented on federal requirements of rangeland barbed wire fences. Vice Chair Settlemeyer stated he supports the trap visitation penalty in R088-14, and it is a reasonable compromise.

Senator Kieckhefer provided a synopsis of the origin and process of R088-14, which Mr. Robb validated.

Assemblywoman Benitez-Thompson asserted R088-14 is consistent with legislative policy, which is to enact laws concerning private property and trap visitation. In addition, she did not think the Commission was the appropriate legislative body for deciding citations and considering a certain level of minutia as has occurred in previous Commission meetings. She noted there are other processes for deciding such matters whereby people can be treated equitably and fairly.

Assemblyman Hansen shared that he aggressively followed up with all of the groups originally opposed to increasing the demerit points to 12, and they all maintain their opposition to not only 12 demerit points but to 9 also. He opined the reason people did not contact Vice Chair Settlemeyer regarding the regulation is because most people thought the matter was dead after the last meeting—the groups he contacted were shocked when they found out it was not.

Assemblyman Hansen said that because the witnesses today have left the impression there is support for a 9 demerit points system, he suggested having a public hearing on the matter to see whether R088-14 is supported by the public. He reiterated only 22 citations have been issued from 2000 to 2016. Regarding trappers with repeated violations, Assemblyman Hansen argued against punishing everyone because of one person's bad behavior. As a reminder, he said the ultimate punishment comes from a judge; the demerit points system is not designed as a punishment, except over a period. With a misdemeanor citation, a judge currently has the power to revoke licenses, and is not bound to the demerit points system. Assemblyman Hansen said this issue is huge in his district. His constituents, who comprise 7 counties and 38,000 square miles, are concerned over the constant escalation of regulations, rules, and penalties, when there is no problem to solve. Assemblyman Hansen urged his colleagues to oppose R088-14, while also urging the BWC to represent the wishes of the public.

Senator Atkinson agreed with Vice Chair Settlemeyer that nobody has protested against R088-14. In addition, there is recourse for individuals who think they have been wrongfully issued demerit points.

**MOTION:** Senator Atkinson moved approval of R088-14. Vice Chair Settlemeyer seconded the motion. Assemblyman Hansen voted no. The motion carried.

#### Regulation R123-15

A REGULATION relating to taxation; establishing provisions for the administration, calculation and payment of the commerce tax imposed on the Nevada gross revenue of certain entities engaged in business in this State; adopting provisions for the administration and calculation of the credit against the payroll tax imposed on certain businesses for the payment of the commerce tax by a business; and providing other matters properly relating thereto ([Agenda Item IV A-4](#)).

Assemblywoman Bustamante Adams questioned Section 16 pertaining to determining whether a business is engaging in business in Nevada, how business registration works in conjunction with the Office of the Secretary of State (SOS), and whether businesses are registered.

Assemblywoman Bustamante Adams and Deonne E. Contine, Executive Director, Department of Taxation (Taxation), discussed Section 16. Ms. Contine stated it is intended to identify out-of-State companies that have not been part of Nevada's tax system. If a company is registered with the SOS and is doing business in Nevada, it is subject to the "commerce tax." Section 16 was designed to provide guidance to taxpayers regarding activities that constitute doing business. She noted Taxation also provides a corresponding questionnaire on its website. Ms. Contine thought the intent of the legislation was to bring businesses that are earning revenue in Nevada, but are not licensed or incorporated in Nevada, into the

taxing structure; the assumption was the tax base would increase. She explained Taxation's goal is to provide information and to give taxpayers the tools and resources needed to identify whether they are subject to the tax and to identify the liability. In addition, if a taxpayer makes a mistake and is audited, or brings something to Taxation's attention, Taxation would enforce the law. Continuing, Ms. Contine said for the past six months, Taxation has been sending letters to taxpayers and conducting training throughout the State, including contacting about 50 organizations, and reaching out to rural and urban communities, as well as using social media. In terms of administration, Taxation obtains information from the SOS pertaining to registered businesses and out-of-State businesses benefitting from revenue within Nevada.

Discussion ensued between Vice Chair Settlemeyer and Ms. Contine regarding concern over requesting too much unnecessary information on the forms and whether R123-15 limits gathering information to only what is necessary. Ms. Contine clarified Section 17 identifies limited information requested of companies ([Agenda Item IV A-4](#)). In addition, the tax return form requires just enough information to be able to identify the taxpayer within the system. Vice Chair Settlemeyer expressed continued concern regarding that issue. Ms. Contine mentioned collecting too much information was also a concern to taxpayers during the regulations process. The information outlined in R123-15 is language everyone agreed upon in order for the taxpayer to file a return while not having to provide information regarding revenue.

Senator Kieckhefer and Ms. Contine discussed Sections 14, 15, and 16 regarding the definition of what constitutes subjection to the commerce tax, defining a business entity, and how to define whether an entity is conducting business in Nevada. Senator Kieckhefer, pointed out subsection 15 of Section 16 concerning holding, acquiring, leasing or disposing of any real property located in this State. He expressed concern that some of the sections are very broad and asked how they will be interpreted. Ms. Contine responded R123-15 ([Agenda Item IV A-4](#)) is a business entity tax; therefore, if someone is an entity conducting business in Nevada, that person would be subject to the tax. However, individuals who own a home who do not hold a business license nor conducts business is not subject to the commerce tax—Section 16 simply identifies business activity.

Ms. Contine stated if someone has a business activity, and that person owns property in Nevada, he or she is subject to the commerce tax. She clarified businesses have the right to choose the North American Industry Classification System (NAICS) code, United State Census Bureau, on their initial return; however, the law requires any changes to the NAICS code to be approved by Taxation. If the NAICS code on the initial return is different from the code on record with Taxation, Taxation will take the taxpayer's word that the NAICS code being provided is correct. On the other hand, if a taxpayer is audited, or if there is a dispute and the wrong NAICS code is on file, Taxation would address that with the

taxpayer. It is not Taxation's intent to create problems, and to initially limit what people think is their business activity. In addition, Ms. Contine stated the conflict of the initial filing will not trigger an audit.

Concerning the process to change a NAICS code, Ms. Contine said taxpayers may request a change up to the date of filing, which is also when the liability is due, and Taxation has 60 days to approve or deny the change. Sometimes entities with multiple lines of business do not initially know from which line they will earn the majority of their revenue and whether they will have to change their NAICS code. The 60 days allows businesses to make that determination before the filing due date and for Taxation to review the code. It is also meant to anticipate businesses might not know whether a NAICS code change is necessary until they are finished with the taxable year and have completed their calculations. In that case, they would have to decide which NAICS code applies to their business. If Taxation denies a request for a NAICS code change and an entity has additional liability, the entity would be subject to penalties and interest; conversely, if an entity paid on a higher amount and was due a refund, Taxation would issue a refund with interest.

**MOTION:** Senator Denis moved approval of R123-15. Assemblywoman Bustamante Adams seconded the motion. Vice Chair Settelmeyer voted no. The motion carried.

#### Regulation R091-14

A REGULATION relating to mental health; providing for an endorsement to the license of a clinical professional counselor or a clinical professional counselor intern which authorizes the licensee to assess and treat couples or families; and providing other matters properly relating thereto ([Agenda Item IV A-5](#)).

Assemblywoman Benitez-Thompson questioned what prompted R091-14.

Colleen Peterson, Ph.D., Member, Board of Examiners, replied in 2007 the licensure for CPCs was created. At the time, practices for CPCs were recognized as distinct and different. When the scopes of practice were defined for CPCs, the assessment and treatment of couples and families was specifically excluded. Thereafter, considering the mental health crises in Nevada and recognizing the need for more clinicians, and the fact folks were moving to Nevada who had been practicing in states that did not exclude working with couples and families, S.B. 155 (Chapter 158, *Statutes of Nevada 2013*) became effective, and the Board of Examiners was charged with determining competence for extending to CPCs the practice of working with couples and families.

Dr. Peterson stated the Board of Examiners engaged in a deliberate and lengthy process related to determining competence, and reviewed all of the scopes of practice for CPCs in the United States. Some argued CPCs were not prohibited from working with couples and families in the other states. However, an extensive

review of the scopes of practice for CPCs revealed only 19 states specifically included working with couples and families—6 of those required coursework specific to couples and families; and 31 states did not include working with couples and families in their scopes of practice.

Dr. Peterson continued the Board of Examiners looked at the accrediting educational requirements for counselors and marriage and family therapists in Nevada as well as to national associations and accrediting bodies. The Board of Examiners found areas that overlapped and other areas with content specific to couples and families. It could not determine with certainty whether CPCs that had been licensed in another state or educated in a certain program may not have the content or skillset specific to working with couples and families. The Board of Examiners identified five areas where it knew there was content and clinical experience specific to working with couples and families, which prompted the regulations. For example, in the area of ethical and legal issues, counselors and marriage and family therapists must take a course specific to that area of expertise. However, there are ethical and legal constraints to working with couples and families, and if the Board of Examiners cannot determine a CPC has met those requirements, it will have to contend with complaints.

In addition, Dr. Peterson said the Board of Examiners wants to give CPCs as much credit as possible. After reviewing the accreditation requirements of the Council for Accrediting of Counseling & Related Programs (CACREP), the Board of Examiners found it was able to credit post 2009 graduates who took courses relative to ethical and legal issues, which is reflected in the regulations.

Assemblywoman Benitez-Thompson questioned whether marriage and family therapists and CPCs are allowed to counsel families in a group setting.

Assemblywoman Benitez-Thompson and Dr. Peterson discussed the current status of CPCs counseling families without the Board of Examiner's endorsement to do so. Dr. Peterson said the regulations will establish a means for CPCs accredited to counsel couples and families outside of Nevada to counsel them inside the State without CPCs having to take additional courses. She argued the Board of Examiner's position is not to make CPCs take additional courses. If the CPCs have the course content or clinical experience, the Board of Examiners will accept documentation through transcripts or external verification. Assemblywoman Benitez-Thompson said the Board of Examiners stated that during the hearings testifiers argued the regulations would inhibit mental health providers' ability to serve in rural areas. She questioned how people in the rural areas are currently being serviced if they should not be receiving this type of counseling without the Board of Examiner's endorsement.

Dr. Peterson replied if a CPC is working in the State of Nevada and does not have a specific license to work with couples and families, the Board of Examiners would

not pursue that practice unless it received a complaint. Part of the rationale for the Board of Examiner's endorsement is to expand the scope of practice. When the Board of Examiners interprets the exclusion for working with couples and families, specifically working with children, it knows a CPC would never work with children without the parents, so the Board of Examiners has never said a CPC cannot work or consult with the parents. When treating a couple or family relationship, it requires a specific skillset. The purpose of the regulations is to help get clinicians into the rural areas who can work with couples and families.

Assemblywoman Benitez-Thompson requested that a member of the public be allowed to speak specifically to the regulation's requirements concerning CPCs and the Board of Examiner's endorsement.

Adrienne Sutherland, previously identified, stated CPCs are prohibited from working with couples; however, they are allowed to consult with families for ten minutes during a session to provide support, but are not allowed to therapeutically engage with families. She said the endorsement would be in the interest of CPCs; however, the requirements are extensive and time-consuming, whereas MFTs do not need to meet these requirements. Therefore, the question becomes why would a CPC be required to undergo 500 hours of clinical experience with couples and families when an MFT can go through a 3,000-hour internship without the same requirement.

Assemblywoman Benitez-Thompson described her experience when she and Assemblywoman Bustamante Adams brought forth a bill during the 2015 Session that merged two boards, which now has regulations. She said two different professions clashed over certain issues and it became unpleasant—she pondered whether a discussion regarding a statutory change would benefit the Board of Examiners. Assemblywoman Benitez-Thompson questioned the regulation's effective date and whether CPCs would be given a certain period to take the courses in order to obtain the endorsement.

Dr. Peterson said once CPCs are approved, they can apply for the endorsement. She acknowledged the history of territorial issues in the mental health field. Dr. Peterson explained CACREP has a track specifically for people who want to work with couples and families, which is what the Board of Examiners looked to for requirements.

Assemblyman Stewart said he could not see the practicality with suddenly not allowing CPCs in rural communities who have the expertise and experience to counsel families, and requiring them to obtain a credential when they do not have accessibility to the course. He stated he saw no need for the regulation.

Chair Roberson questioned if CPCs currently cannot legally counsel couples and families, how do the regulations put them in a worse position.

Dr. Peterson replied CPCs' scope of practice currently does not include couples and families. However, S.B. 155 gives CPCs who can demonstrate competency the opportunity to expand their scope of practice to include couples and families, but it did not give CPCs "blanket" authority to do so. She clarified practicing CPCs new to Nevada assume they are automatically authorized to work with couples and families, whereas that scope of practice has been clearly defined. The Board of Examiners is not trying to limit CPCs; rather, it is looking out for the public by ensuring CPCs have the necessary skillset to treat couples and families. If CPCs from out-of-State can demonstrate that competency through educational coursework and clinical experience, the Board of Examiners is happy to grant its endorsement.

Assemblyman Stewart commented it is ridiculous to not allow a CPC who is treating an individual concerning marriage issues to also meet with the spouse.

Dr. Peterson elaborated there is a different focus of treatment when working with an individual as opposed to treating a couple. She reiterated consultation is permitted with a couple, but not treatment. The approach for treating a relationship and family issues is different from what is needed for treating an individual.

Dr. Peterson confirmed for Assemblyman Hansen there is a shortage of couples and families CPCs in Nevada.

Assemblyman Hansen replied the regulations make no sense from a rural perspective if the desire is to rectify the shortage of CPCs authorized to counsel couples and families; the regulations would have the opposite effect. He posed the question whether the regulations are intended to expand opportunities in Nevada or to reduce them.

Dr. Peterson stated, in her opinion, and from the perspective of the Board of Examiners, R091-14 will expand opportunities and not hinder them.

Senator Kieckhefer questioned whether CPCs who move to Nevada who are licensed to treat couples and families outside of Nevada are eligible for endorsement from the Board of Examiners on the basis of reciprocity.

Dr. Peterson explained the Board of Examiners does not have the authority for direct reciprocity; however, if a CPC is licensed as an MFT and is in good standing, application for licensure in Nevada is allowed, and the Board of Examiners can grant licensure. Or, if the MFT national exam has not been taken, the Board of Examiners can grant an interim permit and assist individuals in getting licensed as soon as possible. Further, if an individual is a practicing MFT in another state as a counselor and wants to be a licensed counselor in Nevada, that person cannot automatically work with couples and families; however, the endorsement of the



Board of Examiners would allow them to add working with couples and families to their license as a CPC, if they have a significant number of hours of experience in that area.

Senator Kieckhefer presumed the concern is not about the endorsement, but rather it is nearly impossible for individuals serving in rural communities who do not have years of experience in marriage and family therapy nor a graduate degree in the field from an accredited institution, to obtain these types of credits while continuing to practice. He requested Dr. Peterson respond to the claim the additional requirements are overly burdensome.

Dr. Peterson countered the educational requirements in the regulations are lower than those for individuals seeking an MFT license. In the area of marital and family studies, licensure as an MFT requires two courses; only one is required for an endorsement of a CPC. Individuals who come out of a CACREP accredited program after 2009 have already met that requirement. There is a minimum of three courses in models and theories for an MFT licensure as opposed to the regulations that require one course each in couples and families. In terms of ethical and legal issues, some programs cover working with couples and families and others do not, which creates an overlap. If an applicant can demonstrate the courses taken covered ethical and legal content, the Board of Examiners will endorse the applicant. In addition, Dr. Peterson stated the courses are available at the University of Nevada, Reno (UNR), the University of Nevada, Las Vegas, and online.

Assemblyman Hansen expressed concern whether the regulation will impact CPCs in rural communities, and he questioned whether those individuals are practicing illegally. Furthermore, he understands the courses are not available online.

Ms. Sutherland responded regarding the required coursework. She said individuals seeking a CPC license are already required to take at least 70 credits in master's-level coursework to become a CPC in Nevada. If CPCs are required to take more courses, she thought they could be taken online; however, many graduate programs will not allow participants to take individual courses.

Jinan Barghouti, previously identified, stated she is a drug and alcohol counselor who currently attending UNR to fulfill the licensing requirements of a CPC. Under her current practice and with a bachelor's degree she is permitted to treat couples and families as long as the treatment pertains to addiction. Ms. Barghouti stated the requirements in R091-14 ([Agenda Item IV A-5](#)) are very stringent for herself and her colleagues considering there are not many MFTs in rural Nevada, and because she must drive hundreds of miles to see people. As a student, she thinks the additional requirements are unfair and have prompted her to consider moving out of State. Ms. Barghouti argued CPCs treat couples and families in 48 states. She compared the situation to a theoretical argument; MFTs and CPCs

have their own. In her opinion, the greater the diversity among professionals, the more people can be helped.

Ms. Barghouti clarified for Assemblyman Hansen that she works under her drug and alcohol license, but she is a student working on obtaining her CPC license. She would like to work with couples and families, and is not opposed to taking the extra courses. However, the information pertaining to what courses are required have not been made available to the public, and the meeting minutes of the Board of Examiners have not been posted. Ms. Barghouti asked the Commission to reconsider the regulations. In addition, she pointed out the regulations propose 500 hours, but it is unclear whether they should be included in the 3,000 hours that is usually fulfilled post-graduate, or whether they are in addition to the 3,000 hours, which MFTs are not required to do because it is very difficult to get couples and families into therapy.

Assemblyman Hansen said he would like to see the maximum number of people available in the rural areas. He expressed concern the regulations will penalize people currently practicing illegally, or if practicing legally the regulations will force them into additional courses and requirements, which will cause them to move into urban areas to get away from onerous regulations.

Dr. Peterson stated she disagrees with the individuals who have testified against R091-14 ([Agenda Item IV A-5](#)), which is based upon an extensive review of State law, accreditation and educational requirements, and professional education and training. She said the Board of Examiners recognizes Nevada's low ranking in terms of mental health needs, especially regarding the special challenges in rural Nevada. In her opinion, the issue is about competence. The Board of Examiners is charged with demonstrating competence and providing criteria for people to demonstrate that competence in order to expand the scope from which they have previously been prohibited. The regulations will increase access to treatment for couples and families, particularly in the rural areas. The Board of Examiners demonstrated it was mindful of the need in rural areas by holding four workshops and a hearing. It tried to balance the need to demonstrate competence while not being overly restrictive. She countered an earlier statement that MFTs are not required to complete 3,000 hours of post-graduate couples and families therapy; the graduates may not have to report those hours, but supervisors are monitoring them to ensure they have that experience.

Chair Roberson said it appears the regulations were promulgated in response to S.B. 155 from 2013. He read the names of the primary sponsors of the legislation pointing out most of them were rural Nevada legislators, noting it was voted out of the Senate 21-0, and voted out of the Assembly 39-0 with three members excused. Chair Roberson wondered why there is so much controversy over regulations of a bill that was passed unanimously. He suggested deferring R091-14 until the next Commission meeting, unless it would cause real hardship

from Dr. Peterson's perspective. Chair Roberson expressed his desire for Dr. Peterson and Assemblywoman Benitez-Thompson to meet with other legislators who also have concerns in an effort to determine the core issues of the regulations.

Dr. Peterson said that would be fine; however, the Board of Examiners is repeatedly receiving requests from people asking whether the endorsement is available. She conjectured some of the folks do not want to be held to a level of competence, and they have a certain expectation, which is not what the Board of Examiners was charged to do—it was charged with establishing competence to expand CPCs' scopes of practice.

Chair Roberson asserted he did not want to hold up a regulation if it is consistent with the intent of the Legislature.

Assemblywoman Benitez-Thompson clarified her questions were simply to figure out what was happening. She said she is not the person to decide the arduousness of an endorsement. As a social worker, she received her master's degree; however, in order to become a licensed clinical social worker she realized additional supervised hours in a clinical setting were required. With that hard work comes the privilege of more clinical work with families that includes diagnoses and treatment. Assemblywoman Benitez-Thompson said she was trying to gauge whether putting the endorsements into place for interns and CPCs would stop anyone from working in order to meet new licensing regulations—it does not appear that is the case. Rather, if the regulations were passed today, everyone working today would be working tomorrow, and those who wish to pursue the endorsement could do so. She recommended passing the regulations, but she also suggested the professions should discuss what it means to be that licensed professional and then to have a conversation with the Board of Examiners about the arduousness of the additional requirements. Assemblywoman Benitez-Thompson commented she did not hear argument concerning the number of additional hours being required, nor argument from the profession that what is being asked is unreasonable.

Chair Roberson determined the regulation will not change the fact that individuals currently practicing without the endorsement from the Board of Examiners appear to be doing so illegally. In addition, likely due to lack of resources, it appears the Board of Examiners will not be enforcing the requirements for the endorsement. If the regulation is passed, it will provide individuals who wish to legally practice in Nevada with the opportunity to do so. He suggested a larger discussion on the topic take place in February 2017, and he recommended passing R091-14 ([Agenda Item IV A-5](#)).

**MOTION:** Assemblywoman Benitez-Thompson moved approval of R091-14. Senator Kieckhefer seconded the motion. Assemblymen Hansen and Stewart voted no. The motion carried.

#### Regulation 132-14

A REGULATION relating to industrial insurance; establishing guidelines for the acceptance of ratings for permanent physical impairment and rulings on claims for reimbursement from the Subsequent Injury Account for Private Carriers; establishing requirements for service of certain documents on or by a claimant; establishing certain methods of proving an employer's knowledge of an employee's preexisting permanent physical impairment; establishing guidelines for determining a permanent physical impairment; providing for the reimbursement of certain benefits paid in the form of a lump sum; providing for the reimbursement of certain benefits paid by an annuity; revising provisions relating to the maintenance of files for claims; authorizing the Administrator of the Division of Industrial Relations of the Department of Business and Industry to refuse to process incomplete claims and to obtain additional information; identifying expenditures which may be eligible for reimbursement from the Subsequent Injury Account for Private Carriers; extending the time in which the Administrator will examine and provide a disposition of a claim; and providing other matters properly relating thereto ([Agenda Item IV A-6](#)).

Assemblyman Hansen questioned whether legitimate concerns raised by Pro Group Management, Inc. (Pro Group) and other individuals in the industry, as referenced in the Amended Informational Statement (AIS) ([Agenda Item IV A-6](#)), were incorporated into the regulations.

Steve George, Administrator, Division of Industrial Relations (DIR), DBI, deferred to Donald C. Smith, Senior Division Counsel, Workers' Compensation, DIR, DBI.

Mr. Smith recalled Pro Group administers associations of insurers and is not subject to the statutes in these regulations. He said the regulations pertain to subsequent injury recoveries for private insurance carriers, which does not include self-insured employers or associations of self-insured employers that are subject to other boards. Mr. Smith commented on Pro Group's specific concerns:

1. Section 2(1)(a)(b) of the AIS ([Agenda Item IV A-6](#))—Pro Group wanted to convert to the current guides of the American Medical Association. The concept with the subsequent injury is there has to be an initial injury that has been litigated and a certain percentage has been assigned to it. He noted that the qualifier for subsequent injury recovery is 6 percent or more. He recalled Pro Group was of the opinion the initial qualifying event should not be considered, but rather it should be approached from the current perspective so that, for instance, if the initial injury was assigned 5 percent at the time but now would be something like 6 percent, or greater, there should be a qualifying subsequent injury. Mr. Smith said this concern was addressed.
2. Section 8 of R132-14 ([Agenda Item IV A-6](#))—Pro Group was also concerned regarding "written records". "Written records" is one of those provisions that

needs to be looked at again, which comes from subsection 4 of NRS 616B.587. Since the adoption of that statute, there have been interpretations in the Supreme Court of Nevada case from 2012: *Holiday Retirement Corporation v. State of Nevada, Division of Industrial Relations*. The DIR has attempted to define the “written records” required as a condition to ensure an entity qualifies for the subsequent injury recovery. There were a number of comments in Section 8 that dealt with changing language that is in contrast to the definition set forth in subsection 3 of NRS 616B.587. Pro Group wanted to change the definition of a “permanent physical impairment,” which has already been determined as “any permanent condition, whether congenital or caused by injury or disease”; therefore, it can be a preexisting condition from any other place. The DIR decided it would go with the statutory language.

3. Subsection 1(c) of Section 10 of R132-14 ([Agenda Item IV A-6](#))—Lump-sum payments was briefly discussed.

Assemblyman Hansen stated he did not want to create regulations that increase the cost of insurance.

Mr. George pointed out Section 6 of the AIS ([Agenda Item IV A-6](#)) indicates some of the arguments made concerning the regulation. He said the regulation must comport with NRS. It may be the language gets changed in the future, but that is a big part of those changes.

Assemblyman Hansen replied he supports keeping the DIR in line with NRS. Referring to Section 7(a) of the AIS ([Agenda Item IV A-6](#)), he questioned whether the regulation has a financial impact upon changes to processes for small businesses.

Mr. Smith replied the effect is a minimal change in the process and forms.

Assemblyman Hansen commented Mr. Smith had reasonably addressed most of his concerns, and he could follow up with Assemblyman Hansen with additional information concerning lump-sum payments.

**MOTION:** Assemblyman Hansen moved approval of R132-14. Assemblyman Stewart seconded the motion. The motion carried.

Assemblyman Stewart remarked his concerns pertaining to R034-15 and R060-15 had been resolved.

**MOTION:** Assemblyman Stewart moved approval of R034-15 and R060-15. Senator Woodhouse seconded the motion. The motion carried.

#### Regulation R068-15

A REGULATION relating to taxation; adopting requirements for the administration and collection of the excise tax on passenger transportation; and providing other matters properly relating thereto ([Agenda Item IV A-7](#)).

Assemblywoman Bustamante Adams questioned whether the information used to identify taxpayers of the excise tax, as referred to in subsection (1) of Section 3, would be derived from the SOS if the entity has registered for a business license.

Deonne E. Contine, previously identified, replied the Taxation receives a list of entities that are subject to the excise tax from Nevada regulatory authorities, including the NTA and the Taxicab Authority (TA), DBI.

Assemblywoman Bustamante Adams expressed concern that in the past the Commission heard testimony some entities were of the opinion they did not need to obtain a business license; therefore, there was a significant discrepancy concerning the actual number of licensees versus entities registered with the NTA and the TA. She questioned whether Taxation would only be able to collect the excise tax from entities registered with the SOS.

Ms. Contine replied the excise tax is on common motor carriers, taxicabs, and transportation network companies. Because they are licensed and regulated by the NTA and the TA, Taxation derives information from the regulating bodies on the entities that are subject to the excise tax. She clarified the excise tax is on the carrier and not the driver.

**MOTION:** Assemblywoman Bustamante Adams moved approval of R068-15. Senator Denis seconded the motion. The motion carried.

#### Regulation 110-15

A REGULATION relating to public utilities; providing for the modification by the Public Utilities Commission of Nevada of the action plans and amendments to the action plans of certain utilities; and providing other matters properly relating thereto ([Agenda Item IV A-8](#)).

Assemblyman Stewart stated his concerns pertaining to R110-15 had been resolved.

Assemblyman Hansen questioned language in subsection 2 of Section 6 concerning approval of the plan by the Public Utilities Commission of Nevada (PUCN). He expressed concern the PUCN has veto power over what the regulation is going to do, and he questioned whether the PUCN only passes amendments to plans with the consent of the utility.

Donald J. Lomoljo, Utilities Hearing Officer, PUCN, deferred to Matthew Fox, Administrative Attorney, PUCN.

Mr. Fox stated R110-15 ([Agenda Item IV A-8](#)) was promulgated in direct response to S.B. 87 (Chapter 230, *Nevada Revised Statutes 2015*). Prior to its passage, the PUCN only had authority to accept or reject, in its entirety, the resource plan of a utility filing; there were no provisions to modify a plan. He confirmed Assemblyman Hansen was correct in that if the PUCN modifies the provisions of a utility's resource plan, the utility has the option to either consent to or reject those modifications. Mr. Fox reiterated R110-15 does nothing more than to effectuate the intent of S.B. 87, and it emulates the flexibility given to the PUCN in S.B. 87.

**MOTION:** Assemblyman Stewart moved approval of R110-15. Senator Denis seconded the motion. The motion carried.

#### Regulation 115-15

A REGULATION relating to common-interest communities; increasing certain fees required to be paid by homeowners' associations; increasing the fees for the application for and issuance of certificates and temporary certificates for community managers; and providing other matters properly relating thereto ([Agenda Item IV A-9](#)).

Assemblyman Hansen commented a common complaint about the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels (Ombudsman), Real Estate Division (RED), DBI, is that it does very little and at great cost. He asked the following questions concerning the Ombudsman: (1) what is the current budget; (2) how much will the budget expand if R115-15 is passed; and, (3) if R115-15 is passed, how much will its authority increase. Assemblyman Hansen continued that he would like to dramatically strengthen the authority and responsibility of the Ombudsman.

Joseph (J. D.) Decker, Administrator, RED, DBI, stated R115-15 implements A.B. 474 (Chapter 446, *Statutes of Nevada 2015*), which increases the fees charged on the common-interest community sector; it does not expand the operating budget of the Ombudsman. Mr. Decker indicated over the past ten years, the reserves of the self-funded budget—a sub-budget of the RED—have been depleted, and it is nearly insolvent. The fee increase only covers current operating expenses and is a cessation of the depletion of those reserves, which will allow it to grow to an acceptable level. He stated the RED master budget is approximately \$2 million per biennium, and the fee increase will replenish the budget of the Ombudsman by \$628,000.

**MOTION:** Assemblyman Hansen moved approval of R115-15. Assemblyman Stewart seconded the motion. The motion carried.



### Regulation 119-15

A REGULATION relating to dentistry; requiring the Board of Dental Examiners of Nevada to charge and collect a fee for conducting certain inspections; revising provisions relating to the inspection of certain offices or facilities where dental treatments are to be performed; allowing a dentist who is licensed in this State to authorize a dental hygienist or dental assistant to perform certain procedures before the patient is examined by the dentist; and providing other matters properly relating thereto ([Agenda Item IV A-10](#)).

Assemblyman Hansen expressed concern pertaining to the use of the word “may” as opposed to “shall” in Section 5 when referring to inspections conducted by agents of the Board of Dental Examiners of Nevada (BDE) at the direction of the Executive Director.

Debra Shaffer-Kugel, Executive Director, BDE, thought using “may” gives discretion for the president of the BDE to conduct an inspection in the Executive Director’s absence. In addition, she said the inspections are conducted during normal business hours, and inspections have been conducted for approximately the last four years.

Assemblyman Hansen stated he looks for the potential for abuse in regulations. He said he has received many e-mails, mostly from Clark County, concerning alleged abuses by the BDE. Assemblyman Hansen asked for confirmation that “shall” simply means someone other than the Executive Director may facilitate an inspection; the BDE will never abuse the regulation; the BDE will notify the dentists of the inspections; and the inspections will be conducted during normal business hours.

Ms. Shaffer-Kugel explained the BDE conducts two types of inspections for infection control: a random inspection and an initial inspection. An initial inspection is required when a licensed dentist becomes an owner of a practice. No later than 30 days thereafter the dentist must submit a request for an inspection. At that point, the dentist is notified of everything and appointments are scheduled during normal working hours, preferably with the dentist present to answer questions. The random inspection is the same as an initial inspection with the exception that the practice is chosen randomly by the BDE’s computer system.

Assemblyman Hansen questioned what triggers the Executive Director issuing a cease and desist order from performing dental treatments, pursuant to subsection 2 of Section 8 of R119-15 ([Agenda Item IV A-10](#)), and how often does it occur. He stressed being out of business for up to 30 days until the BDE conducts a hearing and makes a determination would dramatically impact a person’s finances.

Ms. Shaffer-Kugel replied the language was being added because it was originally included in the regulation when it was adopted several years prior under NAC 631.179. The BDE wanted the process to be consistent between the two types of inspections so the due process was explained; however, when there are critical deficiencies an audit form is shared with the licensee disclosing what the BDE will be looking at. The number one critical deficiency the BDE encounters is when there is no documentation the autoclave has been spore tested or when there is a positive result. She explained when a licensee receives a critical deficiency, the BDE sends a letter informing the licensee that a critical deficiency has been found. The licensee can agree to close the practice, run a spore test, and as soon as possible forward the results to the BDE. Or, the licensee can refuse to voluntarily stop treating patients. Ms. Shaffer-Kugel said the BDE needs a mechanism in place should that occur such as in a cases where there is a threat of harm to the public.

Vice Chair Settlemeyer, referring to subsection 5 of Section 3, requested the definition of "normal business hours," noting with other statutes it has been argued whether that means 8 a.m. to 5 p.m., the business hours kept by the agency, or the business hours kept by the dental practice.

Ms. Shaffer-Kugel replied the BDE goes by the hours of the dental office.

**MOTION:** Vice Chair Settlemeyer moved approval of R119-15. Assemblyman Hambrick seconded the motion. The motion carried.

#### Regulation 135-15

A REGULATION relating to public utilities; revising provisions governing the use of a letter of advice in lieu of an application by a public utility seeking approval for a change in a schedule of rates or services; and providing other matters properly relating thereto ([Agenda Item IV A-11](#)).

Assemblyman Hansen questioned to whom R135-15 applies, remarking he has heard from several people concerned about phone companies changing underground lines.

Jessica Satre Diss, Administrative Attorney, PUCN, stated it is targeted at the 27 small water companies that would have the types of rate changes that would fall under the advice letter categories. She said there is a subsection dedicated to small-scale providers of last resort that was clarified with R135-15. Subsection 6 was added to clarify R135-15 does not apply to competitive telecommunications carriers.

**MOTION:** Assemblyman Hansen moved approval of R135-15. Assemblyman Stewart seconded the motion. The motion carried.

#### Regulation 140-15

A REGULATION relating to education; eliminating the endorsement to teach English as a second language; providing for an English language acquisition and development endorsement and an endorsement as a specialist in English language acquisition and development endorsement as a specialist in English language acquisition and development; and providing other matters properly relating thereto ([Agenda Item IV A-12](#)).

Assemblyman Stewart questioned what improvements are made by R140-15 and how it will affect those operating under the old system.

Karl Wilson, Programs Supervisor, Services for English Learners, Nevada's Department of Education (NDE), responded R140-15 was proposed by the English Mastery Council, NDE, established during the 2013 Legislative Session, to specifically look at the coursework related to preparing educators to better serve English learners. Mr. Wilson stated R140-15 is a refinement of the coursework requirements, including a requirement to receive the endorsement that teachers have a practical experience of working with students in the field. He explained R140-15 shifts the focus from a linguistic approach in terms of understanding language—primarily: how to design services that better meet the needs of students as they learn English.

Assemblywoman Bustamante Adams requested a definition of the term "critical issues."

Mr. Wilson stated the term refers to issues related to effective instruction with a changing demography, and the understanding of the cultural aspects of students and families, as well as changes in legal requirements in ensuring students have equitable access to educational opportunities.

**MOTION:** Assemblyman Stewart moved approval of R140-15. Assemblywoman Bustamante Adams seconded the motion. The motion carried.

#### Regulation 143-15

A REGULATION relating to educational personnel; revising certain requirements for the renewal of a license by a person who is retired and holds a valid license issued by the Superintendent of Public Instruction; and providing other matters properly relating thereto ([Agenda Item IV A-13](#)).

Assemblywoman Benitez-Thompson questioned whether R143-15 applies only to retired persons who hold a valid teaching license. She also requested confirmation that the Public Employees' Retirement System (PERS) connection is being struck and replaced with proof of 15 years of teaching in a public or private school, but persons who taught in a private school do not qualify; rather, they would have to be licensed through the NDE.

Jason Dietrich, Educator Licensure, Educator Effectiveness and Family Engagement Division, NDE, stated the NDE brought the language revisions forward at the request of Assemblyman Philip (P. K.) O'Neill, Assembly District No. 40. He said the regulation opens a pathway for those currently licensed through the NDE to be issued a retiree license similar to that of a district educator license. Private school educators will be allowed to get a license for retirees. Currently, it must be a PERS contributing member; passing R143-15 would eliminate that requirement. Any licensed educator with 15 years of service in a school or district will be eligible for a retiree license. He clarified a retiree license allows for a ten-year retiree license status, which can be obtained without renewal credit requirements. For example, if a teacher has a completed professional license of six years and that individual wants to retire, he or she can maintain a teaching license in Nevada. Retired educators have been brought back into the classroom in Clark County, which allows them to work while being retired through PERS. He confirmed licensed teachers in private schools would be eligible for the option as outlined in R143-15 ([Agenda Item IV A-13](#)).

**MOTION:** Assemblywoman Benitez-Thompson moved approval of R143-15. Assemblyman Stewart seconded the motion. The motion carried.

#### Regulation 151-15

A REGULATION relating to the State Board of Health; revising provisions relating to taking action on certain petitions filed with the Board; revising application fees for the Physician Visa Waiver Program; revising provisions relating to the refund of those application fees in certain circumstances; and providing other matters properly relating thereto ([Agenda Item IV A-14](#)).

Assemblyman Hansen asked for the definition of a "letter of support" (letter) and for justification of the increased fee.

Laura Hale, Manager, Primary Care Workforce Development Office, DPBH, DHHS, stated the DHHS administers the J-1 Physician Visa Waiver Program (J-1 Visa Program). She explained a letter from the State is sent to the United States Citizens and Immigration Services (USCIS) that confirms requirements have been met for the person to serve in one of the designated shortage areas in Nevada and is here on a J-1 Visa Program. Normally, under a J-1 Visa Program, and after residency is completed, the physician must return to his or her home state. However, if a physician is willing to serve in a shortage area, he or she can get another type of waiver from the USCIS.

Ms. Hale explained the fee for the J-1 Visa Program has always been \$500; however, costs for the program have dramatically increased over the past several years. One site visit for a specialist serving in multiple clinics costs about \$500. Before the 2015 Session, the DPBH conducted a cost analysis of the processes related to issuing a letter, which totaled approximately \$1,700.

She stated the DHHS is simply attempting to sustain the program, noting the fee may not exceed \$2,000. Ms. Hale reported the DHHS has averaged three letters of support per year over the last several years; however, it has received eight applications so far this year.

Assemblyman Flores wondered whether the fee for the letter has anything to do with the number of applicants, noting every state is competing for the J-1 Visa Program. He expressed concern that raising the fee may put Nevada at a disadvantage when it comes to attracting applicants. Assemblyman Flores questioned how the fee for the letter in Nevada compares to other states.

Ms. Hale replied Nevada's fee is lower than that of California, Oregon, and Texas.

**MOTION:** Assemblyman Flores moved approval of R151-15. Assemblyman Stewart seconded the motion. The motion carried.

#### Regulation 005-16

A REGULATION relating to insurance; repealing a provision relating to policies of credit personal property insurance; and providing other matters properly relating thereto ([Agenda Item IV A-15](#)).

Assemblywoman Benitez-Thompson questioned whether the Commissioner of Insurance (COI) has experienced a decline in guaranteed auto protection (GAP) insurance filings, and, if so, whether that promulgated the regulation. If not, and the COI is simply anticipating a decline, it might make sense to not pass the regulation at this time.

Erin Summers, Insurance Actuarial Analyst II, Property and Casualty Section, Division of Insurance, DBI, replied between 2007, when the regulation became effective, and May 2015, the COI had 80 approved GAP rate filings; between June 2015 and the present, there have been none.

**MOTION:** Assemblywoman Benitez-Thompson moved approval of R005-16. Assemblywoman Bustamante Adams seconded the motion. The motion carried.

#### Regulation 016-16

A REGULATION relating to unmanned aerial vehicles; prescribing the public purposes for which a public agency may operate an unmanned aerial vehicle that is registered with the Department of Public Safety; and providing other matters properly relating thereto ([Agenda Item IV A-16](#)).

Assemblyman Stewart remarked on media coverage of an unmanned aerial vehicle (UAV) interfering with planes dropping retardant on recent fires in California and Nevada. He asked whether the Department of Public Safety (DPS) has made efforts to prevent that from occurring.

Caleb S. Cage, Chief, Division of Emergency Management, and Homeland Security Advisor, Office of Homeland Security, DPS, confirmed there had been issues reported in the local media a few weeks prior when a helicopter almost hit a hobbyist's UAV during a fire in northern Nevada. He stated R016-16 specifically pertains to the use of UAVs by public agencies. The federal government enforces private UAV use because of the federal oversight of air space. How that interferes with first responders is a public safety issue. Mr. Cage stated that on June 21, 2016, the Federal Aviation Administration released 600 pages of regulations for commercial use of UAVs, and regulations for public sector use of UAVs will be released within the next two years. He commented he personally is not in a position to advocate for legislation regarding this matter during the next session.

Assemblyman Hansen recalled A.B. 239 (Chapter 327, *Statutes of Nevada 2015*), sponsored by Assemblyman Elliot T. Anderson, Assembly District No. 15, in his opinion was one of the best bills of the 2015 Session and a groundbreaker. Pointing out the number one fear expressed before the AJC was the potential misuse of UAVs by law enforcement, he questioned why the regulation uses "may" rather than "shall" concerning the use of UAVs by law enforcement. He expressed concern regarding the temptation of law enforcement to use UAVs, and the potential to do things that might otherwise require a search warrant. Considering the use of UAVs will quickly increase, Assemblyman Hansen asked for assurance the regulation does not contain anything that allows law enforcement agencies to use UAVs in any capacity not specified in subsections 1 through 17 of Section 1.

Mr. Cage responded Section 20 of A.B. 239 prohibits law enforcement agencies from using UAVs for purposes of collecting evidence where a person has a reasonable expectation of privacy without a warrant. However, it authorizes law enforcement to use UAVs for certain purposes including exigent circumstances with probable cause, consent in writing, search and rescue operations, and eminent threat to life and safety within the declaration of emergency by the Governor. It also prohibits the use of any photograph image or recording acquired through the operation of a UAV, in violation of Section 20 of A.B. 239, from admissibility and provides that photographic images or recordings cannot be used to establish reasonable suspicion or probable cause. Mr. Cage confirmed the 17 uses of UAVs set forth in R016-16 ([Agenda Item IV A-16](#)) are for non-law enforcement, public sector agencies.

**MOTION:** Assemblyman Stewart moved approval of R016-16. Senator Denis seconded the motion. The motion carried.

Assemblyman Stewart stated his concerns regarding R029-16 had been resolved.

**MOTION:** Assemblyman Stewart moved approval of R029-16. Senator Atkinson seconded the motion. The motion carried.

#### Regulation 036-16

A REGULATION relating to pharmacy; providing a penalty for the failure to transmit to the State Board of Pharmacy certain information concerning the dispensing of certain controlled substances; and providing other matters properly relating thereto ([Agenda Item IV A-17](#)).

Senator Kieckhefer questioned whether the State Board of Pharmacy (SBP) anticipates using the penalty on a regular basis due to lack of reporting.

S. Paul Edwards, General Counsel, SBP, responded the SBP does not often use the penalty; however, S.B. 459 (Chapter 26, *Statutes of Nevada 2015*) requires the SBP to establish a penalty. He continued the SBP does not anticipate using the penalty, but it has identified a few pharmacies and dispensing practitioners who are not reporting on a daily basis as required. Mr. Edwards described the current process whereby the SBP will contact the pharmacist or practitioner twice via letter through the Prescription Monitoring Program. If no response is received, or there is no resolution, Mr. Edwards sends a follow up letter to the licensee indicating disciplinary action will occur if the licensee does not comply with the reporting requirements. If there still is no resolution, normal disciplinary action begins. He said the SBP has dealt with only four situations that have gotten that far, which have since been resolved. The SBP does not encounter many licensees who intentionally do not report, but rather the licensee thought he or she was reporting; however, something with the software vendor was not working properly or something similar. Mr. Edwards stated the SBP works with licensees to resolve those issues; it is not interested in needlessly bringing licensees before the SBP nor in imposing fines. The regulation gives the SBP “teeth” to enforce reporting, if needed.

**MOTION:** Senator Kieckhefer moved approval of R036-16. Senator Denis seconded the motion. The motion carried.

#### Regulation R050-16

A REGULATION relating to education; revising the minimum passing score for certain high school equivalency assessments; revising the required scores on certain high school equivalency assessments needed to waive credits; and providing other matters properly relating thereto ([Agenda Item IV A-18](#)).

Assemblyman Stewart asked why the minimum passing score was reduced to 145, and whether scores above 145 are retroactive for individuals who took the test in the past, and, if so, will that be added to Nevada’s graduation rate.

Michael Raponi, Director, Office of Career Readiness, Adult Learning, and Education Options, NDE, stated R050-16 was approved by the State Board of Education as a result of a change of the General Educational Development (GED) Test Service’s (GEDTS) norm score. He stated Nevada has three approved norm



score assessments for high school equivalency: the GED; the HiSet; and the TASC. Prior to January 2014, the GED test was at 450 for the cut score for each of the subtests. In January 2014, GEDTS released a new version of the test based on the new national standards, which was run for two years. The cut score was set at 150 by the GEDTS, and Nevada adopted that score. After two years of testing, the GEDTS renormed the test to a cut score of 145. Mr. Raponi said R050-16 ([Agenda Item IV A-18](#)) keeps Nevada's regulations aligned with what the publisher sets as the national cut score, which is adopted by nearly every state that administers the GED test. Mr. Raponi confirmed the new 145 cut score is retroactive to January 2014, which means a person who tested between 146 and 149 would now be determined to have passed and would be issued a certificate of high school equivalency.

Assemblyman Hansen thought it odd that a test score was being lowered so more people could pass, and it cheapened the value of a high school diploma.

Mr. Raponi thought Assemblyman Hansen's points were well taken on the surface; however, looking at the test data, the pass rate for the GED test, since the new tests adoption in January 2014, was 55 percent relative to the past rates of the HiSet test at 79 percent and the TASC test at 63 percent—the test has proven to be significantly more vigorous than the prior test. According to the data for Nevada test takers, it is more rigorous than the other two assessments for high school equivalency.

Assemblyman Stewart commented the Commission should consider the adoption of R050-16 while pointing out it puts Nevada on more of an equal playing field with other states that have adopted the same cut score.

**MOTION:** Assemblyman Stewart moved approval of R050-16. Senator Woodhouse seconded the motion. The motion carried.

Assemblyman Hansen stated he requested R064-16 to be held due to the printed material pertaining to the regulation was not in his binder; however, he was ready to make a motion.

**MOTION:** Assemblyman Hansen moved approval of R064-16. Senator Denis seconded the motion. The motion carried.

B. Approval of Transfer of \$19,650 Appropriated for Fiscal Year 2015-16 to Fiscal Year 2016-17 for Modifications to the Budget Analysis System of Nevada to Maintain Functionality with Changes Made to or Planned for the Nevada Executive Budget System – Rick Combs, Director

Rick Combs, previously identified, stated the Fiscal Analysis Division requests to transfer General Fund (GF) appropriations of \$19,650 from Fiscal Year (FY)

2015–2016 to FY 2016–2017 to support modifications to the Budget Analysis System of Nevada (BASN), the information system Fiscal Analysis Division staff utilize to analyze the governor’s recommended budget, and to prepare the budget approved by the Legislature ([Agenda Item IV B-1](#)). He stated that during the 2015 Legislature, \$105,012.50 was approved to maintain functionality of the Executive Branch’s Nevada Executive Budget System (NEBS) budgeting information system. To date, \$66,712.50 of the \$105,012.50 GF appropriation has been expended to support functionality changes necessary to keep BASN in sync with NEBS, and an additional \$18,650 is projected to be expended by the end of FY 2015–2016.

**MOTION:** Vice Chair Settlemeyer moved approval of the request to transfer \$19,650 in GF appropriations from FY 2015–2016 to FY 2016–2017. Assemblyman Stewart seconded the motion. The motion carried.

C. Approval of Transfer of \$18,000 Appropriated for Fiscal Year 2015-16 to Fiscal Year 2016-17 for the Construction and Furnishing of an Office for the Research Division in the Grant Sawyer State Office Building in Las Vegas – Rick Combs, Director

Mr. Combs stated the Research Division, LCB, was appropriated approximately \$30,000 for the creation of an office in the expansion space of the Grant Sawyer State Office Building. He said there had been delays in the project, but it has since been approved with the final cost of \$18,000, which is considerably less than the initial estimation and is the amount requested to be spent in the second year of the biennium to complete the office ([Agenda Item IV B-2](#)).

**MOTION:** Vice Chair Settlemeyer moved approval of the transfer of \$18,000 appropriated for FY 2015–2016 to FY 2016–17 for the construction and furnishing of an office for the Research Division in the Grant Sawyer State Office Building in Las Vegas. Assemblyman Hambrick seconded the motion. The motion carried.

D. Approval of Early Session Hires for the 2017 Legislative Session – Rick Combs, Director

Mr. Combs referred to a memorandum dated June 27, 2016, regarding early session hires for the 2017 Legislative Session ([Agenda Item IV B-3](#)). He explained that each biennium, the LCB comes before the Commission asking for the Commission’s approval to begin hiring persons for the upcoming legislative session. The LCB is requesting approval to fill 53 early session hires, compared to 67 requested for the 2015 Session. Although fewer positions are being requested, the LCB is asking for an increase in grade levels as well as increased duration of some of the positions.

Mr. Combs stated the primary changes are with respect to the Legislative Police positions. He explained the request is for 22 officer positions, the same amount as requested during the previous biennium; however, the request is to upgrade those positions from a Grade 32, which was approved during the last session, to a Grade 36. Mr. Combs said, historically, those positions have been filled by experienced officers who have retired from police work and are drawing a retirement from former careers. The Executive Branch has authorized the DPS to fill positions with retirees and to not allow that to affect their retirement. Also, due to the critical labor shortage, the LCB is experiencing difficulty in attracting and retaining Legislative Police officers. The LCB anticipates the grade increase, which matches the entry level DPS Officer I position, will attract more applicants to fill the positions needed during the 2017 Session.

In addition, Mr. Combs said Grade 36 is the level at which the LCB hires its permanent officers. He surmised the reason officer session hires have been attained at a lower grade is to save money. At this point, the LCB has saved as much money as it can; it will not be able to attract enough officers to staff the upcoming session if something is not done. He requested leniency to return to the Commission, if during the hiring process the upgrade does not attract enough applicants. At that point, the LCB would need to ensure building security requirements are covered during the next session.

Mr. Combs continued the LCB is requesting to extend the duration for the IT GIS Specialist position from 9 to 12 months due to an increased workload already being experienced with redistricting tasks. In addition, the LCB requests an extended duration of the Legal Division positions from 15 to 16 months to ensure they are present during the bill drafting and codification processes.

Senator Kieckhefer asked for details of the request for the IT GIS Specialist position since redistricting does not occur until 2021.

Mr. Combs stated the United States Census Bureau (Bureau) is already asking the LCB to look at various maps for data, and it would be helpful to get that position up and running by July 1 in order to get a head start on that task before session work begins. He said the LCB does not have permanent staff with the technical skills for that type of work.

Senator Kieckhefer questioned whether historically the Bureau has asked the LCB for that type of data rather than requesting it from the Executive Branch or the counties.

Mr. Combs said he and Michael J. Stewart, Deputy Research Director, Research Division, LCB, have been named as liaisons with the Bureau and the arrangement was at the direction of legislative leadership and a letter signed by the Governor.

**MOTION:** Senator Atkinson moved approval of early session hires for the 2017 Legislative Session. Assemblywoman Bustamante Adams seconded the motion. The motion carried.

## **AGENDA ITEM V—LEGISLATIVE AUDITOR**

### **A. Summary of Audit Reports Presented to Legislative Commission's Audit Subcommittee, NRS 218G.240 – Rocky Cooper, Legislative Auditor**

Rocky J. Cooper, previously identified, referred to a letter dated May 24, 2016, from Senator Ben Kieckhefer, Chair, Audit Subcommittee of the Legislative Commission (Subcommittee) (NRS 218E.240), addressed to the Commission members ([Agenda Item V A-1](#)), indicating a meeting of the Subcommittee was held on that date whereby six audit reports were presented. He gave a brief overview of each report.

#### State of Nevada, Single Audit Report ([Agenda Item V A-2](#))

Mr. Cooper stated the first report is a Single Audit (Audit) of the State of Nevada. The Audit is required by the federal government and includes an audit of the State's financial statements and federal program compliance. The Audit for 2015 was conducted by the firm of Eide Bailly LLP (firm), under contract with the Legislative Auditor (LA). The firm issued an unmodified opinion on the State's financial statements, which means they conform with generally accepted accounting principles. In addition, the firm reported the schedule of expenditures of federal awards totaling \$4.77 billion is fairly stated. The Audit includes 43 findings related to internal controls over compliance with federal program requirements, compared to 46 in the prior year.

#### Department of Public Safety, Division of Parole and Probation (DPP) ([Agenda Item V A-3](#))

Mr. Cooper said the audit focused on two key areas: (1) home contacts with high-risk offenders classified as intensive supervision, house arrest, or sex offenders; and (2) the intake process for offenders entering parole and probation. The DPP did not always conduct timely home contacts with high-risk offenders. Of 50 high-risk offenders tested, 14 had one, or more, untimely home contacts during the period tested. On average, the home contacts were late by about 32 days, and some were late by months; the DPP has less stringent requirements for home contacts with high-risk offenders residing in rural areas. For example, home contacts are required every 60 to 90 days for sex offenders living in Las Vegas and Reno; however, the DPP directives do not require home contacts for sex offenders living in Carson City, or in other less populated areas. Other western states contacted indicated home contact requirements are the same for all high-risk offenders, regardless of geographic location. The DPP also had problems completing key intake steps. For example, initial home contacts required within 30 days were untimely for 23 of 94 offenders tested. The DPP accepted all

eight recommendations. At the May 24, 2016, meeting, the DPP indicated it would develop system reports to monitor untimely contacts, and contact requirements for rural high-risk offenders will be updated.

Department of Health and Human Services, Division of Child and Family Services (DCFS) ([Agenda Item V A-4](#))

Mr. Cooper stated the Audit Division (AD) performed an analysis of funding and expenditures for FYs 2010–2015 including data on the number of children served and the cost per child. In addition, controls over the DCFS's performance measures were reviewed. During analysis of expenditure information, the AD found improvements are needed over the DCFS's monitoring of county block grants. State law specifies certain reporting requirements for child welfare agencies, such as improvement plans and progress reports. The AD reviewed the reports relating to FY 2015 funding and found untimely submittals, incomplete reports, and undocumented reviews. The DCFS also lacks sufficient controls to ensure performance measures are reliable. The AD identified control weaknesses in 8 of 45 performance measures reported during FY 2014. The DCFS accepted the three recommendations related to monitoring block grants and performance measures.

Silver State Health Insurance Exchange (Exchange) ([Agenda Item V A-5](#))

Mr. Cooper said the AD found the Exchange needs to improve its contract monitoring process to ensure efficient use of fees assessed on members' health plan premiums. This includes better monitoring of navigator entities subcontracted through a marketing contractor that provide outreach, education, and enrollment assistance to the uninsured and underinsured populations to ensure that they provide the intended services. Documentation for reported events supported only about 3,000 of the 17,900 staff hours paid from May through October 2015. The monitoring of the outreach and education subcontractors' invoices and reported activities is insufficient. For example, the subcontractor was paid \$90,000 to plan and develop a list of outreach events to attend, while the subcontractor attended 27 events from June through October 2015, only 9 were from the list of the 64 events identified by the subcontractor to attend during that period. The Exchange paid a flat compensation rate of \$45,000 per month, regardless of the amount of work performed by the subcontractor. Invoices showed the hours reported worked varied from 600 to 1,800 hours per month during June through October, but the compensation remained the same. In addition, improved navigator representation in northern Nevada is needed. The Exchange accepted all 13 audit recommendations.

Nevada State Board of Dental Examiners ([Agenda Item V A-6](#))

Mr. Cooper stated the audit was a special request of the Sunset Subcommittee of the Legislative Commission (Sunset Subcommittee) (NRS 232B.210). There were concerns that the BDE's investigative expenses were excessive in relation to the nature of the matters being investigated. The AD found the BDE overcharged

licensees for investigative costs in almost one-half of the 50 investigations conducted within the past two years including several over \$1,000. In addition, four licensees made charitable contributions totaling over \$140,000, as required in stipulation agreements; however, charitable contributions are not allowed under statute. The BDE underreported legal expenses on its financial statements by about \$200,000 per year for FYs 2014 and 2015. This occurred because the actual amount paid for legal expenses was reduced or netted by cost recoveries and assessments related to disciplinary matters. The BDE exceeded its contract maximum with outside legal counsel, which was \$175,000, as approved in October 2013; however, payments exceeded \$300,000 per year in calendar years 2014 and 2015. The AD estimated the BDE could save \$100,000 per year by hiring a full-time staff general counsel while utilizing outside counsel services, as necessary. Investigation results and conclusions for disciplinary screening officers are not reviewed by supervisory personnel or an independent review committee. Other states' dental boards and Nevada medical boards contacted have a review process in place for investigations including review committees. The BDE originally accepted 11 recommendations and rejected 3.

At the May 24, 2016, meeting, the BDE accepted one more recommendation. The BDE continues to reject the AD's recommendations related to refunding licensees for overcharged amounts and to institute an independent review process regarding complaint investigation and resolution. On June 16, 2016, the audit was presented to the Sunset Subcommittee, chaired by Senator Settelmeyer. The Sunset Subcommittee approved a motion to establish an independent review process; required an explanation from the BDE why it cannot refund overcharged amounts to licensees; and why it maintains the position that it is necessary to use outside counsel as opposed to hiring a full-time general counsel. This motion will help ensure the recommendations are implemented to the extent possible.

#### Review of Governmental and Private Facilities for Children, May 2016 (Agenda Item V A-7)

Mr. Cooper said a statutory responsibility of the AD is to conduct reviews of certain governmental and private facilities that have physical custody of children pursuant to a court order. The report includes the result of 5 reviews, 11 unannounced site visits, and a survey of 59 children's facilities. The reviews found that 4 of 5 facilities provide reasonable assurance that they adequately protect the health, safety, and welfare of the youths at those facilities; however, one entity did not. The entity has significant problems with policies, procedures, and practices in protecting the youths' safety as observed by the AD while on site. The entity lacked required consent forms for the administration of psychotropic medications, and it had other poor medication management practices, which are reported to licensing agencies. In addition to correspondence with this entity, the AD has had several communications with the State licensing agency to improve the entity's operations. Also, certain facilities are not required to conduct fingerprint-based background checks of employees. The licensing agency agrees it

is necessary to clarify provisions of Chapter 449 of NRS ("Medical Facilities and Other Related Entities") to ensure all entities are required to obtain background checks.

Mr. Cooper concluded the Subcommittee recommends the Commission accept the reports ([Agenda Item V A-1](#)).

Regarding the Exchange report ([Agenda Item V A-5](#)), Assemblyman Stewart questioned whether Mr. Cooper was of the opinion that the Exchange is headed in the right direction and whether it is fiscally sound.

Senator Kieckhefer, stated the Subcommittee spent a good amount of time discussing the Exchange audit, which highlighted many structural flaws regarding contract monitoring and execution. He said he is comfortable the Exchange has made significant changes to its processes to better account for their expenditures going forward and by ensuring contractors perform to standards. In addition, the Exchange was receptive to the recommendations of the audit team.

Assemblyman Stewart said he has received numerous complaints from dentists and dental assistants concerning the BDE's lack of due process and review; the BDE seems reluctant to fulfill all of the recommendations.

Mr. Cooper replied that during the audit ([Agenda Item V A-6](#)), the BDE was cooperative; however, when the AD reached its conclusions, there were disagreements. He surmised the Sunset Subcommittee's motion will facilitate change where they can work together to resolve some of the issues, which may lead to legislation in this area.

Assemblyman Stewart stated he would be willing to propose some of that legislation. He said it is ridiculous the BDE is unwilling to refund overpayments. Some of the dental assistants have been fined incredible amounts of money, and it has been very detrimental to their financial stability.

Assemblyman Hansen complimented the excellent job performed by the auditors. He said the Exchange being able to account for only 3,000 of 17,900 billable hours is extremely disturbing as well as other matters in the report. He questioned whether this was the first time the Exchange had been audited.

Mr. Cooper explained this was the Exchange's first audit due to it being a relatively new organization.

Assemblyman Hansen stated he also has received numerous complaints, mainly from dentists in Clark County, who are enraged by how they were treated by the BDE. Based on the report, he contends the complaints were justified, pointing out the BDE's overspending of \$200,000 in legal fees and its method of forcing



licensees to donate \$140,000 in charitable contributions, in lieu of paying a fine to the BDE, when there is no statutory provision to do so. He questioned whether the BDE has a Deputy Attorney General (DAG), and at what point do these activities require the involvement of the Office of the Attorney General.

Vice Chair Settlemeyer commented on the issue of the charitable contributions. He said the BDE is slightly different from other boards in that overcharges require going back through the insurance companies, which prompts questions regarding who gets paid and how much is the co-pay versus how much goes to the insurance company. The BDE decided it was wiser to have the dentist make a charitable contribution to dental care organizations for low-income individuals, which makes sense, but the BDE must follow the law.

Assemblyman Hansen surmised there does not appear to be a threshold that crosses into the criminal realm when a board not only exceeds its authority but violates statute.

Vice Chair Settlemeyer stated the Sunset Subcommittee has brought forth bill draft requests to the Commission to address some of these issues. Regarding the question of whether the BDE has a full-time DAG, he said the BDE uses private counsel because the fees are lower than that of a DAG. He said there are three choices for legal counsel: (1) hire a DAG at a higher rate; (2) hire private, outside counsel at a lower rate; and (3) hire full-time inside counsel.

Assemblyman Hansen questioned the last time the BDE was audited and whether the issues revealed during the audit are new.

Mr. Cooper stated annual financial audits of the boards are conducted by a certified public accountant firm, and financial statements are submitted to the AD; however, the AD only conducts audits of the boards upon special requests by the Commission. He said the BDE has not been audited by the AD, nor have most of the other boards.

Assemblyman Hansen said the Commission will need to make those requests.

**MOTION:** Assemblyman Stewart moved approval of the six reports as recommended by the Subcommittee. Senator Denis seconded the motion. The motion carried.

B. Summary of Six-Month Status Reports on the Implementation of the Audit Recommendations by the Legislative Auditor as Submitted to the Audit Subcommittee, NRS 218G.270 – Rocky Cooper, Legislative Auditor

Mr. Cooper referred to a second letter dated May 24, 2016, from Senator Kieckhefer concerning a six-month status report of the Division of Health

Care Financing and Policy, DHHS, reviewed by the Subcommittee ([Agenda Item V A-8](#)). At the time the report was prepared, five out of the six recommendations were fully implemented; the remaining audit recommendation is now fully implemented. He recommended the Commission accept the six-month status report.

Assemblyman Hansen questioned the normal procedure for providing an update to the Commission concerning the six-month reports.

Mr. Cooper explained the follow up process is conducted through the Subcommittee and the 60-day plan of corrective action; thereafter, the agency has six months to implement plans to address the audit recommendations. At that point, the Division of Internal Audits (DIA) Office of Finance (OF), Office of the Governor (OG), independently verifies the recommendations with the agencies, which results in the six-month reports. He said there is a time-lag before presenting back to the Subcommittee during which time some agencies will have fully implemented the remaining audit recommendations. Mr. Cooper said the reason for only one six-month report today is because the agency was the only item on an agenda on May 4, 2015, which was during session; therefore, it was a standalone Subcommittee with one item. Normally, the six-month reports' list is extensive.

Assemblyman Hansen complimented the AD for its great work.

Assemblyman Stewart echoed Assemblyman Hansen's remarks. He questioned the AD's recourse if after six months an agency refuses to comply with audit recommendations.

Mr. Cooper said typically what happens is during session when an agency's budget is being heard, the AD will inform the money committees of problems implementing audit recommendations. Because the BDE's budget is not reviewed during session, nor is it approved by the Legislature, he stressed the importance of the Sunset Subcommittee assisting the AD in this area. The AD will continue with the standard process for internal audits and will verify implementations, but the Sunset Subcommittee has the ability to implement changes in statute.

**MOTION:** Assemblywoman Bustamante Adams moved approval of the six-month status report as recommended by the Subcommittee. Senator Denis seconded the motion. The motion carried.

C. Request from the Commission on Special License Plates for an Audit of Horse Power, A domestic Non-Profit Corporation in Nevada – Assemblyman Jim Wheeler, Chair, Commission on Special License Plates

Assemblyman Wheeler, previously identified, Chair, Commission on Special License Plates (CSLP) (NRS 482.367004), requested the Commission to direct the LA to conduct an audit of Horse Power (HP), an organization that has received roughly \$785,000 from the sale or renewal of its special license plates (SLP). He stated that in 2007, the Commission recommended the HP SLP for approval based on the organization's intent to use the funds raised for the care of wild horses, burros, or mules. In accordance with A.B. 189 (Chapter 211, *Statutes of Nevada 2015*), if the CSLP has reasonable cause to believe, or based on a credible complaint that an organization has mismanaged SLP funds, it may make such a request. Assemblyman Wheeler said a written complaint had been received alleging mismanagement of SLP funds by HP, specifically, there is very little accountability of the program, including reviews of applications and awarding of grants.

Assemblyman Wheeler stated that on October 28, 2015, the CSLP held a meeting where testimony was heard regarding this particular audit request; the CSLP voted unanimously to bring the request for an audit before the Commission. He said under existing law, an organization accepting revenue from the issuance of a SLP must annually provide certain financial and other information to the Commission. This provision was added in 2007 to ensure charitable organizations utilize the collected SLP funds exactly as intended. As a point of reference, SLPs have generated more than \$49 million since FY 1998. The information reviewed by the LA, who determines the adequacy and accuracy of forms and records filed, identifies improper practices of financial administration, and reviews methods and procedures used by an organization to ensure all money received from SLP fees are expended solely for the benefit of the intended recipient.

Assemblyman Wheeler said it is important to note the LA reviews information that is provided by the organization; therefore, the report is based upon representations by the management of the organization—it does not constitute an audit performed in accordance with generally accepted government auditing standards. An audit would involve a more extensive examination in support of records. Conducting an audit of HP will provide accountability and transparency to the public. Assemblyman Wheeler opined ordering the audit would also send a message to other SLP organizations (SLPO) utilizing funds. He referred to a letter in the meeting packet dated November 6, 2015, ([Agenda Item V B](#)) from the CSLP requesting an audit of HP for calendar years 2014 and 2015, and to determine whether HP has adequate methods and procedures in place to ensure grants and other expenditures benefit the intended recipient. Since it is already late June, he asked to modify the request to have the LA review fiscal years 2015 and 2016 instead.

Assemblyman Wheeler answered in the affirmative Senator Atkinson's question regarding whether HP ever set up a committee or board. He said in 2009 or 2010 irregularities were found that, as far as he knows, were fixed; however,

determinations are based upon what is presented to the auditor, and not what the auditor looks into.

Assemblyman Hansen stated that during public comment, the head of HP said it has already gone through a series of audits. He asked Mr. Cooper whether HP has been audited and to what extent.

Mr. Cooper described the audit process. He said all 30 SLPOs are required to provide requested information to the AD by September 1 annually. The AD is required to issue a report by September 30, which meets the SLPO's statutory requirements for filing. Mr. Cooper stated it is not possible to audit all SLPOs in one month, and he could not recall ever having audited one. He confirmed the reports are based upon representation of management. The AD can verify through the State's accounting system whether the revenues are correct; however, reported expenditures are not verified, which are the areas of concern. He said the AD is neither for nor against conducting an audit. In addition, audits conducted by the AD go deeper than traditional financial audits. Because grants are a concern in this area, the AD would evaluate the grants process, solicitation, and awards.

Assemblyman Hansen surmised based on Mr. Cooper's testimony that because none of the SLPOs have been audited, it would be okay to randomly select one to verify compliance.

Assemblyman Wheeler stated prior to the passage of A.B. 189, there was no vehicle in NRS to conduct audits on SLPOs, which is likely the reason audits have previously not been conducted.

Assemblyman Hansen said the AD comes up with amazing recommendations after each audit, and it never hurts to have an outside review to discover whether processes are as efficient and effective as possible. He stated he supports the audits and concluded they would clear up any confusion or concerns regarding possible misappropriation of funds.

Assemblywoman Benitez-Thompson questioned whether SLPOs are required to have an audit. If they are, she pointed out the benefits of each organization paying for its own audit, as opposed to utilizing limited State resources. It would also alleviate allowing individual legislators to "cherry pick" which nonprofits to be audited. Assemblywoman Benitez-Thompson said it would create a more systemic and consistent process and suggested during the next session the Legislature consider requiring SLPOs to be audited annually.

Assemblyman Wheeler explained the audit request is not that of a legislator "cherry picking" an audit. He said a credible complaint was received pursuant to A.B. 189, and testimony was heard before the CSLP from both sides of the issue,

which resulted in a unanimous vote for an audit. Assemblyman Wheeler said when the CSLP asked the AD whether it could conduct the audit within its current budget without additional cost to the State, Mr. Cooper responded in the affirmative.

Assemblywoman Benitez-Thompson reiterated the concept of making a statutory change requiring the SLPOs to be audited yearly. She pointed out the budget auditing needs of some of the larger State agencies compared to those of a SLPO, and having to pull from those resources. Assemblywoman Benitez-Thompson said there is merit for the audits, but they should be paid for by the SLPOs, which should not be an undue burden.

Vice Chair Settlemeyer expressed concern that the cost of an audit could consume a significant portion of smaller SLPOs' fees. In comparing the most popular SLP with the least popular SLP, he questioned what percentage of the fees go directly to the people for whom the money is intended, and how much goes toward administrative fees.

Assemblyman Wheeler replied he did not have an exact figure, but he confirmed the disparity in fees between the more popular and less popular SLPs. He said HP has generated approximately \$785,000 within the last nine years; however, within the last few years, that figure has decreased by \$30,000 or \$40,000. Requiring this SLPO to pay for an audit would be a tremendous burden as it would be for other SLPOs. Assemblyman Wheeler said after listening to the reports from the LA, it is evident there is no bias, and the recommendations can correct problems. He noted it might be a challenge for SLPOs to hire a nonbiased auditor as opposed to the LA.

In closing, Assemblywoman Benitez-Thompson commented she did not think an audit would be financially onerous on SLPOs. All recipients of the SLP program must consist of and maintain a minimum number of people as part of the application process, and many positions are coveted. She said the SLPOs appear to have healthy and stable revenue funds; therefore, spending \$1,500 to \$2,000 for an independent audit makes sense. She argued, for the sake of consistency, it would be better to require all SLPOs to be annually audited than for the AD to conduct audits on individual organizations. In addition, audit reports on all SLPOs might reveal unfavorable practices that could warrant statutory changes.

Chair Roberson stated Assemblywoman Benitez-Thompson's suggestions could be looked at if the Legislature decides to move in that direction.

Vice Chair Settlemeyer said requiring internal audits of SLPOs would probably be a good bill draft request. However, he expressed concern with individual SLPOs selecting auditors with an intended end result desired by the SLPOs.

Vice Chair Settlemeyer said sometimes it is necessary to take a closer look, noting the BDE's hesitation concerning the dental audit.

**MOTION:** Vice Chair Settlemeyer moved approval of the request for an audit of the Horse Power special license plate organization. Senator Denis seconded the motion. Assemblywoman Benitez-Thompson voted no. The motion carried.

## **AGENDA ITEM VI—PROGRESS REPORTS AND APPOINTMENTS**

### **A. Nominations to the Commission on Nuclear Projects, NRS 459.0091 – Rick Combs, Director**

Rick Combs, previously identified, stated the Governor uses a list of three names provided by the Commission to appoint two members to the Commission on Nuclear Projects, Office of the Governor (OG). He said the two current members, Marie I. Boutté, Ph.D. and Paul Workman, have indicated they are interested in continuing to serve, and there is an application from Charles G. Hollis ([Agenda Item VI A-1](#)).

**MOTION:** Vice Chair Settlemeyer moved approval of providing to the Governor the three names for consideration for appointment to the Commission on Nuclear Projects. Senator Atkinson seconded the motion. The motion carried.

### **B. Appointment of Member to the Commission on Ethics, NRS 281A.200 – Rick Combs, Director**

Mr. Combs said this item is for an appointment to replace James Shaw who has served on the Commission on Ethics (COE) for two complete terms and, therefore, is ineligible to serve an additional term. He referred to NRS 281A.200, and a list of current appointees from the Commission ([Agenda Item VI A-2](#)), stating the appointee needs to be from any party other than the Republican Party, can be from any county within the State, and may be a former public official or an attorney, but is not required to be either.

**MOTION:** Assemblywoman Bustamante Adams moved approval to recommend Michael (Mike) A. Schneider, former Nevada State Senator, to replace James Shaw on the COE. Senator Woodhouse seconded the motion. The motion carried.

## **AGENDA ITEM VII—INVESTIGATIONS AND INQUIRIES**

Discussion of the Report and Analysis of the Division of Internal Audit's audit Report of the TA, DBI, Prepared at the Request of the Livery Operators Association of Las Vegas – Jeremy Aguero, Applied Analysis

Jeremy Aguero, Principal, Applied Analysis (AA), provided an overview of an analysis report ([Agenda Item VII A-1](#)) prepared by AA on behalf of the Livery Operators Association of Las Vegas, of a State audit report conducted by the DIA of the TA.

Mr. Aguero stated AA was asked to address two primary conclusions of the audit report issued by the DIA: (1) the rates charged by taxicab operators were excessive; and (2) the credit card fees were inappropriately imposed. He drew the Commission's attention to page 3 of the analysis report ([Agenda Item VII A-1](#)), which indicates the conclusions of the audit report have been recounted in nearly 50 local and national news reports suggesting the State of Nevada, and others, had participated in a version of State-sanctioned consumer overcharging in the amount of \$47.3 million. Mr. Aguero surmised not only is that conclusion inaccurate, but allowing it to continue puts Nevada's tourism-based economy at undue risk.

Mr. Aguero addressed the audit report's conclusion concerning rates. Referring to page 24 of the audit report, he stated taxicab rates and charges are roughly one percent different from the November 2008 rates after being adjusted for inflation. Taking into consideration fuel surcharges, rate fluctuations, and other changes, because rates remained relatively unchanged during most of that period, consumers fared better than they would have otherwise.

Concerning the fuel surcharge, Mr. Agureo referred to page 34 of the analysis report ([Agenda Item VII A-1](#)). He said a 20 cent fuel surcharge is allowed for a prescribed period when fuel prices reach \$3.25 per gallon. The surcharge is discontinued when fuel prices fall below \$3.25 per gallon. Mr. Aguero stated the fuel surcharge was applied exactly as intended, pointing out that in 2015 the surcharge was applied for a shorter period than it could have been. The audit report makes the assumption the fuel surcharge was in place for one year when it was only in place for 11 weeks and 5 days. Also in question was the application of the fuel index being used by the TA (the regulator) to determine when the fuel surcharge should be activated. The audit report concluded the utility of the index used presently, which is produced by the federal government and includes west coast gasoline prices, includes California; therefore, the cost of gasoline is overstated. A step-scale that uses a Nevada-based index has been offered as an alternative. However, the audit report suggests the \$3.25 threshold should remain, but the index at which the \$3.25 threshold is reached should not. If the regulatory body were to make a change to the index used, it should evaluate not only when the threshold is crossed, but also the threshold itself.

Mr. Aguero addressed the audit report's conclusion regarding credit card fees. He said he confirmed with State auditors the concern regarding credit card fees was due to legislative intent for the fee to only cover operating costs. Mr. Aguero referred to a summary timeline of A.B. 351 (Chapter 526, *Statutes of Nevada 2011*) ([Agenda Item VII A-2](#)), which indicates during the 2011 Session the



Legislature considered more restrictive language that was not included, and it is clear there was no coordinated effort by the State or taxicab operators to inappropriately charge consumers. Referring to a chart titled “Comparative Analysis of Tax Rates” ([Agenda Item VII A-3](#)), Mr. Aguero said the vast majority of locations build credit card fees into taxicab fees; therefore, people who do not use credit cards pay for some of those fees, which the State of Nevada has opted not to do. He drew the members’ attention to the column titled “Miscellaneous Charges That Could Result Under Certain Conditions” that lists charges for a variety of services in the top metropolitan areas in the United States.

Mr. Aguero stated the credit card fees and charges have the potential to erode public confidence, as indicated on pages 59 and 60 of the analysis report ([Agenda Item VII A-1](#)). As part of the analysis, he asked the State auditors; the State Business License Division, Secretary of State; the TA; and industry operators whether there had been any complaints relative to this issue—the response was there had been none. Mr. Aguero referred to page 63 of the analysis report ([Agenda Item VII A-1](#)). He said of the \$47.3 million in unsupported charges identified in the audit report, those calculations are either policy considerations or miscalculations; the analysis report indicates what they should actually be. On the same page, Mr. Aguero noted the residual amount is approximately \$3.4 million. He explained when he made an adjustment based on today’s rates, versus historical rates, that was the amount where rates would be if adjusted for inflation. Mr. Aguero stated there were other contributing factors that affected the \$3.4 million adjusted potential excess fees and charges, including the minimum wage increase, the Patient Protection and Affordable Care Act, and industry-specific tax increases, all of which would have affected that particular rate. He concluded while policy matters are important to the State, the matter will likely require additional scrutiny. Mr. Aguero opined if the question comes down to whether the State of Nevada dramatically overcharged consumers, the answer is absolutely not.

Michael D. Hillerby, Director of Legislative Affairs, Kaempfer Crowell, representing MasterCard (MC), stated his firm also represented MC in 2011 and it opposed A.B. 351. He said he submitted testimony to the Legislature at that time accompanied by an exhibit estimating the overcharge would be slightly higher than \$12.9 million. He thanked the DIA for its work, and he thanked Mr. Aguero, particularly, for the quality and thoroughness of his work and for the approach he takes. Mr. Hillerby noted it was interesting that after five years of the industry consistently saying the credit card fees were designed to only cover costs, including testimony in 2011, and given the justifications for the fuel surcharges, it is clear there is no justification and the defense is “everybody else is doing it, so why can’t we.” He argued that approach is a disservice to passengers if the intent was to raise money rather than to cover costs only.

Mr. Hillerby stated language was included in A.B. 351 for the TA to regularly review the credit card fee; it has not done so. According to a review of the minutes and meetings since 2011, and given the results of the audit report, the desire is for the TA to review the charge and arrive at a fee. Ostensibly, one of the reasons legislation was brought forward in 2011 was due to the credit card networks not allowing merchants to surcharge because it was thought to be a disservice to consumers. Since then, as a result of legal action with major retailers, the credit card networks no longer have that rule; therefore, there is no need for specific surcharging language. The credit card network rules state any retailer can include an additional charge, but it must approximate the expenses involved with accepting a credit card. Mr. Hillerby conjectured, based on the audit report and the information submitted in 2011, the fee is considerably higher than that needed to cover the cost for accepting credit card payments.

Assemblyman Hansen questioned who is to blame. He recalled testimony that the fee was going to be limited; however, the Senate Committee on Finance (SCF) removed the limits in 2011. He agreed the issue needs to be resolved and with the audit report's conclusion that the \$3 fee is excessive, but he could not fault the taxicab industry for taking advantage of what the Legislature essentially allowed it to do.

Mr. Hillerby stated the TA had already approved the credit card fee in 2010. The taxicab industry came forward in 2011 to ensure it had the authority to charge the fee and to change the law in order to get around contracts with banks that were issuing credit cards and the network rules that prohibited surcharging because it is seen as "anticonsumer."

Assemblyman Hansen commented the only good thing about this issue is the argument that the credit card fee is being charged to cover costs can now be eliminated, despite past efforts for its justification.

Senator Atkinson asked for clarification regarding whether the credit card fee actually covers costs.

Mr. Aguero replied that point was not part of his analysis, but rather to determine whether the credit card fee was permissive and whether the State of Nevada was doing anything it should not.

Assemblyman Hansen clarified the original language in the 2011 legislation that would have restricted the fee to cover only the cost was removed by the SCF and the \$3 fee was included.

By implication, Mr. Aguero said the fee went beyond covering costs.

## AGENDA ITEM VIII—INFORMATIONAL ITEMS

Chair Roberson asked the members whether they would like to discuss any of the informational items on the agenda.

Assemblywoman Bustamante Adams requested discussion of the *Tesla Gigafactory Quarterly Activity Report, 1st Quarter of 2016* ([Agenda Item VIII](#)).

- A. Interim 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. Interagency Council on Veteran Affairs (ICVA), Nevada Veterans Comprehensive 2016 Report Pursuant to NRS 417.0195
  - 2. Nevada System of Higher Education (NSHE), Report on Adjustment of Tuition Charges, Registration Fees or Other Fees, February 2016 Pursuant to NRS 396.542(3)
  - 3. More Copes Review and Expenditure Reports Submitted Pursuant to Sections 13.5 and 13.7 of the Clark County Sales and Use Tax Act of 2005, 3rd Quarter of Fiscal Year 2016
    - a. City of Henderson
    - b. City of North Las Vegas
    - c. Las Vegas Metropolitan Police Department
  - 4. Reports Regarding Contracts with Construction Managers at Risk (CMAR) Pursuant to Section 14.5 of A.B. 283 (2013 Session):
    - a. Clark County School District
    - b. Las Vegas Convention and visitors Authority
  - 5. Silver State Health Insurance Exchange, Fiscal and Operational Report Pursuant to NRS 695I.370(1)(b)
  - 6. Tesla Gigafactory Quarterly Activity Report, 1st Quarter of 2016 Pursuant to NRS 360.975(2)

Regarding Item C.6., the *Tesla Gigafactory Quarterly Activity Report, 1st Quarter of 2016* (Tesla Report) ([Agenda Item VIII](#)), Assemblywoman Bustamante Adams questioned how the \$9.6 million in transferable tax credits (TTCs) figure was determined.

Steve Hill, Executive Director, Governor's Office of Economic Development (GOED), explained the TTCs are granted after an audit of the performance of the company is determined and certified. The TTCs occur when job-site, permanent employees are hired at the minimum average wage, or greater, and TTCs are based upon the amount of investment the company makes on the site. Mr. Hill said the most recent audit was conducted for the period through December 31, 2015, and he anticipates the audits will be performed on a six-month basis.

In response to additional questions from Assemblywoman Bustamante Adams, Mr. Hill provided the following information.

- The number of employees who qualified for the \$12,500 in TTCs during the most recent audit was 92;
- The amount of capital investment through the end of the calendar year was \$386 million;
- The definition of “unique construction workers” mentioned in section (b) of the Tesla Report ([Agenda Item VIII](#)) refers to the method by which GOED asked Tesla to count individual construction workers: whether they work for a day or whether they work for an entire year; the average number of construction workers is recounted in the quarterly reports; and
- The \$131 million invested in the first quarter of 2016, referred to in section (d) of the Tesla Report ([Agenda Item VIII](#)), is a compilation of both Tesla’s \$67 million and Panasonic’s \$64 million in investments.

Mr. Hill confirmed for Senator Kieckhefer future quarterly reports can and will include benchmarks against which to evaluate the Tesla Gigafactory’s (factory) progress. He pointed out when the initial impact report was run, it was done relatively early in the process in March or April 2014. It took GOED through the end of 2014 to converse with Tesla. In addition, there was the special session, and contracts needed to get done. Mr. Hill said when GOED went before the Legislature, it should have moved up the economic impact assessment, which shows projected jobs and investments, by at least the nine months to one year it took from the time the process began to the time it finished. If GOED had done that, the projections for permanent employment would be more closely aligned; GOED should have changed the dates. A project of that size changes plans along the way—what is projected is not exactly the way things happen. In this case, by not updating those dates by at least nine months, it caused some of that differential and the concern that came with it.

Assemblyman Hansen commented he had the benchmarks, which were provided by LCB staff. He surmised Tesla is required to report every six months; therefore, progress can be compared twice yearly. He reiterated Mr. Hill’s suggestion that there be an offset of at least nine months to one year. For example, if there currently is a benchmark at 2,500 employees, one year later the realistic expectation is 2,500 even though the initial benchmark has not been reached.

Mr. Hill replied Tesla is required to have audits performed annually. He said GOED has given Tesla the option of having audits performed more frequently, and they have opted to do audits every six months. In addition, legislation requires Tesla to compile quarterly reports. The current report will consist of the period through June 2016 when the quarterly reports requirement ends. Going forward, Mr. Hill said GOED will report

against GOED's original projection and then he will work with Tesla to see whether it can come up with benchmarks of where it is currently.

Assemblyman Hansen expressed concern regarding a large, out-of-State contracting company that brought its own crew to the job site, which did not meet the minimum requirement for hiring a certain percentage of Nevadans. In addition, the contractor paid a wage that was substantially lower than the wage agreed upon for the job site. He asked whether the E-Verify program (E-Verify), Verification Division, USCIS, U.S. Department of Homeland Security, and the Social Security Administration is used on the project.

Mr. Hill responded the law requires an excess of 50 percent of Nevadans be hired for construction, and a minimum of 50 percent for permanent employees. Through the reporting period of March 2016, 72 percent of construction workers were Nevadans and 90 percent of permanent employees were Nevadans. He said Tesla has used a number of in-State and out-of-State contracted employees, and although he did not know the exact wage of those employees, he confirmed wages have met the legislatively mandated criteria. Mr. Hill stated he would follow up with the Commission regarding whether Tesla uses E-Verify.

7. Department of Business and Industry, Housing Division, annual Housing Progress Report Pursuant to NRS 278.235.

## **AGENDA ITEM IX—PUBLIC COMMENT**

Chair Roberson called for public comment; however, no testimony was presented.

The following documents were submitted for the record:

1. Application for Horse Power provided by Sally Summers, Founder and Executive Director, Horse Power ([Agenda Item IX A](#)).
2. Written testimony provided by Catherine and John Cappello, Nevada residents ([Agenda Item IX B](#)).

## **AGENDA ITEM X—ADJOURNMENT**

There being no further business to come before the Commission, the meeting was adjourned at 3:24 p.m.

Respectfully submitted,

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Debbie Gleason  
Secretary for Minutes

APPROVED BY:

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Senator Michael Roberson, Chair  
Legislative Commission

## MEETING MATERIALS

AGENDA ITEM	WITNESS/ENTITY	DESCRIPTION
<a href="#"><u>Agenda Item II A</u></a>	Sally Summers, Founder and Executive Director, Horse Power	Written testimony
<a href="#"><u>Agenda Item II B</u></a>	Andrea Johnson, M.A., Psychotherapist, Great Basin Behavioral Health and Wellness, Reno, Nevada	Written comments regarding R091-14
<a href="#"><u>Agenda Item IV A-1</u></a>	Legal Division, Legislative Counsel Bureau (LCB)	List of State agency regulations
<a href="#"><u>Agenda Item IV A-2</u></a>	Legal Division, LCB	Adopted Regulation of the State Board of Health (SBH), LCB File No. R144-13
<a href="#"><u>Agenda Item IV A-3</u></a>	Legal Division, LCB	Adopted Regulation of the Board of Wildlife Commissioners, LCB File No. R088-14
<a href="#"><u>Agenda Item IV A-4</u></a>	Legal Division, LCB	Adopted Regulation of the Nevada Tax Commission, LCB File No. R123-15
<a href="#"><u>Agenda Item IV A-5</u></a>	Legal Division, LCB	Adopted Regulation of the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors, LCB File No. R091-14
<a href="#"><u>Agenda Item IV A-6</u></a>	Legal Division, LCB	Adopted Regulation of the Administrator of the Division of Industrial Relations of the Department of Business and Industry, LCB File No. R13214
<a href="#"><u>Agenda Item IV A-7</u></a>	Legal Division, LCB	Adopted Regulation of the Nevada Tax Commission, LCB File No. R068-15



<a href="#"><u>Agenda Item IV A-8</u></a>	Legal Division, LCB	Adopted Regulation of the Public Utilities Commission of Nevada (PUCN), LCB File No. R110-15
<a href="#"><u>Agenda Item IV A-9</u></a>	Legal Division, LCB	Adopted Regulation of the Commission for Common-Interest Communities and Condominium Hotels, LCB File No. R115-15
<a href="#"><u>Agenda Item IV A-10</u></a>	Legal Division, LCB	Adopted Regulation of the Board of Dental Examiners of Nevada, LCB File No. R119-15
<a href="#"><u>Agenda Item IV A-11</u></a>	Legal Division, LCB	Adopted Regulation of the PUCN, LCB File No. R13515
<a href="#"><u>Agenda Item IV A-12</u></a>	Legal Division, LCB	Adopted Regulation of the Commission on Professional Standards in Education (CPSE), LCB File No. 140-15
<a href="#"><u>Agenda Item IV A-13</u></a>	Legal Division, LCB	Adopted Regulation of the CPSE, LCB File No. 143-15
<a href="#"><u>Agenda Item IV A-14</u></a>	Legal Division, LCB	Adopted Regulation of the SBH, LCB File No. R151-15
<a href="#"><u>Agenda Item IV A-15</u></a>	Legal Division, LCB	Adopted Regulation of the Commissioner of Insurance, LCB File No. R005-16
<a href="#"><u>Agenda Item IV A-16</u></a>	Legal Division, LCB	Adopted Regulation of the Department of Public Safety, LCB File No. R016-16
<a href="#"><u>Agenda Item IV A-17</u></a>	Legal Division, LCB	Adopted Regulation of the State Board of Pharmacy, LCB File No. R036-16
<a href="#"><u>Agenda Item IV A-18</u></a>	Legal Division, LCB	Adopted Regulation of the State Board of Education, LCB File No. R050-16

<a href="#"><u>Agenda Item IV B-1</u></a>	Rick Combs, Director, LCB	Memorandum concerning transfer of General Fund appropriations
<a href="#"><u>Agenda Item IV B-2</u></a>	Rick Combs, Director, LCB	E-mail and memorandum concerning transfer of appropriated funds
<a href="#"><u>Agenda Item IV B-3</u></a>	Rick Combs, Director, LCB	Memorandum concerning early session hires
<a href="#"><u>Agenda Item V A-1</u></a>	Rocky J. Cooper, Legislative Auditor, Audit Division (AD), LCB	Letter concerning audit reports
<a href="#"><u>Agenda Item V A-2</u></a>	Rocky J. Cooper, Legislative Auditor, AD, LCB	Letter concerning Single Audit
<a href="#"><u>Agenda Item V A-3</u></a>	Rocky J. Cooper, Legislative Auditor, AD, LCB	Summary report of Division of Parole and Probation, Department of Public Safety
<a href="#"><u>Agenda Item V A-4</u></a>	Rocky J. Cooper, Legislative Auditor, AD, LCB	Summary report of Division of Child and Family Services, Department of Health and Human Services
<a href="#"><u>Agenda Item V A-5</u></a>	Rocky J. Cooper, Legislative Auditor, AD, LCB	Summary report of Silver State Health Insurance Exchange
<a href="#"><u>Agenda Item V A-6</u></a>	Rocky J. Cooper, Legislative Auditor, AD, LCB	Summary report of Nevada State Board of Dental Examiners
<a href="#"><u>Agenda Item V A-7</u></a>	Rocky J. Cooper, Legislative Auditor, AD, LCB	Summary report of review of governmental and private facilities for children
<a href="#"><u>Agenda Item V A-8</u></a>	Rocky J. Cooper, Legislative Auditor, AD, LCB	Letter concerning six-month report
<a href="#"><u>Agenda Item V B</u></a>	Assemblyman Jim Wheeler, Assembly District No. 39	Letter concerning request to conduct audit of Horse Power (HP)
<a href="#"><u>Agenda Item VI A-1</u></a>	Rick Combs, Director, LCB	Appointment of members to the Commission on Nuclear Projects, Office of the Governor

<a href="#"><u>Agenda Item VI A-2</u></a>	Rick Combs, Director, LCB	Appointment to Commission on Ethics
<a href="#"><u>Agenda Item VII A-1</u></a>	Jeremy Aguero, Principal, Applied Analysis (AA)	Overview of an analysis report of a State audit report
<a href="#"><u>Agenda Item VII A-2</u></a>	Jeremy Aguero, Principal, Applied Analysis, AA	Timeline of Assembly Bill 351 (Chapter 526, <i>Statutes of Nevada 2011</i> )
<a href="#"><u>Agenda Item VII A-3</u></a>	Jeremy Aguero, Principal, Applied Analysis, AA	Chart of taxi rates
<a href="#"><u>Agenda Item VIII</u></a>	Steve Hill, Executive Director, Governor's Office of Economic Development	Tesla Gigafactory report
<a href="#"><u>Agenda Item IX A</u></a>	Sally Summers, Founder and Executive Director, HP	HP application
<a href="#"><u>Agenda Item IX B</u></a>	Catherine and John Cappello, Nevada residents	Written testimony

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