

MINUTES OF THE  
LEGISLATIVE COMMISSION  
NEVADA LEGISLATIVE COUNSEL BUREAU (LCB)  
January 28, 2010

The first meeting in 2010 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Thursday, January 28, 2010, commencing at 9:10 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada. A simultaneous video conference was broadcast to Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada.

COMMISSION MEMBERS PRESENT:

Assemblyman John Ocegüera, Chair (in Las Vegas)  
Assemblyman Marcus L. Conklin, Vice Chair (in Las Vegas)  
Senator Maggie Carlton (in Las Vegas)  
Senator Barbara K. Cegavske (in Las Vegas)  
Senator Steven A. Horsford (in Las Vegas)  
Senator Randolph J. Townsend (in Las Vegas)  
Senator Maurice E. Washington (in Carson City)  
Senator Joyce L. Woodhouse (in Las Vegas)  
Assemblyman John C. Carpenter (in Carson City)  
Assemblywoman Marilyn Kirkpatrick (in Las Vegas)  
Assemblyman James A. Settlemeyer (in Carson City)  
Assemblywoman Debbie Smith (in Carson City)

LEGISLATIVE COUNSEL BUREAU STAFF:

Lorne J. Malkiewicz, Director (in Las Vegas)  
Risa B. Lang, Chief Deputy Legislative Counsel (in Carson City)  
Mark Krmpotic, Senate Fiscal Analyst (in Carson City)  
Tracy Raxter, Assembly Fiscal Analyst (in Carson City)  
Paul V. Townsend, Legislative Auditor (in Carson City)  
Donald O. Williams, Research Director (in Carson City)  
Connie Davis, Legislative Commission Secretary (in Carson City)  
Fran Sullivan, Committee Assistant (in Carson City)

Chair Ocegüera called the meeting to order. Exhibit A is the agenda, and Exhibit B is the guest list. Certain items may have been taken out of order but were placed in agenda order in the minutes for purposes of continuity.

**Item I – Approval of Minutes of Meeting Held on October 26, 2009**, – Assemblyman John Ocegüera, Chair.

SENATOR TOWNSEND MOVED APPROVAL OF THE MINUTES OF THE OCTOBER 26, 2010, MEETING.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Senator Horsford, Senator Washington, and Assemblywoman Kirkpatrick were not present for the vote.)

**Item II – Legislative Auditor:**

**A. Summary of Audit Reports presented to Legislative Commission's Audit Subcommittee (NRS 218.6823) – Paul V. Townsend, Legislative Auditor.**

Paul Townsend, Legislative Auditor, Legislative Counsel Bureau, referenced a letter (Exhibit C) from Assemblywoman Sheila Leslie, Chair of the Audit Subcommittee of the Legislative Commission. The letter, included in the January 28, 2010, meeting packet under Item II.B, advised that during a meeting held on November 5, 2009, the following five reports were submitted to the Audit Subcommittee:

- Programs for Innovation and the Prevention of Remediation
- Office of the State Public Defender
- Department of Health and Human Services, Health Division – Inspection Programs
- Department of Business and Industry, Division of Financial Institutions
- Department of Business Industry, Real Estate Division

Programs for Innovation and the Prevention of Remediation - Mr. Townsend reported that the Programs for Innovation and the Prevention of Remediation Account originated from the 73rd Legislative Session (2005) that created the Commission on Educational Excellence. Mr. Townsend advised that the Commission on Educational Excellence was responsible for activities related to increasing student achievement.

Additionally, Mr. Townsend reported that the 2005 Legislature appropriated \$91.9 million to the Account for Programs for Innovation and the Prevention of Remediation of which \$81.3 million was expended in 2006 and 2007. Mr. Townsend also advised that the Audit Division was required, under the provisions of NRS 385-3789(4), to conduct biennial audits of the Account for Programs for Innovation and the Prevention of Remediation and that the audit the Division conducted related to funds expended in 2006 and 2007.

Mr. Townsend reported that schools and school districts did not always spend grant funds received from the Account for Programs for Innovation and the Prevention of

Remediation in accordance with laws, Commission and Department of Education policies and procedures, and the terms of the grant awards.

Mr. Townsend said that expenditures made by the schools and school districts were not always authorized by the Commission and that over \$580,000 in expenditures were made on items that were specifically rejected or never presented to the Commission for approval. Mr. Townsend noted, however, that although the Commission did not approve the expenditures, all were education-related expenses.

Additionally, Mr. Townsend reported that grant amendments were not always prepared or properly approved prior to the expenditure of funds, and it was determined in the Audit Division's sample that schools and school districts spent over \$5.1 million of grant funds prior to receiving Commission approval.

Mr. Townsend also advised that schools and school districts did not return unused funds to the Account for Programs for Innovation and the Prevention of Remediation in a timely manner. Additionally, the Department of Education did not deposit funds in accordance with state law. Mr. Townsend said that the untimely return of funds and failure to deposit checks timely resulted in the loss of about \$45,000 in interest earnings to the State.

Mr. Townsend advised that the audit report contained 16 recommendations to help ensure that the expenditure of funds from the Account for Programs for Innovation and the Prevention of Remediation were proper, and he said that the Nevada Department of Education (NDE) had accepted all 16 of the audit recommendations.

Mr. Townsend reported that over 500 grants were awarded during a "relatively" short time and that many of the problems found by the audit were related to the first year of the grant award. Concluding his presentation, Mr. Townsend advised that with the availability of funding, the Audit Division would continue to perform audits on the Account for Programs for Innovation and the Prevention of Remediation.

Office of the State Public Defender - Mr. Townsend reported that the audit for the Office of State Public Defender (OSPD) found that the Office of the State Public Defender substantially complied with state laws, regulations, policies, and procedures significant to its practices. Mr. Townsend advised, however, that improvements were needed in some areas.

Mr. Townsend said that although the OSPD was required by statute to submit reports during various intervals, they did not prepare and submit some reports. He pointed out that the biennial reports disclosing the total proposed budget and projected cases for each participating county for the upcoming biennium were not prepared. Additionally, it was determined that the hours used in preparing the reports were not always accurate and were charged to the wrong entity.

Additionally, Mr. Townsend reported that some expenditures, such as investigative costs and expert witness fees, were paid directly by counties and were not recorded in the OSPD's budget, which did not provide a complete picture of the total cost to run the OSPD.

Mr. Townsend advised that the audit for the OSPD contained eight recommendations, which were accepted.

Health Division's Inspection Programs - Reporting on the audit for the Health Division's Inspection Programs, Mr. Townsend advised that the Health Division had not inspected facilities in accordance with requirements established in laws, regulations, and other guidelines.

Under the audit's principal findings, it was determined that the Health Division's Environmental Health Services (EHS) Program for the inspection of food establishments in school kitchens in 14 counties, Clark County, Carson City, and Washoe County excluded, did not inspect all food establishments annually as required by statute. The audit found that the EHS did not conduct 40 percent of inspections during fiscal years 2006 through 2008, and in some cases, food establishments were not inspected for several years. The audit also found that the EHS did not inspect all school kitchens at least twice each school year as required and that 32 percent of required inspections were not conducted during fiscal years 2006 through 2008. Mr. Townsend reported that the EHS did not always follow up timely on critical violations found during food inspections, and, in many cases, follow-up did not occur until the next annual inspection.

Additionally, the audit found that the Health Division's Bureau of Health Care Quality and Compliance Licensure and Certification Program (LCP) did not inspect health-care facilities timely. Mr. Townsend reported that 56 percent of inspections for 100 randomly selected facilities were not timely. The audit also found that the LCP did not always investigate and resolve complaints timely. Mr. Townsend reported that 37 percent of complaints from fiscal year 2008 were not investigated timely.

Mr. Townsend advised that the Division could make further improvements to performance measures for its inspection programs. He explained that most performance measures tracked the number of inspections conducted rather than the percentage of required inspections completed and that tracking the percent of required inspections conducted would better measure program effectiveness. Additionally, Mr. Townsend said that inspection programs would benefit by tracking whether the Division corrected violations found during inspections timely.

Mr. Townsend reported that the audit for the Health Division's Inspection Programs included 20 audit recommendations, which the Division accepted.

Division of Financial Institutions - Reporting on the Division of Financial Institutions audit, Mr. Townsend advised that the Division did not always perform timely

examinations of non-depository licensees. Non-depository licensees included collection agencies and companies that provided services, such as check cashing, high-interest and title loans. Mr. Townsend explained that non-depository licensees often dealt with individuals with a financial hardship, and, therefore, it was important to ensure the protection of consumers against unethical business practices.

Mr. Townsend reported that the audit found that in 48 percent of sampled items during 2008, the Division did not always perform required examinations timely. Additionally, there were concerns that Division staff did not always use the least expensive method of travel when conducting state business. The audit found that reimbursement was provided to multiple examiners for traveling in personal vehicles rather than car-pooling in a State Motor Pool vehicle.

Mr. Townsend reported that the audit for the Division of Financial Institutions contained 12 recommendations, which the Division accepted.

Division of Real Estate - Mr. Townsend reported that the audit for the Division of Real Estate found that the Division had difficulty controlling certain financial and administrative activities. Specifically, Mr. Townsend said the Division did not actively pursue the collection of fines, accounts receivable records were not adequate, and staff did not properly report receivables to the State Controller.

Additionally, Mr. Townsend reported that Division staff did not actively pursue the collection of disciplinary fines. Audit Division staff reviewed 19 large fines that totaled \$808,620 and found that the Division collected only \$40,600 or 5 percent on two fines. Mr. Townsend pointed out that the Division did not send past-due collection letters for more than nine months after violators failed to pay. Additionally, the total time from assessment of fines to sending collection letters averaged more than a year and a half. Mr. Townsend also said that Division staff did not submit delinquent fines to the State Controller who could have pursued outside collections. Mr. Townsend pointed out that oftentimes violators would leave the state and might not pay the fines, but waiting a year and a half to send collection letters significantly reduced the ability for collection.

Mr. Townsend reported that the audit also found that the Division did not investigate appraiser complaints timely. A sample of 10 cases remained open an average of 552 days as of May 2009, and the Division took an average of 580 days to resolve and close cases.

Additionally, Mr. Townsend reported that the Division did not always process real estate complaints timely. Of 25 real estate complaints tested, 9 complaints remained open, on average, more than a year while the Division's work performance standards suggested that complaints be processed within 6 months.

Mr. Townsend advised that the audit report for the Real Estate Division contained 12 recommendations to improve fiscal and administrative practices, which the Division accepted.

Concluding his presentation, Mr. Townsend advised that the Chair of the Audit Subcommittee recommended that the Legislative Commission accept the audit reports.

Chair Ocegüera asked for information regarding the outcome of the audit recommendations.

Mr. Townsend discussed the 60-day plan for corrective action that the agencies were required to submit to the Audit Division with a copy to the Department of Administration. Mr. Townsend advised that the Audit Division staff reviewed the agency plans to ensure agreement that the plan would satisfy the audit recommendations.

Mr. Townsend reported that the 60-day plan for corrective action on the audits he had just summarized were due on February 5, 2010. Additionally, he said that six months after receipt of the plans for corrective action, the Department of Administration, through its Division of Internal Audits, would verify and prepare a written report on the status of the recommendations followed by a hearing before the Audit Subcommittee of the Legislative Commission. Mr. Townsend reported that in the event that the agencies did not implement the recommendations, members of the Audit Subcommittee would ask agency staff to explain any implementation problems they were experiencing. Mr. Townsend also advised that the Audit Division staff would continue to follow up on the recommendations until the issues were resolved.

Senator Cegavske asked for information on the number of auditors the Legislative Counsel Bureau's Audit Division employed and the number of audits on which they were working.

Mr. Townsend reported that the Audit Division had a staff of 30 approved positions and that there were currently 24 auditors and supervisors including himself, 2 support staff, and 4 vacancies. Mr. Townsend advised that staff were currently conducting 10 audits.

In response to additional questions from Senator Cegavske regarding the number of audits conducted during a year, Mr. Townsend advised that the Audit Division conducted 25 to 30 audits over a biennium and normally between 14 and 15 audits per year.

Senator Horsford noted that the audit for the Division of Financial Institutions found that of 50 non-depository licensee examinations, which included collection agencies, check cashing, high-interest and title loan companies, 24 licensees or 48 percent did not receive timely examinations. Senator Horsford asked Mr. Townsend to comment on whether there was a trend toward a lack of regulatory oversight or whether the low rate of timely examinations was an initial identification.

Mr. Townsend responded that the issue regarding timely examinations was previously identified, and in November 2008, the Interim Finance Committee (IFC) approved 10

additional positions for the Division of Financial Institutions to address the issue. Mr. Townsend explained, however, that when the Commissioner for the Division of Financial Institutions received the audit report, he expressed concern that because of the current financial crisis, some of the Division's resources were being shifted to depository institutions. Mr. Townsend said that although the Commissioner accepted the recommendation and was working to increase the examinations of the non-depository licensees, he expressed concern about the ability to continue doing that effectively.

Senator Horsford commented that the Division was still required to properly examine non-depository licensee examinations to ensure that consumers were not being taken advantage of or that unethical business practices were occurring. Senator Horsford noted that with the current economy, members of the public might be turning to non-depository licensee businesses. Additionally, Senator Horsford asked how many of the 10 additional examiner positions the Division of Financial Institutions had hired.

Mr. Townsend advised that the Division filled all 10 of the examiner positions at the conclusion of the audit and that the Commissioner of Financial Institutions, in his response to the audit, mentioned that furloughs also affected the examination process.

Senator Townsend commented that "traditionally" self-funded agencies were permitted to use fees they collected to fund audits to improve the regulatory process. Senator Townsend said, however, that he believed that the Legislative Counsel Bureau's Audit Division did not receive fees from the Division of Financial Institutions' licensees for the audit procedure.

Mr. Townsend confirmed that the Audit Division did not receive fees collected by state agencies.

Senator Townsend suggested that perhaps the Interim Finance Committee, at its next meeting in February, should address the collection of licensee fees to ensure that state agencies complied with the regulatory process. Senator Townsend expressed concern that if the Legislature, as a body, was restricted in ensuring the appropriate regulatory compliance for the public, it might be appropriate to hold discussions with licensees concerning a way to assist the Legislative Audit Division in the process.

Senator Carlton addressed the audit for the Health Division's Inspection Programs and asked about the lack of inspections for mammography equipment noting that 64 percent of machines were not inspected in a timely fashion. Senator Carlton recalled that the hepatitis C crisis several years ago was attributed to a lack of inspection of public health facilities and expressed concern that another catastrophe could follow by not conducting timely inspections. Senator Carlton asked if a shortage of personnel was the reason inspections were not conducted timely.

Mr. Townsend reported that when the issue of inspections of health facilities was brought to the Division's attention and presented to the Audit Subcommittee, it was

recognized that there had been past problems. Mr. Townsend said that one of the reasons for the audit was to highlight the other areas and to ensure that weaknesses could be addressed. Mr. Townsend recalled that there were some difficulties in filling positions for the Radiological Health Program (RHP), which was a specialized area and although RHP had some difficulty filling positions during the time of the audit, staff had indicated they were currently working toward improvement.

Senator Carlton expressed concern regarding the health of women being tested on mammography equipment that was not functioning properly and requested information on past and current staffing.

Mr. Townsend provided clarification that the audit findings revealed that the mammography equipment was inspected timely.

Senator Carlton agreed that she had misread the narrative, which said that the mammography equipment was inspected timely and that it was x-ray machines that were not. Senator Carlton said, however, she was concerned that the 32 out of 50 randomly selected x-ray machines were not inspected timely and asked that follow-up information concerning the lack of timely inspections of x-ray equipment be provided to her.

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

SENATOR TOWNSEND MOVED APPROVAL OF THE AUDIT REPORTS  
SUBMITTED TO THE LEGISLATIVE COMMISSION.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**B. Summary of Six-month Status Reports on the Implementation of the Audit Recommendations by the Legislative Auditor as Submitted to the Audit Subcommittee – Paul V. Townsend, Legislative Auditor.**

Paul Townsend, Legislative Auditor, Legislative Counsel Bureau, referenced a November 6, 2009 letter (Exhibit D) from Assemblywoman Sheila Leslie, Chair of the Audit Subcommittee, which reported that 17 six-month reports on the implementation of the audit recommendations made by the Legislative Auditor were submitted to the Audit Subcommittee on November 5, 2009.

Mr. Townsend referenced a schedule (Exhibit E) that reflected the Audit Division's analysis of reports presented to the Audit Subcommittee as of November 5, 2009, and said that Page 2 of the schedule showed 185 recommendations for the 17 reports. Mr. Townsend reported that as of November 5, 2009, the audited agencies had fully



implemented 162 recommendations and partially implemented 23 recommendations. Additionally, he said that the Audit Subcommittee was continuing to follow up on the 23 partially implemented recommendations, a number of which involved information technology systems that were in progress. Mr. Townsend advised that he would provide an additional report to the Audit Subcommittee and the Legislative Commission on the implementation process. Mr. Townsend further advised that the Chair of the Audit Subcommittee recommended that the Legislative Commission accept the 17 six-month status reports.

There were no questions from the members of the Commission.

SENATOR TOWNSEND MOVED APPROVAL OF THE 17 SIX-MONTH STATUS REPORTS.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

In response to a request for discussion on the motion, Senator Horsford noted that there appeared to be inadequate compliance among multiple fee-based agencies in meeting their inspection requirements. He asked whether the Audit Division staff could identify how those agencies were failing to meet their regulatory or compliance expectations beyond the information currently before the members of the Commission.

Mr. Townsend advised that many regulatory agencies existed, particularly in the Department of Business and Industry. He explained that as the Audit Division staff conducted risk assessments on the areas of review in an audit, one of the ways of determining whether regulatory agencies were fulfilling their mission was to ensure they were conducting timely inspections and that complaints were resolved. Mr. Townsend suggested that he conduct an analysis of audits that the Audit Division had performed to provide the Commission members information that showed common elements.

Senator Horsford indicated that with the Chair's direction, the top five or ten common findings and a list of the divisions where the trend appeared evident would be helpful for future analysis.

The Chair expressed agreement with Senator Horsford's suggestion, and there being no further discussion called for a vote on the motion.

THE MOTION CARRIED UNANIMOUSLY.

### **Item III – Progress Reports and Appointments:**

#### **A. Appointment of Members to Nevada Silver Haired Legislative Forum (NRS 427A.320) – Lorne J. Malkiewich, Director.**

Lorne Malkiewich, Director, Legislative Counsel Bureau, provided the following discussion regarding the appointment of members to the Nevada Silver Haired

Legislative Forum. Mr. Malkiewich referenced a memorandum (Exhibit F) dated January 20, 2010, from Mary Shope, Coordinator for the Forum, and advised that Ms. Shope was available to respond to questions concerning the appointments. Mr. Malkiewich advised that page 2 of the memorandum listed the appointments to the Forum, which currently had four vacancies that Ms. Shope was working on with senators representing the districts in which the vacancies occurred. Mr. Malkiewich noted that with the exception of Reba June Burton, a new appointee, nominated by Senator Maurice Washington, the names listed on page 2 were reappointments to the Forum. Mr. Malkiewich reported that Reba June Burton had served as a member and the chair of the Washoe County Library Board of Trustees and was well qualified for appointment to the Forum. Additionally, he said that Assemblywoman Debbie Smith supported Ms. Burton's appointment in a January 27, 2010 letter (Exhibit G) to the Nevada Silver Haired Forum.

Mary Shope, Coordinator, Nevada Silver Haired Legislative Forum, advised that there were two vacancies in the north, one for the Capitol Senatorial District for nomination by Senator Amodei and one in Washoe County Senatorial District No. 1 for nomination by Senator Bernice Mathews. Additionally, Ms. Shope advised that there were two vacancies in the south, one for Clark County Senatorial District No. 7 for nomination by Senator David Parks and one for Clark County Senatorial District No. 10 for nomination by Senator Bob Coffin.

Ms. Shope expressed her thanks to the Senators for their nominations for appointments and reappointments as well as to all of the members of the Forum under the leadership of President Lucy Peres.

Chair Ocegura thanked Ms. Shope for her work as Coordinator to the Nevada Silver Haired Legislative Forum and indicated he would entertain a motion for approval of the appointment and reappointments.

SENATOR WOODHOUSE MOVED APPROVAL OF THE APPOINTMENT OF REBA JUNE BURTON AND REAPPOINTMENT OF ALICE ADAMS, CLO BANKS, VERLIA DAVIS HOGGARD, RONALD E. STOLLER, HARRIET TRUDELL, EVELYN A. CANNESRA, RICK A. STANFILL, AND RUTH H. HART TO THE NEVADA SILVER HAired LEGISLATIVE FORUM.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Senator Cegavske discussed sending letters of congratulations to those appointed to the Silver Haired Legislative Forum with thanks to those reappointed for their continued service.

Ms. Shope advised that senators sometimes sent individual letters and the President of the Forum also sent thank-you letters to the appointees. Ms. Shope said that at the direction of the Legislative Commission, she would prepare a formal letter of acknowledgement from the Commission to those appointed and reappointed members of the Forum.

In response to a question from Chair Ocegüera on how the members of the Commission wished to proceed, Senator Cegavske asked that Ms. Shope prepare a formal letter of acknowledgement from the Commission.

#### **Item IV – Legislative Commission Policy:**

##### **A. Review of administrative regulations – Risa B. Lang, Chief Deputy Legislative Counsel.**

Chair Ocegüera indicated that in keeping with customary procedure, he would go down the list of regulations (Exhibit H), and the members of the Commission could request further discussion on any of the regulations submitted. Additionally, he said he would entertain a motion to approve the regulations not held for further discussion.

The following regulations were held for further discussion:

R051-09A held by Assemblyman Conklin  
R087-09A held by Assemblyman Conklin  
R109-09A held by several members of the Commission  
R118-09A held by Senator Carlton  
R119-09A held by Assemblyman Settlemeyer  
R127-09A held by Assemblyman Conklin  
R134-09A held by Assemblyman Carpenter  
R136-09A held by Senator Cegavske  
R139-09A held by Assemblyman Carpenter  
R142-09A held by Assemblyman Carpenter and Assemblywoman Kirkpatrick

SENATOR TOWNSEND MOVED APPROVAL OF THE REMAINING REGULATIONS IDENTIFIED HEREIN AS R111-08A, R209-08A, R004-09A, R014-09A, R056-09A, R082-09A, R094-09A, R102-09A, R103-09A, R110-09A, R115-09A, R120-09A, R122-09A, R123-09A, R130-09A, R131-09A, R137-09A, R146-09A, R147-09A, AND R148-09A.

MS. KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regarding R051-09A from the Public Utilities Commission of Nevada (PUCN), Mr. Conklin asked that staff from the PUCN discuss, for the record, the intent of the

regulation, which appeared would clarify the accounting practice for the Federal Energy Regulatory Commission (FERC) accounts.

Anna Penrose-Levig, Administrative Attorney, PUCN, appearing for Commissioner Rebecca Wagner, PUCN, advised that the intent of updating the references to the Uniform System of Accounts was to ensure that the PUCN regulations were current and reflected the current Uniform System of Accounts numbers.

Mr. Conklin asked for assurance that the regulation did not provide the ability to “write off additional monies under rate cases.”

Ms. Penrose-Levig indicated that she did not believe the regulation provided for the movement of any money and that the regulation was simply referencing the correct account numbers assigned to specific accounts by the FERC.

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION  
R051-09A FROM THE PUBLIC UTILITIES COMMISSION OF NEVADA.

MR. CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

On Regulation R087-09A from the Public Utilities Commission of Nevada (PUCN), Mr. Conklin noted that the regulation appeared to change the accounting for reimbursements or subsidies for Lifeline, a service that provided qualified consumers with a discount on monthly charges for their primary home phone line. Mr. Conklin asked for assurance that the Lifeline service would continue to qualified consumers at the same rate currently offered.

Nancy Wenzel, Senior Attorney and Hearings Office, PUCN, advised that carriers currently providing the Lifeline discount to their customers would continue to provide the discount, and the eligible customers today would continue to be the eligible customers tomorrow. Ms. Wenzel advised that the regulation simply provided a mechanism by which the provider could collect those funds, which they did not have in the past.

In response to questions from Senator Townsend regarding the regulation and A.B. 518, 74th Legislative Session (2007), Ms. Wenzel, advised that during the rulemaking process for A.B. 518, an issue arose regarding the Lifeline Fund. Ms. Wenzel explained, however, that A.B. 518 did not precipitate the issue and that the Legislature enacted the statute for the Lifeline Fund in 1999. She explained that the carriers raised some concerns regarding the PUCN administrative process to recover the reimbursements or subsidies for Lifeline and asked that the PUCN streamline the process to collect those monies more efficiently and to pass the discount through to their customers.

MR. CONKLIN MOVED APPROVAL OF REGULATION R087-09A FROM THE PUBLIC UTILITIES COMMISSION OF NEVADA.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Senator Townsend commented on the binder containing copies of the state agency regulations provided to the members of the Legislative Commission and called attention to a document titled, Notice of Adoption of Proposed Regulation that was enclosed behind each of the regulations in the binder. The document included information concerning the number of persons who attended and testified at each hearing, submitted written comments, and other information that Senator Townsend said could be helpful to members of the Legislative Commission in reviewing each of the regulations and their intent.

Senator Townsend noted that because of term limits, many new legislators would be joining the Legislature in 2011 and suggested that an adjustment to the Notice of Adoption of Proposed Regulation document would be helpful to legislators new to the process. Senator Townsend said that listing the individuals who attended and testified during the regulation hearings would provide new legislators the ability to contact those individuals directly, a suggestion he said that the members of the Commission might review over the next several Commission meetings.

Mr. Conklin expressed agreement with Senator Townsend's comments and indicated that if Legislative Commission members could gain electronic access to the information in the binder containing the state agency regulations and the informational statement prior to the Commission meetings, members would be better prepared to review the regulations.

Chair Ocegüera also agreed that providing a list of regulation hearing attendees prior to the Commission meetings would be helpful.

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that the Legislative website included The Nevada Register, "a compilation of proposed, adopted, emergency and temporary administrative regulations, notices of intent and informational statements." Mr. Malkiewich indicated that if the information requested by Senator Townsend and Mr. Conklin was not included, he thought perhaps it could be scanned to the website for provision to the Commission members before the next meeting.

Chair Ocegüera said that a link to the information would be helpful.

On regulation R109-09A from the Private Investigator's Licensing Board, Ms. Kirkpatrick questioned the language in Section 2 of the regulation that required "a licensee to provide certain potential employees with an application for registration with the Board." Ms. Kirkpatrick asked for additional information concerning who those certain potential

employees were. Additionally, Ms. Kirkpatrick pointed out an additional reference in Section 2.3 that said, "If a licensee determines that the person is not registered or provisionally registered . . . the licensee must provide the person with an application for registration." Ms. Kirkpatrick asked why there was a need for the first requirement if an application for registration was going to be provided anyway.

Mechele Ray, Executive Director, Private Investigator's Licensing Board, Office of the Attorney General, said the reference in Section 2 typically applied to all employees who worked for a licensee and that all employees were required to have a work registration card. Ms. Ray explained that the Private Investigator's Licensing Board currently issued the work cards, which the counties had previously issued. Ms. Ray agreed that the language in Section 2.3 regarding a licensee providing a person with an application for registration appeared to be redundant and said that the Board could amend that language.

Ms. Kirkpatrick indicated she did not believe there was an option to amend the regulation and suggested that perhaps it should be pulled from the agenda and rewritten.

Ms. Ray indicated that once a person was registered or provisionally registered with the Private Investigator's Licensing Board, that person could apply to a licensee for employment.

Ms. Kirkpatrick said that she believed "simple was good" but that she felt it was better to gain the employment followed by the paperwork.

Ms. Ray advised that rather than sending potential employees away, licensees provided them with an application for registration through the Private Investigator's Licensing Board and asked them to return to apply for a job after they were registered.

Ms. Kirkpatrick indicated that it appeared the registration process created conflict.

Mr. Conklin expressed agreement with Ms. Kirkpatrick's comments and indicated that the language in Section 2 that required, "a licensee to provide certain potential employees with an application for registration with the Board" appeared to be "overly restrictive."

Chair Ocegüera asked Ms. Ray whether pulling the regulation from the current agenda would negatively affect the Board.

Ms. Ray advised that S.B. 265, 75th Legislative Session (2009), provided the authority for the regulation and that the bill was effective January 1, 2010. Ms. Ray said, however, that the corrections to the regulation could be quickly resolved, and the Board would return to the Commission for approval.

Chair Oceguera asked Ms. Ray whether she wanted to pull Regulation R109-09A from the agenda, and she agreed to do so.

Chair Oceguera advised that Regulation R109-09A was pulled from the agenda and would be brought before the Commission for review at the next meeting.

Chair Oceguera asked whether there were additional concerns with the regulation and hearing none moved on to the next regulation.

On Regulation R118-09A from the Peace Officers' Standards and Training Commission (P.O.S.T.), Senator Carlton questioned the revision of specific qualifications and the necessity, for example, to define agility run. Senator Carlton discussed the expense involved in revising and adopting regulations and commented that there appeared to be no compelling reason to change the height a person could jump, the number of sit-ups completed in a minute, or the number of push-ups that could be completed for different categories of peace officers. Senator Carlton disclosed that her husband was currently an employee of the Department of Public Safety and a P.O.S.T. certified Nevada peace officer.

Dick Clark, Executive Director, Peace Officers' Standards and Training Commission, identified himself for the record and introduced Scott Johnston, Professional Standards Bureau Chief, P.O.S.T.

In response to Senator Carlton's questions, Mr. Clark explained that the physical fitness standards included in the regulation were entry-level standards for peace officers. He said that for many years, Nevada had borrowed physical fitness standards from a study outside of Nevada rather than establishing standards. Mr. Clark advised that the sheriffs and chiefs in the P.O.S.T. Commission recommended conducting a job task analysis within Nevada to establish standards with "cut points that would be fair, reasonable, and defensible" for an individual to become a peace officer in Nevada. Mr. Clark further advised that the Legislature granted \$150,000 to conduct the study, and the P.O.S.T. Commission completed the job task analysis with the cooperation and collaboration of all Nevada law enforcement agencies.

Mr. Clark explained that after completion of the job task analysis, "cut points" were established to provide varying physical fitness standards for peace officer categories I, II, and III, and those standards were recommended to the P.O.S.T. Commission for adoption. Mr. Clark advised that there were no problems experienced or adversarial testimony received during the regulation process.

Senator Carlton expressed concern with respect to setting different qualifications for peace officer categories I, II, and III, which she indicated appeared to be too restrictive with regard to the number of sit-ups and push-ups an individual could accomplish. Senator Carlton pointed out that some agencies had category II officers working next to category I officers while category III officers worked in corrections, a more isolated profession. Additionally, Senator Carlton noted that some exercises were more easily

accomplished by males and asked if women would be designated to a certain category of peace officers and men to another.

Mr. Clark advised that the levels for each of the physical fitness tasks were tied to job functions established through the job task analysis. Additionally, Mr. Clark advised that historically for the last 20 to 25 years, peace officers had to qualify for already established requirements. Mr. Clark explained that the study, however, clarified the physical demands of the job and the differences between categories I, II, and III in Nevada, and active male and female field peace officers, spread out through different age categories, were tested to establish the basis level to physically perform the duties of a peace officer in Nevada. Mr. Clark reiterated that the cut points were set specifically through the study and were legally defensible.

Senator Carlton expressed continued reservations concerning the regulation and asked whether the new physical fitness standards would affect current peace officers.

Mr. Clark advised that, as he had mentioned in his opening statement, the cut points were for entry-level peace officers. Additionally, he said there was no requirement for peace officers to annually certify or to take a physical fitness test.

Senator Horsford questioned whether the Department of Personnel had reviewed the language in Section 6.2 (a) on page 4 of the regulation, which said, "An investigation of the current and past employment history of the person, including, without limitation, an examination of the duties that have been assigned to the person and any performance evaluations of the person." Senator Horsford indicated that it was his understanding that an employer could not release past employee performance evaluations. Additionally, Senator Horsford questioned the language under Section 6.2 (d) concerning the need for a financial history of the person. Senator Horsford indicated that while he understood that certain financial backgrounds could disqualify a person, he said that the language appeared to be "open ended."

In response, Mr. Clark said that the financial history check had been included in the regulation for years and was not being revised. Additionally, Mr. Clark said that when conducting background investigations, law enforcement agency officials asked the individuals, whose backgrounds were being checked, to sign a waiver, although they were not obligated to do so, in order that their past personnel history including performance evaluations could be reviewed.

Senator Horsford indicated that he understood the investigation of the background of a person could include the use of a lie detector. He asked Mr. Clark, however, to state for the record whether the past employment history of the person being investigated, including performance evaluations, could be released if the person voluntarily signed a waiver to do so.

Mr. Clark confirmed that the statement was correct.



Senator Horsford said that just because the language concerning financial history was already included in the regulation did not necessarily make it right. Senator Horsford asked for information regarding the need for the financial history of an applicant and how that information was used in determining whether the person was eligible for employment.

Mr. Clark advised that there were no specifics concerning how an agency interpreted regulations and that the recommendation was that agencies make judgments based on their standards. Additionally, Mr. Clark clarified that the use of a lie detector in the proposed regulations, at this point, was not mandatory but rather a recommendation to check for truth verification.

Senator Horsford indicated he would follow-up with his concerns after the meeting since it appeared that the information concerning whether financial history qualified or disqualified an applicant was subjective. Additionally, Senator Horsford indicated that a need existed for setting a standard for the disclosure of financial history information that was not open-ended.

Chair Oceguera advised that while he understood Senator Horsford's concerns, he also had some knowledge of background investigations for the fire department. Chair Oceguera advised that the fire department's background investigations for firefighter applicants included financial history information to verify the applicant's history of where they had lived and bankruptcy issues. Chair Oceguera pointed out that firefighters and peace officers were people in whom the public placed their trust and expressed agreement with the necessity to look into an applicant's past to avoid hiring people that were not worthy of being trusted.

Hearing no additional comments, Chair Oceguera entertained a motion for approval.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL OF  
REGULATION R118-09A FROM THE PEACE OFFICERS' STANDARDS  
AND TRAINING COMMISSION.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

On Regulation R119-09A from the State Board of Pharmacy, Mr. Settelmeyer questioned the need for increasing fees and asked whether the Board was experiencing monetary problems with the current licensing fee. Additionally, he asked for information on the availability of reserve funding.

Larry Pinson, Executive Secretary, Nevada State Board of Pharmacy, reported that the Board had not requested an increase in licensing fees for pharmacists in ten years and advised that nationally, the fees were low compared with other professions. Mr. Pinson

drew a comparison between himself and his wife, a dental hygienist, who he said paid twice the amount for her license as he paid for his.

Additionally, Mr. Pinson reported that in the ten years since the Board had requested a fee increase, job duties had increased, which included:

- The inspection of every pharmacy and dispensing practitioner in Nevada
- An unfunded mandate to inspect Canadian drug pharmacies, to ensure the safety of drugs for Nevada consumers, at a cost of \$10,000 to \$12,000 for each trip
- The addition of an inspector for the large number of pharmacy chains that had moved into Nevada
- The passage of A.B. 128, 74th Legislative Session (2007), an act related to prescription drugs that required certain wholesalers and manufacturers of prescription drugs to file an annual report with the State Board of Pharmacy disclosing the wholesalers' and manufacturers' compliance with a written marketing code of conduct

Mr. Pinson advised that one of his primary concerns was the grant-funded Controlled Substance Prescription Abuse Prevention Task Force, which he considered one of the best prescription-monitoring programs in the country. Mr. Pinson told the members of the Commission that he did not want to risk the loss of the program in the event that grant funding was no longer available.

Mr. Pinson indicated that because of the reasons he had given, he believed the \$15-a-year fee increase for pharmacists was reasonable. Additionally, he said that the Board held a series of workshops and public hearings during which there was no opposition to the increase although one person asked about the \$20 increase for intern pharmacists. Additionally, Mr. Pinson said that the Interim Legislative Committee on Health Care reviewed the request for a fee increase.

Mr. Settlemeyer reiterated his earlier question and asked for information on whether the Board was currently experiencing a financial problem and whether a reserve account existed.

Mr. Pinson advised that the Board was not experiencing any financial problems and confirmed the availability of reserve funding.

Mr. Settlemeyer asked whether an attempt was being made to ensure funding for new programs since the Board had a reserve account and no financial problems.

Mr. Pinson advised that the Board requested the fee increase to ensure the continued funding of the current programs and reiterated that the continued grant funding for the

Controlled Substance Prescription Abuse Prevention Task Force was of primary concern.

Mr. Settelmeyer indicated that he believed fees should be related to what they were being charged for, and it appeared that the increase in fees would be potentially utilized for something entirely separate.

Carolyn J. Cramer, General Counsel, Nevada State Board of Pharmacy, explained that pharmacists had just renewed their licenses and that they would not be affected by the new rate increase for two years, which provided them time to prepare for the increase. Additionally, Ms. Cramer advised that funding, provided through the Harold Rogers Prescription Drug Monitoring Discretionary Grant Program, for the Controlled Substance Prescription Abuse Prevention Task Force would end in June 2010. Ms. Cramer reported that since an extension for funding could not be guaranteed, the program was not presently accounted for in the Board of Pharmacy budget. Ms. Cramer said that if grant funding for the program was no longer available, funding the Task Force would become a new expense for which the Board would have to use reserve funding.

Ms. Cramer compared the Board's funding to retirees on a fixed income who put aside their income and cashed in certificates of deposit throughout the year. Ms. Cramer reiterated that the Board wanted to provide their licensees with a lengthy notice that when they renewed licenses in 2011, the fee would increase by \$30 from \$150 to \$180, which remained below the statutory limit of \$200.

Ms. Kirkpatrick discussed the problem of prescription drugs within Nevada high schools and the importance of the drug-monitoring program. Ms. Kirkpatrick indicated that high school students could buy prescription pain pills for \$15 a pill and pointed out that cost for insurance on prescription drugs would skyrocket if the prescription drug problem in high schools was not resolved.

Ms. Kirkpatrick expressed support for the request for a biennial increase of \$30 and disclosed that her daughter was attending pharmacy school.

Senator Carlton noted that Mr. Settelmeyer had asked a question concerning reserve funding that members of the Board had only partially answered. Senator Carlton asked how much money was in the reserve account.

Mr. Pinson responded that as licensing fees were received, the Board bought certificates of deposit and staggered those certificates in order to cash them as needed throughout the year. Although he indicated he was uncertain about the total amount in reserve, he said that he would find out.

Senator Carlton recalled that in the past other boards with significant reserve accounts had expressed similar concerns and requested approval for fee increases. Senator Carlton indicated that she understood continued funding of the Task Force was a high priority but expressed reservations about increasing licensing fees for pharmacists and

intern pharmacists in anticipation that grant funding would no longer be available. Additionally, Senator Carlton agreed that the fee increase was small but asked why the Board would need a yearly \$15 fee increase if, for example, a million dollar reserve existed. Additionally, Senator Carlton recalled that recently all boards increased pay for board members and asked for information on the rate of reimbursement for the Board of Pharmacy members.

Mr. Pinson advised that Board members received the same reimbursement of \$80 a day in addition to meals as they had for the past 15 years.

Senator Carlton said that although the increase was small, she could not support the request without knowing the total amount in reserve.

MS. KIRKPATRICK MOVED APPROVAL OF REGULATION R119-09A FROM THE STATE BOARD OF PHARMACY.

MR. CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Settelmeyer, Mr. Carpenter, and Senators Cegavske, Carlton, and Washington voted nay).

On regulation R127-09A from the Employment Security Division of the Department of Employment, Training and Rehabilitation, Mr. Conklin asked for clarification concerning the continuation of the average tax rate of 1.33 percent for Nevada employers and the lowering of the reserve ratio for each employer. Mr. Conklin asked for assurance that the tax rate remained the same.

Cindy Jones, Administrator, Employment Security Division (ESD), Department of Employment, Training and Rehabilitation (DETR), identified herself for the record and introduced Donna Clark, Chief of Contributions, ESD, DETR. Ms. Jones provided assurance that the average tax rate for Nevada employers remained at 1.33 percent. Ms. Jones explained that it was necessary to adjust the reserve ratio for each tax bracket to ensure achievement of the 1.33 percent average tax rate.

Donna Clark, Chief of Contributions, ESD, DETR, confirmed Ms. Jones explanation. Additionally, Ms. Clark said that the goal was to maintain the average tax rate and that because employers' records changed on a yearly basis, an adjustment was made to the reserve ratio that applied to each employer's tax bracket.

Mr. Conklin asked if he was correct in understanding that the average businesses' reserve, because of the large unemployment rate, had diminished and in order to maintain the tax rate at 1.33 percent, the reserve rate categories were adjusted downward.

Ms. Jones confirmed that Mr. Conklin's understanding was correct.

Mr. Conklin noted that there would also be a significant reduction in contributions collected for reasons that he said could be attributed to lower wage rates, fewer hours, and high unemployment.

Ms. Jones expressed agreement with Mr. Conklin's statement and advised that when the tax schedule was set in 2009, the ESD expected to collect approximately \$313 million in unemployment insurance taxes over the next calendar year. Ms. Jones reported, however, that because of the high unemployment rate, lower payrolls, and a reduction in the number of employee units in Nevada, current economic trends indicated that collections could be less than the amount projected.

There were no further questions, and Chair Ocegüera indicated he would accept a motion on the regulation.

MR. CONKLIN MOVED APPROVAL OF REGULATION R127-09 FROM THE EMPLOYMENT SECURITY DIVISION, DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

On Regulations 134-09A and 139-09 from the Department of Motor Vehicles (DMV), Mr. Carpenter asked for information on whether the proposed regulations, which related to revising requirements for outdoor signs for motor vehicle body shops and authorized emission stations would require the replacement of existing signs.

Lloyd Nelson, DMV Services Manager, Compliance Enforcement Division, Department of Motor Vehicles, advised that it was the Department's intention not to replace existing signs for licensed body shops and emission stations at the current time. Mr. Nelson explained that rather than the DMV providing signs to new emission and body shop licensees, the DMV would provide new licensees with sign specifications and a template that they could take to any sign shop of their choosing to have the sign produced. Mr. Nelson reiterated that existing signs for currently licensed existing shops and emission stations were fine.

Mr. Carpenter expressed his thanks and advised that he wanted to include Mr. Nelson's remarks on the record.

Vice Chair Conklin temporarily assumed the duties of Chair and asked whether Mr. Carpenter's questions were answered for both regulations R134-09 and R139-09.

Mr. Carpenter indicated his questions for both regulations had been answered.

Vice Chair Conklin asked if there was further discussion and hearing none asked for a motion on the regulation.

MR. CARPENTER MOVED APPROVAL OF REGULATIONS R134-09 AND R139-09 FROM THE DEPARTMENT OF MOTOR VEHICLES.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Ocegüera advised that Senator Cegavske's questions regarding Regulation R136-09 from the Commission on Professional Standards in Education were answered off the record.

Hearing no further discussion, Chair Ocegüera asked for a motion on the regulation.

SENATOR CEGAVSKE MOVED APPROVAL OF REGULATION R136-09 FROM THE COMMISSION ON PROFESSIONAL STANDARDS IN EDUCATION.

ASSEMBLYWOMAN SMITH SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

On Regulation R142-09A from the Division of State Parks, Department of Conservation and Natural Resources, Mr. Carpenter asked for clarification regarding the multipurpose annual fee permit for the use of Wild Horse State Recreation Area in Elko. Mr. Carpenter commented that a fee currently existed for the South Fork State Recreation Area in Elko, and he pointed out that one fee in White Pine County and Lincoln County permitted entrance to other state parks in the area. Mr. Carpenter asked about the possibility that one fee could cover entrance into both South Fork and Wild Horse State Recreation Areas.

Steve Weaver, Deputy Administrator, Nevada Division of State Parks, Department of Conservation and Natural Resources, confirmed that the purchase of an annual permit gained entrance into seven White Pine and Lincoln County State Parks. Mr. Weaver explained that the purchase of an annual permit for use in White Pine and Lincoln County State Parks provided a discount for frequent users of the parks. Additionally, Mr. Weaver advised that he believed the Division of State Parks would support the proposal for a combination fee and annual permit for entrance into either or both Wild Horse and South Fork State Recreation Areas.

Mr. Weaver also advised that in an earlier conversation, the Commission's counsel suggested a policy measure to provide the discount for users of Wild Horse and South Fork State Recreation Areas. Mr. Weaver indicated that he believed the Division of Parks could issue a temporary or emergency policy effective through the next two-year cycle for Nevada Administrative Code (NAC) regulations, and if not, he said that perhaps the Division could amend NAC regulations later in the current year.

Risa Lang, Chief Deputy Counsel, Legislative Counsel Bureau, advised that the issue was discussed prior to the meeting and that an annual permit was defined in the NAC.

Mr. Weaver agreed that an amendment to the NAC would be required.

Ms. Lang further advised that stating their intent would allow the Division of State Parks to collect the fee for the additional location and that a separate regulation would clarify that purchasing one permit would entitle users entrance to either or both Wild Horse and South Fork State Recreation Areas. In the meantime, Ms. Lang suggested that Division of State Parks staff look into making a policy change.

Mr. Carpenter agreed that the Division of State Parks should clarify whether they would change the regulation by a policy or emergency measure or whether they would return to the Commission with a regulation change.

Ms. Kirkpatrick commented on the regulation change that removed the collection of fees for Floyd Lamb Park and indicated she wanted to clarify for the record that removing the collection of fees was because Floyd Lamb Park was no longer a state park.

Mr. Weaver confirmed that Floyd Lamb Park was no longer a state park.

Ms. Kirkpatrick also asked whether the change in the group entrance fee for the Spring Mountain Ranch State Park would affect outdoor theater performances sponsored by the Super Summer Theater.

Mr. Weaver explained that the manner in which the group fee was previously structured allowed entrance for up to 900 people, which the facility could not adequately accommodate. Mr. Weaver said that the change limited the number of persons to the park to 200 but did not change the group entrance fee. Mr. Weaver reiterated that the change was necessary because the facility could not adequately accommodate groups larger than 200 persons, and he advised that the change did not pertain to Super Summer Theater productions.

Chair Ocegüera asked Mr. Carpenter whether it was satisfactory to approve the regulation and to request that the Division of State Parks return to the Commission with a clarification on the annual fee/permit for Wild Horse and South Fork State Recreation Areas.

Mr. Carpenter agreed to approval of the regulation and that the Division of State Parks return to the Commission to provide either a policy change or a separate regulation that would allow users to purchase an annual permit for entrance into either or both South Fork and Wild Horse State Recreation Areas.

Senator Carlton asked for information concerning the change in the special use permit and fee per day that pertained to commercial photography in state parks.

Mr. Weaver explained that there were many visitors to Nevada State Parks and that it was difficult to differentiate between ordinary visitors who took photographs and commercial photographers. Mr. Weaver advised that the previous provisions regarding commercial photography were challenged and difficult to enforce. He said it was decided that the best way to clarify and simplify the procedure was to eliminate the provision regarding one vehicle with not more than five persons because one vehicle with not more than five persons did not cause problems or require additional park staff. Mr. Weaver advised that Valley of Fire, Lake Tahoe, and Spring Mountain Ranch State Parks drew a large number of television commercials and film productions every year that required "substantial additional" work for park staff. Mr. Weaver reiterated that the only change to the regulation regarding commercial photography was to eliminate the fee and special permit for one vehicle with not more than five persons unlike the larger production companies that would be required to pay the fee per day as outlined in the regulation.

Senator Carlton asked whether the regulation change affected wedding photographers and whether four or five limousines carrying wedding guests could enter a park without a fee payment.

Mr. Weaver advised that there were routinely over 1,000 weddings per month at Valley of Fire State Park alone, but he said that the regulation did not affect "commercial wedding providers," who were required under the current regulations to obtain special-use permits that allowed entrance into a park for a certain number of weddings.

Hearing no further discussion, Chair Ocegüera indicated he would accept a motion on the regulation.

MR. CARPENTER MOVED APPROVAL OF REGULATION R142-09A  
FROM THE DIVISION OF STATE PARKS, DEPARTMENT OF  
CONSERVATION AND NATURAL RESOURCES.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.



**B. Approval of Photovoltaic Installation for Legislative Building –**  
Lorne J. Malkiewich, Director.

Lorne Malkiewich, Director, Legislative Counsel Bureau, referenced a December 8, 2009, letter to Dave Whatley and supporting documents (Exhibit I), contained within the meeting packet, as well as a handout (Exhibit J) of schematic drawings of the second floor of the Legislative Building and the third floor of the parking garage.

Mr. Malkiewich advised that approval to install the photovoltaic system was an agenda item during the October 26, 2009, meeting of the Commission after learning of the selection of the Legislative Building for the project. Mr. Malkiewich advised that because staff, at that time, had many questions concerning requirements, liability, and responsibility, it was decided that approval for the project would be placed on the agenda again for the next meeting of the Legislative Commission. Mr. Malkiewich advised that since that time, members of his staff had worked with staff from the State Public Works Board and the State Office of Energy to prepare for the installation of the system and to respond to questions from members of the Commission. Mr. Malkiewich advised that Jim Groth, Director, Nevada State Office of Energy, could not attend the meeting but that Jeff Resler, Project Manager, State Public Works Board, was available to respond to questions.

Mr. Malkiewich referred to the schematic drawings (Exhibit I) and recalled a question from the previous meeting concerning the reason for placing the solar array on the roof of the building rather than over the parking garage. Mr. Malkiewich pointed out that the drawings provided two options for the installation of the 30-kilowatt system, which were still under consideration. One option was for installation behind the Legislative Building near the loading dock and the other was on the top floor of the parking garage between the two ramps. Mr. Malkiewich advised that staff from the Public Works Board, the Nevada State Office of Energy, and Mr. Whatley of the Legislative Counsel Bureau, were working to determine the best installation site and needed the Commission's approval as well as approval from the State Board of Examiners to move forward with the project.

Ms. Kirkpatrick asked about the possibility of tracking savings for the current use of energy and energy used after the installation of the photovoltaic system.

Mr. Malkiewich indicated that he was uncertain the system would provide energy savings so much as it would generate energy that would offset consumption. Mr. Malkiewich discussed a presentation he was considering, to the Legislative Commission's Committee to Conduct an Interim Study on the Production and Use of Energy, concerning tracking energy savings since 2005. Mr. Malkiewich explained that all agencies including legislative facilities had a target to reduce energy use by approximately 20 percent between 2005 and a designated point in the future. Mr. Malkiewich reiterated that the photovoltaic system would generate energy and that

controls, already installed in the Legislative Building, to turn off lighting as well as heating and cooling systems provided energy savings.

Jeff Resler, Project Manager, State Public Works Board, appeared before the Commission to respond to questions from the members of the Commission.

There were no questions from the members of the Commission concerning the project, and Chair Ocegüera asked for a motion for approval.

SENATOR TOWNSEND MOVED APPROVAL OF THE PHOTOVOLTAIC  
INSTALLATION FOR THE LEGISLATIVE BUILDING.

MR. CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**C. Amendment to Rules and Policies of the Legislative Counsel Bureau,  
Rule No. 32 concerning payment for holidays – Lorne J. Malkiewicz,  
Director.**

Lorne Malkiewicz, Director, Legislative Counsel Bureau, referenced a document contained within the meeting packet titled *Amendments to Rules and Policies of the Legislative Counsel Bureau, Rule No. 32 concerning payment for holidays (Exhibit K)*. Mr. Malkiewicz advised that the proposed amendment concerned intermittent employees without a fixed schedule who, for example, worked a few hours for one or two days and then did not work again for several weeks. Additionally, Mr. Malkiewicz advised that the Legislative Counsel's Rules currently provided that if an intermittent employee without a fixed schedule took sick leave or annual leave, the employee received 4 hours of paid leave because the number of hours worked in any given day was not fixed.

Mr. Malkiewicz reported that the current rule concerning intermittent employees provided that an employee must work the shift immediately before a holiday or on the holiday if the employee's shift began on that day. He explained the need for a rule change using the Legislative Police as an example. Mr. Malkiewicz indicated that if an officer without a fixed schedule covered a shift on Wednesday, another officer covered a shift on Thursday, and the holiday was on a Friday, the officer who covered on Thursday would receive holiday pay and the officer who worked on Wednesday would not.

Mr. Malkiewicz reported that approval of the rule change would provide that an employee working part time without a fixed schedule would receive 4 hours of holiday pay if in paid status during any part of the pay period in which a holiday occurred. If not in paid status during a pay period in which a holiday occurred, part-time employees without a fixed schedule would not receive holiday pay. Additionally, Mr. Malkiewicz pointed out that as he had previously mentioned, the rule change was consistent with

annual leave and sick leave payment for intermittent employees, a rule previously approved by the Commission.

Hearing no questions from the members of the Commission, Chair Ocegüera said he would entertain a motion for approval.

MS. KIRKPATRICK MOVED APPROVAL OF THE AMENDMENT TO  
RULE NO. 32.

MR. CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**D. Formal creation of Subcommittee to Review U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program – Lorne J. Malkiewich, Director.**

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that at the October 26, 2009, meeting of the Legislative Commission, Chair Ocegüera appointed a Subcommittee comprised of Senator Carlton, Senator Washington, and Mr. Conklin to review the U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program. Mr. Malkiewich reported the recent receipt of the U.S. Department of Labor report.

Additionally, Mr. Malkiewich advised that *Nevada Revised Statutes* (NRS) provided the Legislative Commission with the authority to create subcommittees and that formal establishment would ensure the subcommittee with the statutory powers of the Legislative Commission. Mr. Malkiewich further advised that if the Commission voted for official establishment of the subcommittee, designation of a chair should also be included in the vote.

Chair Ocegüera entertained a motion for approval that included appointment of Senator Carlton as Chair of the Subcommittee.

SENATOR HORSFORD MOVED APPROVAL FOR THE FORMAL  
CREATION OF THE SUBCOMMITTEE TO REVIEW THE U.S.  
DEPARTMENT OF LABOR'S REPORT ON THE NEVADA  
OCCUPATIONAL SAFETY AND HEALTH PROGRAM AND THAT  
SENATOR CARLTON SERVE AS CHAIR.

MR. CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**Item V – Informational Items:**

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that he had included a memorandum with the packet materials that asked if members of the Commission wanted to receive testimony on any of the informational items. Although he did not receive requests for testimony, he advised that certain members of the audience were available to respond to questions.

**A. Legislative Committee Reports.**

Mr. Malkiewich advised that a report of the Legislative Committee on Education's December 11, 2009, meeting was included in Volume II of material provided to the Commission. A December 30, 2009 letter (Exhibit L) from Senator Woodhouse to Chair Ocegueda, in connection with the December meeting and concerning application for grant funds available through application to a program entitled Race to the Top Fund, was not included in the packet but was provided as a handout to the members during the meeting.

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

There were no questions from the members concerning the summary of quarterly reports.

**C. Miscellaneous Reports from State Agencies and Others:**

Regarding Item C.2, Mr. Malkiewich advised of the availability of persons in the audience that could respond to questions concerning the Report on North Las Vegas Airport SJR-3 Flight Safety Review and Recommendations from SJR-3 Stakeholder Group.

Regarding Item C.10, Mr. Malkiewich advised that Sergeant Callaway, Las Vegas Metropolitan Police Department, was available to respond to questions concerning MORE COPS Revenues and Expenditures Reports.

Regarding Item C.4, Mr. Malkiewich advised that at the request of a Commission member, Tax and Fee Reports were included in the packet of materials provided to the Commission. Mr. Malkiewich explained, however, that the report was not sent to the Legislative Commission but rather to the Interim Finance Committee, and Brian Burke, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, was available to respond to questions.

Ms. Kirkpatrick indicated that she had asked for inclusion of the report because she believed it was helpful in the current economy for all legislators, not just those serving on the Interim Finance Committee, to be aware of and to track tax and fee collections and that the more information available, the better it was for all.

1. Reports on Consumer Sessions from the Public Utilities Commission of Nevada.
2. Report on North Las Vegas Airport SJR-3 Flight Safety Review and Recommendations from SJR-3 Stakeholder Group.
3. Reports on Voluntary Loss Costs and Rating Values and Assigned Risk Rates and Rating Values from the Division of Insurance, Department of Business and Industry.
4. Tax and Fee Reports, 1st Quarter, pursuant to Assembly Bill 193.
5. Report from the Division of Welfare and Supportive Services and the Housing Division concerning the Annual Evaluation of Programs of Energy Assistance submitted pursuant to NRS 702.280(2)l.
6. Annual Report from the Las Vegas Office of the Legislative Counsel Bureau.
7. Report from the Division of Health Care Financing and Policy concerning uncompensated care costs pursuant to NRS 422.3807.
8. Assembly Bill 128 Marketing Code of Conduct Annual Compliance Report from the Nevada State Board of Pharmacy.
9. Annual Report Concerning Garages, Garagemen and Body Shops from the Department of Motor Vehicles.
10. MORE COPS Revenues and Expenditures Reports.

There were no further questions or comments from the members of the Commission concerning informational items.

**Item VI – Public Comment:**

There were no comments from the public in either Las Vegas or Carson City.

There being no further comments, the Chair adjourned the meeting at 11:05 a.m.

Respectfully submitted,

Connie Davis, Secretary  
Legislative Commission

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Assemblyman John Ocegüera, Chair  
Nevada Legislative Commission

<b>EXHIBITS</b> <b>Nevada Legislative Commission</b>		
<b>Exhibit</b>	<b>Witness/Agency</b>	<b>Description</b>
A		Agenda
B		Guest List
C	Assemblywoman Sheila Leslie, Chair Audit Subcommittee of the Legislative Commission	November 6, 2009 letter to the members of the Legislative Commission
D	Assemblywoman Sheila Leslie, Chair Audit Subcommittee of the Legislative Commission	November 6, 2009 letter to the members of the Legislative Commission
E	Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau	Legislative Auditor Analysis of Six-Month Reports Presented in the Audit Subcommittee November 5, 2009
F	Mary Shope, Coordinator, Nevada Silver Haired Legislative Forum	Memorandum dated January 20, 2010 concerning appointments to the Forum.
G	Assemblywoman Debbie Smith	Letter dated January 27, 2010 to Lucy Peres, President, Nevada Silver Haired Legislative Forum
H	Legislative Counsel Bureau	State Agency Regulations to be Reviewed by the Legislative Commission January 28, 2010
I	Lorne Malkiewich, Director Legislative Counsel Bureau	December 8, 2009, Letter to David Whatley from Jeanne P. Peat, State Public Works Board
J	Lorne Malkiewich, Director Legislative Counsel Bureau	Schematic drawings of the second floor of the Legislative Building and the third floor of the parking garage
K	Lorne Malkiewich, Director Legislative Counsel Bureau	<i>Amendments to <u>Rules and Policies of the Legislative Counsel Bureau</u>, Rule No. 32 concerning payment for holidays</i>
L	Senator Joyce Woodhouse	Letter dated December 30, 2009 to Assemblyman John Ocegüera, Chair Legislative Commission