MINUTES OF THE
LEGISLATIVE COMMISSION
NEVADA LEGISLATIVE COUNSEL BUREAU (LCB)
May 7, 2010

The second meeting in 2010 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Friday, May 07, 2010 commencing at 9:35 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada with a simultaneous video conference to Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada.

COMMISSION MEMBERS PRESENT:

Assemblyman John Oceguera, 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 Mike McGinness (in Carson City) alternate for
Senator Randolph Townsend
Senator Maurice E. Washington (in Carson City)
Senator Joyce L. Woodhouse (in Las Vegas)
Assemblyman Bernie Anderson (in Carson City) alternate for
Assemblywoman Debbie Smith
Assemblywoman Marilyn Kirkpatrick (in Las Vegas)
Assemblyman James A. Settelmeyer (in Carson City)
Assemblyman Lynn Stewart (in Las Vegas) alternate for
Assemblyman John C. Carpenter

LEGISLATIVE COUNSEL BUREAU STAFF:

Lorne J. Malkiewich, Director (in Las Vegas)
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)
Tarron Collins, Committee Assistant (in Carson City)

Chair Oceguera called the meeting to order. Exhibit A is the agenda. 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.

*I. APPROVAL OF MINUTES OF THE JANUARY 28, 2010, MEETING – Assemblyman John Oceguera, Chair

ASSEMBLYMAN CONKLIN MOVED APPROVAL OF THE JANUARY 28, 2010 MEETING MINUTES.

SENATOR HORSFORD SECONDED THE MOTION.

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

II. LEGISLATIVE AUDITOR:

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

Paul Townsend, Legislative Auditor, Legislative Counsel Bureau, referred to a letter (Exhibit C), dated April 14, 2010, from Assemblywoman Sheila Leslie, Chair of the Audit Subcommittee. The letter, included in the May 7, 2010 Legislative Commission meeting packet under Item II.A, advised that during a meeting held on April 13, 2010, the following eight reports were presented to the Audit Subcommittee:

- Office of State Controller
- State of Nevada Single Audit Report
- Department of Conservation and Natural Resources, Information Technology Security
- Department of Personnel, Statewide Payroll System
- Purchasing Division
- Alcoholic Beverage Awareness Program Fines
- Office of the State Treasurer, Unclaimed Property Program
- Review of Governmental and Private Facilities for Children (AB 103)

Mr. Townsend provided the following summaries for each audit submitted to the Audit Subcommittee:

Office of State Controller

Mr. Townsend reported that the audit for the State Controller, which focused on accounts receivable and debt collection found that improvements were needed to the accounts receivable reporting and debt collection processes. Mr. Townsend advised that the Office of State Controller's June 30, 2008 Statewide Accounts Receivable Report was not reliable because some agencies reported inaccurate or unsupported amounts, did not report information at all, or reported untimely. Additionally, the Audit found that the Office of the State Controller could improve

the quality and reliability of its statewide receivable reports by enhancing its review of agencies' accounts receivable reports and the guidance it provided to agencies.

Mr. Townsend reported that a review of three large agencies found that none reported accounts receivable completely or accurately. Additionally, he reported that one third of agencies' reports due for the quarter that ended September 30, 2008, were not submitted four months after the due date.

Mr. Townsend advised that the review of year-end receivable reports found that agency estimates regarding the collectability of accounts receivable were not always based on sound assumptions and that "roughly" 85 percent of receivables were considered collectible even though some of them were significantly old.

Mr. Townsend said the review also noted that state agencies turned over debt to the Office's debt collection program that were over two years old on average when submitted, which greatly reduced the chance for collection.

Additionally, Mr. Townsend advised that the Office of State Controller was taking steps to improve its processes over monitoring accounts receivable and increasing the collection of the State's accounts receivable. He further advised that the Office requested changes to statute, which would increase agency participation in collection activities. He also advised that the Office was implementing a new information technology system aimed at improving effectiveness and efficiencies and increasing its training for agencies in understanding accounts receivable, meeting reporting requirements, and improving collection of accounts receivable.

Mr. Townsend reported that the Office of the State Controller accepted the 13 audit recommendations.

State of Nevada Single Audit Report

Mr. Townsend referred to a letter dated April 13, 2010, contained within Volume I of the meeting packet, which indicated that the CPA firm of Kafoury, Armstrong & Company, under contract, completed the Single Audit for the year ending June 30, 2009.

The auditor's report disclosed no material weaknesses or noncompliance with financial reporting and applicable laws, regulations, contracts, and grants. Additionally, the auditor reported that the Schedule of Expenditures of Federal Awards for the year ended June 30, 2009, was fairly stated and that the schedule showed total expenditures of federal financial awards of $3.8 billion. The Single Audit Report included 41 findings and $284,772 in questioned costs.

Information Technology Security - Department of Conservation and Natural Resources

Mr. Townsend reported that the audit for the Department of Conservation and Natural Resources' Information Technology Security found that the Department substantially complied with state information security standards. Mr. Townsend said, however, that the audit identified several areas where controls could be improved, which included, for example, that sensitive personal identifying information was stored on agency computers, and critical network equipment was not always available. Additionally, some former employees retained current network access, and Information Technology staff did not always have background investigations.

Mr. Townsend advised that the Department accepted the 10 audit recommendations and corrected most deficiencies prior to completion of the audit.

Statewide Payroll System – Department of Personnel

Mr. Townsend reported that the audit for the Statewide Payroll System, administered by the Department of Personnel, found that internal controls associated with the Statewide Payroll System were sufficient to provide reasonable assurance that payroll transactions were correct, properly authorized, and supported.

Mr. Townsend said, however, that the audit found that some areas needed improvement including, for example, certain payroll transactions were not always correct or properly documented, and overtime and annual leave were not always approved in advance. In addition, agreements required to work variable work schedules were not always on file, and many employees who prepared payroll and records forms had not received required certification and training.

Mr. Townsend advised that the Department of Personnel accepted the 6 audit recommendations.

Purchasing Division – Department of Administration

Mr. Townsend reported that the primary focus of the audit for the Purchasing Division was the State's Procurement Card (P-Card) and performance measures.

Mr. Townsend explained that a P-Card was a VISA card, similar to a personal credit card. He advised that P-Cards provided an "excellent" method for making purchases because savings resulted through reduced paperwork, checks did not have to be issued to vendors, and cash rebates were paid by the bank to the state for using the card.

Mr. Townsend reported that the audit found that the Purchasing Division could improve its oversight of the state's P-Card program to help ensure that the program operated effectively and the payments were timely. He said that oversight improvements would help to maximize cash rebates available through the program and avoid late payment fees. Mr. Townsend advised that oversight could be improved by developing internal controls to guide Purchasing staff and enhancing statewide policies and procedures to assist participating agencies.

Additionally, Mr. Townsend said that the audit found that the Division could improve the reliability of its performance measures reported in The Executive Budget and internally to management.

Mr. Townsend advised that the audit report contained 6 recommendations, which the Division accepted.

Alcoholic Beverage Awareness Program Fines – Department of Taxation

Mr. Townsend reported that the requirement for the alcoholic beverage awareness programs, pursuant to statute, applied to counties with at least 100,000 residents. He explained that employees at certain establishments in Clark and Washoe Counties, in order to serve alcohol, were required to complete training in a specific program of alcoholic beverage awareness every four years and to hold a valid alcohol education card. Additionally, Mr. Townsend said that law enforcement officers were supposed to report violations they discovered to the Department of Taxation, and when notified of violations, the Department was required to levy a fine of $500 upon the establishment for a first offense and higher amounts for repeat offenses.

Mr. Townsend reported that information provided to the 2009 Legislature revealed that the Department had not received any reports of violations and had not imposed any fines. That information prompted passage of Assembly Bill (A.B.) 432 of the 75th Legislative Session (2009) which revised and clarified the requirements and enforcement of the program as well as required the audit.

Mr. Townsend reported that the audit found that fines were not being imposed and more emphasis was needed on enforcing the statute and reporting violations to the Department of Taxation, including training law enforcement personnel to report violations and monitoring agencies' violation reporting activities. Additionally, the audit found that the Department could take steps to broaden enforcement resources by authorizing local officials to enforce the statute. Lastly, Mr. Townsend said that the Department and law enforcement agencies in Clark and Washoe Counties needed written procedures to ensure compliance with reporting requirements. Additionally, he said that the Department would be required to submit reports concerning violations and the imposition of fines to the 2011 Legislature.

Mr. Townsend advised that the audit contained 6 recommendations, which the Department of Taxation accepted.

Unclaimed Property Program – Office of the State Treasurer

Mr. Townsend reported that the Unclaimed Property Program, for which the State Treasurer was the administrator, had the responsibility to collect, safeguard, and distribute unclaimed property for current and past residents and businesses of the state. Mr. Townsend advised that the goal of the Program was to reunite property with rightful owners or heirs and according to the State Treasurer's annual report, the state held about $337 million in unclaimed property at the end of fiscal year 2009.

Additionally, Mr. Townsend explained that statutes required companies and governmental agencies holding unclaimed properties to submit annual reports and turn over unclaimed personal assets and contents of safe deposit boxes. Upon payment or delivery of property to the Administrator, the state assumed custody and responsibility for the safekeeping of the property.

Mr. Townsend advised that the audit found that the Program substantially complied with state laws, regulations, and policies significant to its activities; however, the program could improve its practices for identifying unclaimed property. In addition, Mr. Townsend reported that the program did not always comply with the requirements for timely deposits and that improvements to identification practices could potentially increase collections, and timely deposits would strengthen controls over cash receipts. He said that the Program also needed stronger controls over some administrative functions related to the sale of securities, various reconciliations of internal records, and access to data in the Unclaimed Property database. The audit found that stronger controls would help ensure that the program continued to meet its responsibility to safeguard unclaimed property.

The report included 9 recommendations, which were all accepted by the Treasurer.

Review of Governmental and Private Facilities for Children

Mr. Townsend advised that the Legislative Auditor was required, under statute, to conduct reviews, audits, and unannounced site visits of governmental and private residential facilities for children.

Mr. Townsend explained that the purpose of the reviews was to determine whether the facilities adequately protected the health, safety, and welfare of the children and whether the facilities respected the civil and other rights of the children in their care.

Mr. Townsend reported that Legislative Auditors reviewed 13 facilities and conducted unannounced site visits on an additional 14 facilities. He said that based on procedures performed and, except as otherwise noted, the policies, procedures, and processes in place at the 13 facilities reviewed provided reasonable assurance that they adequately protected the health, safety, and welfare of the youth and that they respected the civil and other rights of youth in their care. Mr. Townsend advised, however, that auditors were unable to obtain assurance that one facility adequately protected the health of the youth residing there because of significant medication documentation and administration issues. Mr. Townsend said that the auditors worked with the management of the facility and subsequent to their visit, the facility revised their medication administration policies and procedures. Additionally, Mr. Townsend reported that during the 14 unannounced site visits to facilities for children, Legislative Auditors did not note anything that caused them to question the health, safety, welfare or protection of rights of children in those facilities.

Mr. Townsend indicated that a common element was that all of the 13 facilities could improve their background check process, and he pointed out that many facilities' processes did not ensure that staff had appropriate backgrounds. Mr. Townsend said that at some facilities, at least one employee did not have a background check, the results of checks were not received, or the facility did not follow up when the results of the check showed an arrest but did not indicate conviction information. Mr. Townsend said that when auditors checked on conviction information, they found that one facility had four employees with felony convictions.

Additionally, Mr. Townsend pointed out a lack of consistency regarding the different types of facilities, and requirements for background checks varied depending on the type of license and the licensing agency. He also advised that different types of facilities had different time frames for obtaining background checks and different requirements for periodic post-employment background checks.

Mr. Townsend suggested that, in order to ensure all youth in Nevada facilities were afforded equal protection, the Legislature might wish to consider enacting legislation to make background check requirements consistent for all types of facilities that served and provided residential services for youth.

Mr. Townsend noted that the audit's most common observation was that all 13 facilities needed to develop or update policies and procedures ranging from suicide risk to privileges. Additionally, Mr. Townsend reported that all 13 facilities needed to improve medication processes and procedures.

Mr. Townsend advised that complaint and grievance processes also needed improvement and pointed out, for example, that instances were noted that when youth disclosed an allegation of abuse or neglect, required by statute to be reported to a child welfare agency or to law enforcement, auditors found no evidence at 2 of the 13 facilities that the allegations were reported.

Mr. Townsend said that Legislative auditors made specific recommendations regarding each of the 13 facilities reviewed, and responses to those recommendations were included in the complete report. Additionally, he advised that the audit included a recommendation that the Legislature consider:

- Enacting legislation to require all facilities that provided residential services to children to obtain state and federal fingerprint background checks of all employees prior to allowing the employees to have unsupervised access to children;

- specify the offenses for which a conviction would exclude a person from obtaining employment at a facility;

- require facilities to maintain results of a background check for each employee for as long as that person remained employed by the facility; and,

- require background checks be obtained periodically for persons remaining employed at a facility for a specified time

Having concluded his presentation, Mr. Townsend advised that the Audit Subcommittee recommended that the Legislative Commission accept the reports.

On behalf of the members of the Commission, Chair Oceguera expressed his appreciation to Mr. Townsend for his presentation and for the critical function of the Legislative Audit Division.

Chair Oceguera noted that each audit included a 60-day plan for corrective action due on July 8, 2010 and that the agencies for which the Audit Division conducted audits accepted all of the recommendations. After noting both serious and minor concerns highlighted in the audits, Chair Oceguera asked the members of the Commission for comments or questions.

After extending his appreciation to the auditors for their "hard work" and "thoroughness," Assemblyman Anderson expressed concern about reoccurring problems, particularly, in the Controller's report. Assemblyman Anderson noted that debts, such as those that went to court, could not be always be collected in a timely fashion if "a year or two-year time lag" occurred while the court attempted

to collect the debt. Assemblyman Anderson asked whether such a situation was an auditing error or a statutory question that needed reexamination.

Mr. Townsend recalled that the Audit Division last issued an audit of the State Controller in 2000, but prior to that, in 1998, the Audit Division conducted an audit of the entire accounts receivable process, which involved several agencies. Mr. Townsend advised that legislation was passed in 2001, which established *Nevada Revised Statutes* (NRS) 353C and provided the centralized location of responsibility for collecting receivables with the State Controller. Additionally, Mr. Townsend advised that individual state agencies continued to have their own responsibilities but had the option to turn debt collection over to the State Controller after a certain period.

Mr. Townsend explained that while some current issues were similar to those prior to 2001, the structure had changed with more responsibility provided to the Controller; however, he said that auditors considered individual agencies' job performance on receivables during the process of an audit. Additionally, Mr. Townsend reported that Assembly Bill (A.B.) 87 of the 75th Legislative Session (2009) passed and provided additional structure for agencies to submit debts in a timelier manner to the Controller. Mr. Townsend indicated that it was trying on the part of the Controller to get debts over two years old provided that could be sent to collection agencies because the possibility of collection rapidly declined with time. Mr. Townsend advised that follow up would continue and improvement was expected.

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

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

*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, referred to a letter (Exhibit D), dated April 14, 2010, from Assemblywoman Sheila Leslie, Chair of the Audit Subcommittee. The letter, included in the May 7, 2010 Legislative Commission meeting packet under Item II.B advised that two six-month reports were submitted to the Audit Subcommittee on April 13, 2010, for review.

Mr. Townsend referred to Schedule 1 (Exhibit E), which provided information on two six-month reports, one for the Peace Officer's Standards and Training Commission (POST) and the other for the Department of Employment, Training and Rehabilitation (DETR), Information Technology Security. Mr. Townsend reported that out of a total of 26 recommendations for both POST and DETR, as of April 13, 2010, the two agencies fully implemented 20 recommendations and partially implemented 6. Mr. Townsend advised that the Audit Division staff would continue to monitor the implementation of the recommendations and report on the status of the implementation to the Audit Subcommittee.

Mr. Townsend referred to Schedule 2 (Exhibit E) that provided a status report on the follow up on six-month reports presented at prior meetings of the Audit Subcommittee. Mr. Townsend explained that when an agency did not implement audit recommendations by the six-month report, the Audit Subcommittee "often" asked the agency to appear again before the Subcommittee. Schedule 2 provided a status report on one such agency, which involved the Victims of Crime Program and an audit report issued in late 2007 in which one finding involved a situation concerning the Victims of Crime Program policy in paying claims that was not consistent with statute. Mr. Townsend said that the agency had indicated they would submit a bill draft request (BDR) for the 2009 Legislative Session that would resolve the situation. However, a BDR was not submitted, and agency staff were asked to appear at the April 13, 2010 Audit Subcommittee meeting to provide an update at which time they indicated they would submit a BDR for the 2011 Legislative Session. Mr. Townsend reported that the Chair of the Audit Subcommittee asked agency staff to return to the next Audit Subcommittee meeting to provide a status report as well as an explanation concerning why the agency did not submit a BDR for the 2009 Legislative Session.

Having concluded his presentation on the six-month reports, Mr. Townsend advised that the Audit Subcommittee recommended that the Legislative Commission accept the two six-month status reports.

There were no questions from the members of the Legislative Commission.

> ASSEMBLYMAN STEWART MOVED APPROVAL TO ACCEPT THE TWO SIX-MONTH STATUS REPORTS.
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> SENATOR CEGAVSKE SECONDED THE MOTION.
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> THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

III. PROGRESS REPORTS AND APPOINTMENTS:

*A. Litigation Currently in Progress – Brenda J. Erdoes, Legislative Counsel

Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau, provided the following information concerning five cases currently in litigation:

Southern California Edison v. Nevada Tax Commission

Ms. Erdoes reported that Southern California Edison sued the Nevada Tax Commission for a refund on taxes paid on coal brought into the state to generate electricity. Ms. Erdoes advised that the current issue was whether the First Judicial District Court should hear the case as a judicial review of the Nevada Tax Commission's decision or as a de novo case.

Ms. Erdoes said that, on behalf of the Nevada Legislature, Legislative Counsel filed an amicus brief with the Nevada Supreme Court that argued only the points of statutory interpretation for *Nevada Revised Statute* (NRS) 372.680. Ms. Erdoes advised that the interpretation was that the court should enforce the plain meaning of the statute and that the court's level of judicial review should be to treat the case as a final decision of the Nevada Tax Commission.

Ms. Erdoes reported that the most recent calculation by the Legislative Counsel Bureau's Fiscal Analysis Division staff was that if the court reversed the Nevada Tax Commission's decision not to grant the refund, the total impact as of February 2010 would be $138.2 million including interest. Ms. Erdoes advised that the state's portion of that award would be approximately $80.7 million.

Clean Water Coalition Cases

Ms. Erdoes reported that shortly after the 26th Special Session of the Nevada Legislature in 2010, the Clean Water Coalition sued the Nevada State Treasurer and, on the same bill provision, the M Resort sued the Nevada Legislature, the Treasurer, and the State of Nevada.

Ms. Erdoes advised that Legislative Counsel, on behalf of the Legislative Commission and the Nevada Legislature, and in conjunction with the Attorney General, on behalf of the Governor, the Treasurer, and the Controller, filed a petition for writ of mandamus with the Nevada Supreme Court to require the payment of $62 million. Ms. Erdoes advised that the Clean Water Coalition filed a response on April 29, 2010, and the petitioners' response was due on May 24, 2010. In the meantime, Ms. Erdoes advised that Legislative Counsel had succeeded in having the two underlying district court cases consolidated and stayed pending the Supreme Court case decision.

American Cancer Society v. the Las Vegas Convention and Visitors Authority

Ms. Erdoes reported that the third case, currently in the First Judicial District Court in Carson City, concerned Assembly Bill (A.B.) 309 of the 75th Legislative Session (2009) and the challenge based on the single subject rule that generally specified that ballot initiatives and legislation could only deal with a single subject. Ms. Erdoes explained that several crime provisions were combined within A.B. 309, and the Legislature intervened in the case to defend the constitutionality of the statute. Ms. Erdoes advised that Legislative Counsel only included arguments regarding the statutory interpretation and the constitutionality of the case, which was currently awaiting the decision of the court.

Gypsum Resources, LLC v. Catherine Masto, et al

Ms. Erdoes reported that Gypsum Resources, LLC v. Catherine Masto, et al cases filed in federal and state courts challenged Senate Bill (S.B.) 358 of the 72nd Legislative Session (2003), an act related to land use planning.

Ms. Erdoes advised that the federal court case was currently in progress, but the state court case in which the Legislative Commission was a defendant was stayed pending the outcome of the federal case. Additionally, she advised that the judge in the federal case recently granted the plaintiff's motion for summary judgment holding that the special act that created the District to protect the Red Rock Canyon National Conservation Area was unconstitutional as a violation of the *Nevada Constitution*, both the local and special act prohibition and the uniform county government provision. Ms. Erdoes advised that the Attorney General had appealed the case to the Ninth Circuit Court of Appeals.

Ms. Erdoes advised that Legislative Counsel was "carefully" watching the case because the decision would affect the Nevada Legislature in terms of being able to enact local and special acts, of which, she said, there were many. Ms. Erdoes pointed out that "a body of law of the Nevada Supreme Court" interpreted the *Nevada Constitution* and set standards for the constitutionality of bills and that the bill had been carefully drafted to comply with those standards. Additionally, Ms. Erdoes advised that the case could affect, for example, Assembly Bill (A.B.) 352 of the 75th Legislative Session (2009), an act relating to the Spring Mountains National Recreation Area.

Lastly, Ms. Erdoes reported that one case on which Legislative Counsel was working was confidential and involved the Equal Employment Opportunity Commission (EEOC).

Hearing no questions from the members of the Commission, Chair Oceguera accepted Counsel's report on litigation currently in progress.

*B. Recommendation Regarding Elimination of Obsolete or Antiquated Statutes (NRS 220.085) – Brenda J. Erdoes, Legislative Counsel, and Donald O. Williams, Research Director, Legislative Counsel Bureau

Donald O. Williams, Research Director, Legislative Counsel Bureau, advised the members of the Commission that he and the Legislative Counsel, Brenda Erdoes, were charged, under statute, to work collaboratively to develop recommendations for the elimination of obsolete or antiquated provisions contained within *Nevada Revised Statutes* (NRS). Mr. Williams reported that he and Ms. Erdoes made that determination every two years and presented recommendations, if any, to the Legislative Commission before July 1 of even-numbered years.

Mr. Williams advised that, with assistance from his staff, he and Ms. Erdoes had identified the statute governing the Advisory Council on the Metric System within the State Department of Agriculture as obsolete. Mr. Williams reported that in a 1981 response to a movement at the federal level to convert all states to the metric system, Nevada created the Advisory Council. Additionally, Mr. Williams reported that President Gerald Ford originally created a Metric System Board but that President Ronald Reagan eliminated the funding for that Board, and since 1982, the federal government had not actively promoted conversion to the metric system. Mr. Williams pointed out that Nevada's Advisory Council had not met since the mid 1980s, and the State Department of Agriculture confirmed that the Advisory Council on the Metric System was obsolete.

Mr. Williams and Ms. Erdoes recommended that the Legislative Commission consider initiating a bill draft request (BDR) to repeal the statute.

Chair Oceguera noted that the recommendation appeared reasonable and that he would accept a motion to initiate a BDR to remove the statute.

SENATOR WOODHOUSE MOVED APPROVAL TO INITIATE A BDR TO REMOVE THE STATUTE GOVERNING THE ADVISORY COUNCIL ON THE METRIC SYSTEM WITHIN THE STATE DEPARTMENT OF AGRICULTURE.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

*C. Appointment of Members to Commission on Minority Affairs (NRS 232.852) – Lorne J. Malkiewich, Director, Legislative Counsel Bureau

Lorne Malkiewich, Director, Legislative Counsel Bureau, referred to a letter (Exhibit F) dated April 27, 2010, from Leticia Bravo, Ombudsman for Consumer Affairs for Minorities, to the Chair of the Legislative Commission, regarding replacements for vacancies on the Commission on Minority Affairs. Mr. Malkiewich advised that the letter contained statements of interest and resume highlights of the recommended individuals.

Assemblyman Anderson noted that there were three recommendations for three vacancies and asked whether only three individuals had applied for the positions.

Leticia Bravo, Ombudsman for Consumer Affairs for Minorities, confirmed that only three individuals had applied to serve on the Commission. Ms. Bravo discussed the difficulty involved in getting interested people to give up their time to serve on the Commission without compensation.

Senator McGinness noted that the three individuals recommended to serve on the Commission were from Las Vegas and asked whether the recruitment process for appointments included northern Nevada and rural Nevada.

Ms. Bravo advised that currently one member of the Commission was from Elko and one member from the Reno-Sparks area.

In response to Senator McGinness, who asked whether news releases were issued regarding vacancies to serve on the Commission, Ms. Bravo advised that news releases were not issued. She said, however, that since the majority of the vacancies were from the Latino community, she had asked Assemblyman Kihuen and Assemblyman Denis for suggestions.

Senator Cegavske suggested notifying all legislators with a request for their recommendations for appointment when vacancies occurred on any of the commissions.

Mr. Malkiewich said that as Ms. Bravo had indicated, difficulty occurred in recruiting individuals to serve without compensation. He said, however, that if the members of the Legislative Commission so desired, he would request that Ms. Bravo send notice of any future vacancies to him, and he would provide that information to all legislators and ask for their recommendations for appointment.

SENATOR HORSFORD MOVED TO APPROVE THE INDIVIDUALS RECOMMENDED TO THE COMMISSION ON MINORITY AFFAIRS AND TO SUBMIT FUTURE VACANCIES TO THE DIRECTOR OF THE LEGISLATIVE COUNSEL BUREAU WHO WOULD SEND THE INFORMATION TO ALL LEGISLATORS AND REQUEST THEIR SUGGESTIONS FOR REPLACEMENTS.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Assemblyman Stewart asked whether an Asian American served as a member of the Commission on Minority Affairs.

Ms. Bravo advised that one member of the Commission was Asian and that Rico White, recommended as a replacement, was involved in the southern Nevada Asian community.

THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

*D. Appointment of Member to Legislative Commission's Committee to Conduct an Interim Study on the Production and Use of Energy (Senate Concurrent Resolution 19, File No. 99, *Statutes of Nevada* 2009) – Lorne J. Malkiewich, Director

Chair Oceguera advised that after consulting with Senator Horsford and Senator Raggio, a decision was made, unless a member of the Commission objected, to not appoint a member to the Committee to Conduct an Interim Study on the Production and Use of Energy since the Committee had only one additional meeting before concluding its work.

*E. Appointment to or Revision of Membership of Legislative Commission's Subcommittee to Review Regulations (NRS 233B.067) - Lorne J. Malkiewich, Director

Chair Oceguera advised that the recent resignation of a member of the Senate had created a vacancy on several committees and that he had consulted with Senator Horsford and Senator Raggio concerning their recommendations for replacement, which he asked Senator Horsford to share with the members of the Commission.

Senator Horsford advised that the consensus between Chair Oceguera, Senator Raggio, and himself was to appoint Senator McGinness to the Legislative Commission's Subcommittee to Review Regulations and to appoint alternates from each of the Houses in the event an absence occurred.

Chair Oceguera advised that in addition to Senator McGinness' appointment, there was also consensus to appoint Senator Nolan and Senator Copening as alternates from the Senate and to appoint Assemblywoman Debbie Smith an alternate to serve with Assemblyman Settelmeyer who currently served as an alternate from the Assembly.

SENATOR HORSFORD MOVED APPROVAL TO APPOINT SENATOR MCGINNIS TO THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO REVIEW REGULATIONS AND TO APPOINT SENATORS NOLAN AND COPENING AS ALTERNATES FROM THE SENATE AND ASSEMBLYWOMAN SMITH AS AN ALTERNATE FROM THE ASSEMBLY TO SERVE WITH ASSEMBLYMAN SETTELMEYER WHO CURRENTLY SERVED AS AN ALTERNATE.

THE MOTION CARRIED. (Assemblywoman Marilyn Kirkpatrick was not present for the vote).

*F. Appointment of Member to Legislative Commission's Committee to Consult with the Director (NRS 218E.225) - Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, noted that Senator Townsend's recent resignation created the vacancies on the various committees under discussion. He said, however, that the Committee to Consult with the Director had no statutory requirements concerning the membership and that it was entirely up to the members of the Commission on whether to add a member to replace Senator Townsend or to continue with the current nine members serving on the Committee.

Chair Oceguera advised that after consulting with Senator Horsford, the recommendation was to leave the membership with its current nine members.

ASSEMBLYMAN CONKLIN MOVED APPROVAL TO LEAVE THE MAKEUP OF THE COMMITTEE TO CONSULT WITH THE DIRECTOR WITH ITS CURRENT NINE MEMBERS.

SENATOR HORSFORD SECONDED THE MOTION.

Assemblyman Anderson suggested that since there would be several openings within the Assembly and the Senate after the election, the appointment should remain open until after the election since that was when the Committee normally met.

Mr. Malkiewich advised that Assemblyman Anderson was correct that the Committee to Consult with the Director generally met late in the interim because its job was to prepare for the next session of the Legislature. He said, however, that the Committee was tentatively scheduled to meet in June and in August to begin work on the 120-day calendar for the 2011 Legislative Session, and to decide whether to include timelines for reapportionment and other scheduling necessities. Mr. Malkiewich indicated that those members who would be leaving the Committee after the election would be valuable for the meetings tentatively scheduled for June and August. Mr. Malkiewich advised that one final meeting would occur after the election to make and finalize plans for the 2011 Legislative Session and at that time, the Legislative Commission could appoint new members.

Chair Oceguera agreed with Assemblyman Anderson's suggestion and asked for a revision to the motion that included language to leave the appointment open until after the election.

ASSEMBLYMAN CONKLIN REVISED THE MOTION TO LEAVE THE MAKEUP OF THE COMMITTEE TO CONSULT WITH THE DIRECTOR AS A NINE-MEMBER COMMITTEE UNTIL AFTER THE ELECTION.

SENATOR HORSFORD SECONDED THE REVISED MOTION.

THE MOTION CARRIED AS REVISED. (Assemblywoman Kirkpatrick was not present for the vote.)

IV. LEGISLATIVE COMMISSION POLICY:

*A. Review of Administrative Regulations Submitted Pursuant to NRS 233B.067– Brenda J. Erdoes, Legislative Counsel
See list of attached regulations to be considered or access list at http://www.leg.state.nv.us/register/Indexes/RegsReviewed.htm

Chair Oceguera indicated that in keeping with customary procedure, he would read through the list of regulations (Exhibit G), and the members of the Commission could request further discussion on any of the regulations submitted. Additionally, he said he would accept a motion to approve the regulations not held for further discussion.

The following regulation was held for further discussion:

R213-09A held by Assemblyman Conklin

SENATOR CARLTON MOVED APPROVAL OF THE REMAINING REGULATIONS IDENTIFIED HEREIN AS R184-08A, R185-08A, R143-09A, AND R007-10A.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

With respect to R213-09A from the Commissioner of Insurance, Assemblyman Conklin advised that the Department of Motor Vehicles (DMV) had recently submitted a similar regulation to the Legislative Commission's Subcommittee to Review Regulations. Assemblyman Conklin recalled that the DMV submitted the regulation because of their new program that required proof of insurance to register a vehicle. He also recalled that during the Subcommittee's hearing, questions arose concerning insurance responsibility and that the DMV was specific in their response that the insurer determined whether insurance was in effect for a vehicle, and the insurer provided matches not by name but rather by vehicle identification number (VIN).

Assemblyman Conklin expressed concern regarding the language for R213-09A under Sec. 6 on pages 3 and 4 regarding the card constituting "evidence of insurance" and the information contained on the card. Assemblyman Conklin indicated it was his understanding that the evidence of insurance card was proof that the person registering the vehicle was insured. He advised, however that he had recently received a call from his insurance company requesting his certificate of registration because his middle initial was missing on the evidence of insurance card and concern that the DMV would "kick back" his registration.

Assemblyman Conklin indicated that at some point reasonableness was required because even though his middle initial was missing from the evidence of insurance card, the DMV could obtain a perfect match to the VIN for the vehicle registered to him for five years.

Martha Barnes, Administrator, Central Services Division, DMV, recalled the testimony regarding the DMV regulation and the matching information question. Ms. Barnes provided clarification regarding that testimony and said that once the DMV entered all of the information into the system, the insurance company had the ability at that time to provide matching information.

Ms. Barnes indicated that when individuals registered a vehicle at the DMV, a technician determined whether the insurance information provided was enough of a match without the VIN. Ms. Barnes advised that if, for example, a vehicle registered to *Bill Smith* was insured under *Joe's Auto Body*, the technician could not make a match because there was no commonality. Ms. Barnes noted that the example of the missing middle initial could only be a problem if, for example, 15 Marcus Conklin's were entered into the database. Ms. Barnes said, however, that

if, for example, a vehicle registered to William Smith was insured under Bill Smith, the DMV could match it to the VIN. Again, Ms. Barnes said that once all of the information was entered into the DMV system, matches could be made to verify insurance.

Assemblyman Conklin noted that the regulation required that the evidence of insurance card must contain the name of the owner, the year, the make, and complete identification number of the insured vehicle, which he said should always provide a perfect match and thus questioned the need for additional information.

Marie Holt, Chief Insurance Examiner, Division of Insurance, Property and Casualty Section, Department of Business and Industry, advised that the registered owner's name was required, by law, to appear on the identification card.

Assemblyman Conklin expressed concern regarding the complexities that might arise at the DMV and insurance company levels if he, for example, purchased a vehicle under a family trust or for a family member who was the exclusive driver but he was the owner.

Jackie Rombardo, Insurance Counsel, Division of Insurance, Department of Business and Industry, advised that Insurance Commissioner Scott Kipper was unable to attend the Commission meeting because his attendance was required at a meeting of the Nevada Health Information Technology Blue Ribbon Task Force.

Ms. Rombardo, in response Assemblyman Conklin's concerns, began with some background information and advised that *Nevada Revised Statutes* (NRS) 482.215 addressed registration of a vehicle at the DMV and that in order to register a vehicle, the vehicle must be registered in the owner's name and that the owner must show proof of title match. Additionally, Ms. Rombardo advised that NRS 482.215 required proof that the applicant, i.e., the registered owner, carried insurance on the vehicle and that the registered owner of a motor vehicle must continuously provide the required minimum liability insurance. Ms. Rombardo said that if the owner registered the vehicle and provided the required insurance, the evidence of insurance card provided by the insurer must indicate the name of the owner. Ms. Rombardo said the proposed regulation was not an attempt to increase the criterion but rather to comply with the law that whenever individuals registered their vehicles at the DMV, they provided ownership and insurance verification documentation as required under the provisions of NRS 485.185.

With respect to the example concerning the purchase of a vehicle for a family member, Ms. Rombardo advised that statute required the person who purchased the vehicle to insure the vehicle in the owner's name and to insure the driver who was the family member.

Assemblyman Conklin advised that a representative of Property Casualty Insurers Association of America (PCI) was in the audience in Carson City and was prepared to comment on the proposed regulation.

Chair Oceguera indicated that prior to hearing testimony from the PCI representative, other members of the Commission had questions regarding the proposed regulation. Chair Oceguera indicated that his family's vehicles were under their family trust to protect their assets, and he wanted some additional information concerning insurance and the trust.

Senator Carlton asked questions concerning the ability to access information to process claims in the event of an accident involving a rental car or a Nevada resident's car if the owner's name did not appear on the insurance card.

Elena Ahrens, Assistant Chief, Property and Casualty Section, Division of Insurance, Department of Business and Industry, responded that although she was unaware of problems associated with rental cars, approximately 75 percent of the complaints received by the Division regarding insurance verification were because of name mismatches, which prompted proposal of the regulation.

In response to Senator Carlton's request for an example of a typical complaint, Ms. Ahrens advised that a typical complaint was associated with a consumer who was insured but whose name did not match the name in the DMV insurance verification system. Ms. Ahrens pointed out that complaints, such as the one she had just provided occurred prior to DMV's new insurance verification program, which now required a consumer to show proof of insurance when registering a vehicle. Additionally, Ms. Ahrens indicated that insurance policies written to non-owners on an owner's policy created a liability. Ms. Ahrens advised that an insurer should issue a policy of insurance to the owner of a motor vehicle, which under the provisions of NRS 485.185 required the owner to provide liability insurance pursuant to financial responsibility laws.

Sam Sorich, representing Property Casualty Insurers Association of America (PCI), identified himself for the record, and advised that PCI was an association of property casualty insurance companies including automobile insurance companies.

Mr. Sorich described PCI's opposition to the proposed regulation as "very narrow," and "very focused" on just one issue. He advised that NRS 690B.023 required an insurance company to provide its policyholders with an evidence of insurance card that included the name and address of the policyholder but that the statute did not make reference to the name of the registered owner of the vehicle. Additionally, he said that the regulation proposed to require the insurance company to include on the evidence of insurance card the name of the owner of the vehicle but that the regulation did not refer to the name of the policyholder.

Mr. Sorich said that it was PCI's position that the Legislature had "very clearly" stated that the evidence of insurance card must include the name of the policyholder and that the Division of Insurance had no authority to disregard that clear statutory mandate.

Mr. Sorich indicated that the proposed regulation would create problems for some insurance companies when, for example, a person who purchased insurance coverage for a vehicle provided the vehicle identification number and other identification for his or her use of that automobile, but the exact name of the owner of the registered vehicle was unknown. Mr. Sorich pointed out that the insurance company dealt with the person who paid the policy and the person to whom the insurance company made claim payments to in the event of an accident. In summary, Mr. Sorich said it was PCI's position that the Division of Insurance should simply follow the statute and require the insurance company to show the name and address of the policyholder on the evidence of insurance card.

Senator Cegavske expressed her thanks to Mr. Sorich for the information he had provided to her by fax.

Ms. Rombardo, in response to Mr. Sorich's testimony, pointed out that NRS 690B.023 outlined the criterion for an evidence of insurance card, which provided that evidence of insurance must include the name and address of the policyholder. She said, however, that the statute also addressed that an insurance policy issued to the owner was specifically pursuant to NRS 485.185, which required the owner's name on the policy.

Ms. Rombardo pointed out that the situation to which Mr. Sorich referred was one in which a person wanted to be insured for a vehicle that he or she did not own, or a non-owner policy to which neither NRS 485.185 or the proposed regulation applied. Ms. Rombardo advised that the requirement for the name of the owner on an evidence of insurance card that was set forth in the proposed regulation applied only to owner policies, and that under NRS 690B.023, an owner must have an insurance policy and that name must be on the evidence of insurance card as the policyholder.

Assemblyman Settelmeyer questioned the regulation insofar as corporations were concerned and, using the Settelmeyer Ranch Inc. as an example, asked whether all stockholders' names would be required to appear on the paperwork for a vehicle the Corporation insured but did not own.

Ms. Holt advised that an option existed on a commercial auto policy that allowed for an extension of coverage in situations in which an individual owned the vehicle but the corporation insured the vehicle. Ms. Holt further advised that in order to

protect the registered owner's interest, a "named driver endorsement" should appear on the policy. Additionally, Ms. Holt advised that the DMV allowed multiple names to appear on the evidence of the identification card.

Assemblyman Settelmeyer pointed out that listing multiple names on a card would be nearly impossible for a large corporation.

Ms. Holt advised that, although the discussion was moving away from the scope of the regulation, there were various options on a commercial policy for which that risk could be insured. Ms. Holt explained that one option was to include "Symbol 1" on the policy, which indicated that any vehicle added to the policy was automatically covered. Additionally, Ms. Holt advised that for a commercial policy with individual owners, the named endorsement would include the name of the corporation and the name of each individual insured. Ms. Holt said, for example, under the "named insured" for the Settelmeyer Corporation, each individual with an exposure that needed to be protected would be listed as well.

Assemblyman Settelmeyer indicated that it appeared the regulation could be problematic for corporations in a situation where an individual owned the vehicle and although not a stockholder in the corporation wanted their vehicle insured through the corporation.

Ms. Holt reiterated that by using the "Symbol 1," the identification card could be listed in the owner's name, but the policy would respond to any exposures identified on the application.

Senator Carlton noted that many drivers did not hold the title to the vehicles they drove and asked whether the entity financing the vehicle was required to be listed on the insurance card.

Ms. Ahrens advised that the financing company's name did not appear on the insurance card and that NRS 485.090 provided the definition for "owner" of a vehicle.

In response to Senator Carlton's question concerning the regulation and whether most problems were likely to be associated with fleet and corporate policies, Ms. Ahrens indicated that while fleet policies were a different subject, only one name that matched the certificate of registration had to appear on the evidence of insurance card for a corporation. Ms. Ahrens clarified that multiple names were not required on the insurance card for a corporation or a trust as long as the names appeared on a schedule in the policy.

Chair Oceguera expressed concern regarding the apparent confusion that the regulation had raised.

In response to Senator Washington, who asked for clarification concerning vehicles insured under a corporation, Ms. Ahrens advised that only the corporation's name would be required on the evidence of insurance card while the names of the drivers appeared on a schedule in the insurance policy.

Senator Washington agreed that there was some confusion regarding the regulation.

Chair Oceguera suggested taking no action on R213-09A and deferring it to the next Legislative Commission meeting, which he said would provide an opportunity for representatives of the DMV and the Division of Insurance to provide clarifying language that would make the regulation easier to understand.

Senator Washington asked whether more clearly stating the objective to make the regulation less ambiguous would require going through the public hearing process again.

Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau, advised that based on the changes to NRS 233B made in the 2009 Legislative Session, any changes to the regulation by the Division of Insurance required a hearing that complied with the open meeting law. Ms. Erdoes said, however, the hearing would require a notice of 3 days rather than the 30-day notice required for the regulation as initially proposed.

Regulation R213-09A was deferred to the next meeting of the Legislative Commission.

Chair Oceguera advised that although the Commission had initially approved all of the regulations before them with the exception of R213-09A, Senator Cegavske had asked for clarification regarding R007-10A.

After stating her request for clarification regarding R007-10A and the language regarding endorsement as a professional administrator of a school, Senator Cegavske noted that the language under Section 1 was being excluded, which answered her question.

Assemblyman Stewart noted that R184-08A, which related to mammography included a chart (Exhibit H) that reflected responses to a survey of small businesses, and one of the questions concerned whether a specific regulation would have an adverse effect on small businesses. Assemblyman Stewart noted that 50 out of 157 responded that the regulation would have an adverse effect and 35 out of a 150 responded that they anticipated adverse effects on their businesses. Assemblyman Stewart expressed concern for the number of

businesses closing and asked if there was anyone present who could respond to the survey questions.

Chair Oceguera noted that it appeared there was no one in Carson City to respond to Assemblyman Stewart's inquiry but that his question would be forwarded to the Health Division for response.

*B. Approval of Language of Ballot Questions – Lorne J. Malkiewich, Director, Legislative Counsel Bureau

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that the Legislature occasionally placed measures on the ballot that generally fell into two categories. He said that the Sales and Use Tax Act was approved by a vote of the people, and amendments to substantive provisions of the Sales and Use Tax Act also required a vote of the people. Additionally, he said that Constitutional amendments, proposed by the Legislature, required adoption at two consecutive sessions followed by a vote of the people.

Mr. Malkiewich advised that *Nevada Revised Statutes* (NRS) 218D.810 provided that the Legislative Commission was responsible for approving the language for ballot questions. He explained that for the past several sessions, when it was determined which ballot questions required approval, a group of internal Legislative Counsel Bureau (LCB) staff, including staff who worked on the measures during the Legislative Session, prepared the condensation, explanation and arguments for and against passage. Additionally, a member of the LCB Fiscal Analysis Division staff prepared the fiscal note attached to each ballot question. This was followed by a group effort to develop a draft of the language for each ballot question. After sending the draft to interested parties and to those interested in reviewing measures, in general, as well as to anyone who testified on the bill and the sponsor of the legislation, the group reviewed the comments from interested parties and incorporated changes to develop a final version of the language for each ballot question.

Mr. Malkiewich noted that the final versions of the ballot questions appeared in Volume I of the packet of material prepared for each member and that interested parties provided comments only for Assembly Bill (A.B.) 403 of the 75th Session (2009) and Senate Joint Resolution (S.J.R.) 2 of the 74th Session (2007). Mr. Malkiewich pointed out that the comments from interested parties were included behind the cover sheet entitled "First Draft" so that the members of the Commission could see all responses and the changes proposed and incorporated into the final draft.

Mr. Malkiewich advised that the members of the internal group wrote the ballot questions in a non-partisan manner understanding that the Legislature, having

passed the bill, at the very least wanted to see the question on the ballot, if not passed. Additionally, Mr. Malkiewich explained that the members of the committee tried to write an accurate description of the measure and an accurate argument for and against passage, particularly attempting to avoid slanting the narrative in the condensation and explanation. Mr. Malkiewich advised that writing the best and most accurate arguments for and against passage was more challenging in an effort to avoid the use of inflammatory language or language overstating a measure. Additionally, Mr. Malkiewich pointed out that there tended to be less comment regarding the fiscal notes and that there had been very few proposals for changes.

Chair Oceguera announced that the Commission would review the ballot questions in order of presentation.

1. Assembly Bill (A.B.) 403 of the 75th Legislative Session, (2009)

Chair Oceguera asked the members of the Commission for comments or questions regarding Assembly Bill (A.B.) 403 of the 75th Legislative Session, (2009).

Assemblyman Anderson asked whether, as suggested by Carole Vilardo, President, Nevada Taxpayers Association, it was possible to underscore or bold the last paragraph of the language under Arguments for Passage that read:

> This amendment does not authorize the Legislature, without voter approval, to increase the State's portion of the tax rate (2 percent) or to take away or narrow the scope of any tax exemption under the Act.

Mr. Malkiewich said that after a discussion regarding highlighting portions of the language in ballot questions, the members of the group decided to continue past formatting procedures in which only the "Yes" or "No" vote language would be bolded. Mr. Malkiewich advised that to do otherwise would "open the door" to every argument for and against passage and whether and where to use bolding, underscoring, or italics. Mr. Malkiewich said that while the group agreed that inclusion of the language, as stated, was important, the Commission had the option to word the argument for passage in stronger language if they wished.

Assemblyman Anderson indicated that he did not wish to change the language.

Assemblyman Conklin drew attention to the first paragraph of arguments for passage and the language that read "a potential 2-year delay in maintaining compliance with the Agreement," and "The additional delay of requiring approval of a ballot question to make technical and administrative changes."

Assemblyman Conklin indicated he would prefer language that included a specific length of time to maintain compliance with the Agreement. He pointed out that currently a potential 4-year delay existed to amend or repeal provisions of the Streamlined Sales and Use Tax Act and that the potential 4-year delay was being reduced to a 2-year delay, which he said should be delineated in the Arguments for Passage. Assemblyman Conklin pointed out that Congress might only provide 6 months to a year rather than 4 years to act in which case, if it was in the Legislature's purview, a Special Session could be called but a ballot initiative would have to await the next election.

Assemblyman Conklin indicated that since the state could not hold a special election, he believed that members of the public should understand that the real time difference that existed to vote on the ballot question was not the legislative delay but rather the difference between the legislative delay and a general election.

Mr. Malkiewich advised that the group had discussed the issues Assemblyman Conklin brought up and that one of the changes the group made between the first draft and the final draft was the language concerning even and odd-numbered years. Mr. Malkiewich referred to the language in the Arguments for Passage in the first draft that read:

> Because the Legislature only meets regularly in odd-numbered years, there are already possible delays in maintaining compliance with the Agreement.

Mr. Malkiewich advised that that the group changed the language in the final draft to read:

> Because the Legislature only meets regularly in odd-numbered years *and general elections only occur in even-numbered years, there is already a potential 2-year delay* in maintaining compliance with the Agreement.

Mr. Malkiewich said that an issue the group considered was the possibility of the need for immediate action. He explained that although that action would not require a general election, the issue, if serious enough, could theoretically require a Special Legislative Session during which the Legislature could also direct holding a special election.

Mr. Malkiewich pointed out, however, that the group was concerned with adding too much language because it ran the risk that the voters would not read the arguments. Mr. Malkiewich said that the language concerning the regular Legislative Sessions in odd-numbered years and general elections in even-numbered years provided information about the delay that voters would understand but advised that the members of the Commission had the option to include a statement that more clearly defined the time delay.

Chair Oceguera announced that he would accept a specific recommendation to change the language on which the Commission could vote.

Assemblyman Conklin stated that he would prefer language to the effect that *the additional delay of up to 18 months of requiring a ballot question to make technical changes could result in a loss of revenue by the state of Nevada*. Assemblyman Conklin noted that being out of compliance with the Agreement ran the potential risk of losing revenue but that if the *loss of revenue* language was a problem and should not be included, the language concerning *the additional delay of 18 months* should be included.

Mr. Malkiewich advised that language concerning the potential for a loss of revenue should not appear in the Arguments for Passage. Mr. Malkiewich said the group tried to provide language that factually stated that the additional delay of requiring approval of a ballot question to make technical and administrative changes relating to sales and use taxes increased the risk of falling out of compliance with the Agreement, which in turn jeopardized Nevada's membership status.

Mr. Malkiewich suggested that if the Commission wanted to include a specific length of time that the language read, *approximately 18 months* rather than *up to 18 months*. He explained that the length of time between the passage of a bill and an election could vary because a bill passed early or late in a Legislative Session could mean 22 to 18 months before an election.

Assemblyman Anderson indicated he preferred the language as stated in the final draft and indicated that additional information regarding dates would confuse rather than be helpful to the voter's understanding of the ballot question.

Chair Oceguera opened the discussion to public comment.

Carole Vilardo, President of the Nevada Taxpayers Association called attention to the last paragraph of the Arguments for Passage in the final draft that read:

> This amendment does not authorize the Legislature, without voter approval, to increase the State's portion of the tax rate (2 percent) or to take away or narrow the scope of any tax exemption exemption under the Act.

Ms. Vilardo expressed concern regarding the absence of the language she had suggested, which would have included the phrase, *to expand the base of the tax*.

Mr. Malkiewich advised that the group had discussed the issue and decided against including language regarding expanding the base because that language did not

appear in A.B. 403. Mr. Malkiewich said that the language the group decided on was precisely the language contained within A.B. 403. Mr. Malkiewich pointed out that narrowing an exemption was one way to expand the base of the tax and that adding language in the Arguments for Passage not contained within the bill might have appeared as though the group was slanting the argument in favor of passage.

Carole Vilardo responded that her intent had been to secure passage of the ballot question by including the language.

Vickie McDevitt, a member of the public speaking from Las Vegas, asked for clarification concerning the language in the Condensation regarding *conflict with any federal law*.

Mr. Malkiewich advised that the Streamlined Sales and Use Tax Agreement was part of an overall plan in which various states attempted to make the collection of sales and use taxes easier to administer and to provide the ability to tax sales of products across state lines and eventually over the Internet.

Mr. Malkiewich explained that to remain in compliance with the Agreement, Nevada would be required to "act in a timely manner regarding federal legislation or amendments to the Agreement that affected the Sales and Use Tax Act." Mr. Malkiewich said, for example, that if a federal law passed in the interim between Nevada's Legislative Sessions, and Nevada wanted to remain in compliance with the Streamlined Sales and Use Tax Act, a change to state law would be required. He said, however, that the only instance in which a change to the Sales and Use Tax Act would not require a vote of the people was for legislation to resolve a conflict with any federal law or interstate agreement for the administration, collection, or enforcement of sales and use taxes.

In response to Ms. McDevitt, who asked whether taxes for purchases made in other states were collected by those states and sent to Nevada, Mr. Malkiewich advised that the sales and use tax for purchases made in other states and brought into Nevada, was owed in Nevada. Mr. Malkiewich said, however, that unless the product was worth thousands of dollars, it was unlikely that the Department of Taxation would tax the purchaser for the product.

Additionally, Mr. Malkiewich explained that although Nevada, for example, could not require an out-of-state retailer to collect the sales and use tax, some entities had a sufficient nexus to the state, perhaps a corporate headquarters, or sufficient contacts in the state that required them to collect the tax. Mr. Malkiewich indicated that he also believed that there were companies that voluntarily entered into agreements with the Department of Taxation to collect sales and use tax for Nevada.

Chair Oceguera indicated he would accept a motion to approve the language for the ballot as written for A.B. 403.

> SENATOR CEGAVSKE MOVED APPROVAL OF THE LANGUAGE FOR THE BALLOT QUESTION AS WRITTEN FOR A.B. 403.
>
> SENATOR HORSFORD SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

2. Assembly Joint Resolution (AJR) 3 of the 74th Legislative Session, (2007)

Chair Oceguera asked the members of the Commission for comments or questions regarding Assembly Joint Resolution (AJR) 3 of the 74th Legislative Session, (2007) and hearing none opened the discussion to public comment.

Juanita Clark, representing the Charleston Neighborhood Preservation group, expressed concern regarding the proposed amendment that would revise provisions related to eminent domain proceedings. Ms. Clark drew an analogy to the Eighth Commandment, "Thou Shalt Not Steal," and indicated that she hoped others would come forward with similar concerns before the ballot question went to a vote of the people.

Hearing no further comments or questions, Vice Chair Conklin indicated he would accept a motion for approval of the ballot question language.

> SENATOR CARLTON MOVED APPROVAL OF THE BALLOT QUESTION AS WRITTEN FOR AJR 3.
>
> SENATOR WOODHOUSE SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

Lorne Malkiewich, Director, Legislative Counsel Bureau, reported that although sent to interested parties for comment, the committee received no response to the request for AJR 3.

3. Senate Joint Resolution (SJR) 2 of the 74th Legislative Session, (2007)

Chair Oceguera asked the members of the Commission for comments or questions regarding Senate Joint Resolution (SJR) 2 of the 74th Legislative Session, 2007. Senate Joint Resolution 2, if approved, would amend the *Nevada Constitution* to provide for the appointment of Supreme Court justices and District Court judges by the Governor for their initial terms from lists of candidates nominated by the Commission on Judicial Selection, with subsequent retention of those justices and judges after performance evaluations and voter approval.

Assemblyman Anderson referred to the explanation concerning the measure and asked for clarification on the composition of the Commission on Judicial Selection.

Lorne Malkiewich, Director, Legislative Counsel Bureau, responded that both the Commission on Judicial Selection and the Commission on Judicial Performance were composed of the Chief Justice of the Supreme Court, two members of the state bar and two non-attorneys as the core panel. Additionally, Mr. Malkiewich advised that each nomination for District Court judge would be made by a temporary commission composed of the permanent Commission in addition to two members of the State Bar of Nevada, two residents of the judicial district in which the vacancy occurred and two residents of that judicial district that were not members of the legal profession.

Mr. Malkiewich pointed out that the composition of the Commission generally included the Supreme Court justice, or in the evaluation of a Supreme Court justice, a District judge, and an equal number of attorneys and non-attorneys. Additionally, Mr. Malkiewich pointed out that the committee that drafted the language preferred an explanation that simply indicated that the Commission consisted of the Chief Justice of the Nevada Supreme Court and equal numbers of attorneys and non-attorneys rather than a detailed explanation of the formation of each of the Commissions.

Assemblyman Oceguera, hearing no further questions or comments from other members of the Commission opened the discussion to public comment.

Nicole Willis-Grimes, representing The Ferraro Group, appeared before the Commission on behalf of a group interested in SJR 2 to present, for consideration, the four following proposed changes to the ballot question language:

- Inclusion of the word, "*independent*" in the last line of the Condensation that would read, "with subsequent retention of those justices and judges after *independent* performance evaluations and voter approval" and inclusion of

the word, "*independent*" in the "Yes" vote, which was a reiteration of the language in the Condensation.

Ms. Willis-Grimes said that it was important for the voters to understand that the judicial performance review was, in fact, independent and not a review by just one individual who might or might not have a bias against a particular judge or justice. Additionally, she said that voters should know that the review was a collaborative process with individuals, who had varying levels of legal background or absence of legal background that came together to critically analyze the performance of the judges and justices and together produced the summary review that the public had access to prior to the election.

- Modify paragraph 5 in Arguments for Passage by removing the language, "The District of Columbia" and the numbers "24" and "15" so that the language would read: "*At present, several states across the country have already adopted a nominating plan like this one for the appointment of judges to initial terms on the bench, and many also hold retention elections at the expiration of a judge's term*."

Ms. Willis-Grimes indicated that she had seen numbers other than 24 and 15 used and similarly that the District of Columbia "actually followed the federal appointment system." Additionally, Ms. Willis-Grimes said that the group she represented initially considered requesting removal of that section of the Arguments for Passage in its entirety but decided on the modification of the statement to indicate that the idea was a practice that other states in the country had already implemented.

- Remove the last sentence In the Arguments Against Passage that read, "This provision has already reduced the need for fundraising in uncontested judicial campaigns."

Ms. Willis-Grimes reported that the group she represented believed that the citation of Rule 4.2 of the *Nevada Code of Judicial Conduct* informed the voter that justices and judges could not raise campaign funds if they ran for election unopposed. Secondly, Ms. Willis-Grimes reported that the statement did not necessarily provide specific information that substantiated the argument that there had been a reduction in the need for fundraising.

- Clarify language in "No" vote to read, "A "No" vote would retain the existing language in the *Nevada Constitution* that Supreme Court justices and District Court judges in Nevada must be elected *except for those who are first appointed to fill a vacancy and then stand for election*."

Ms. Willis-Grimes advised that the members of the group she represented were concerned that voters might not necessarily be "fully aware" of the current practice or process for the election and appointment of judges especially when a vacancy occurred. Ms. Willis-Grimes expressed concern that voters might believe that a judge was either elected or appointed and that when a judge was appointed to fill a vacancy, that judge did not necessarily have to run for election upon expiration of the term.

In response to Chair Oceguera's request for comment, Mr. Malkiewich advised that Ms. Willis-Grimes had provided the recommended changes for review in advance of the Legislative Commission meeting.

Mr. Malkiewich referred to the first recommendation and advised that the group that drafted the ballot question language decided against including the word, "*independent*" in the Condensation and in the corresponding "Yes" vote language. Mr. Malkiewich explained that although it was true that the evaluation was independent, the language in the Condensation was lengthy for a ballot question and that especially in a Condensation explanation, the committee wanted to stay away from anything that appeared to "color" the question or to "urge" voters in any way.

Mr. Malkiewich referred to the second recommendation to remove the following language in the Arguments for Passage:

> the District of Columbia and the 24 states . . . and fifteen of these states
>
> Mr. Malkiewich suggested alternative language that read: "At present, *several states across the nation* have adopted a nominating plan like this one for the appointment of judges to initial terms on the bench, *and many also hold retention elections at the expiration of a judge's term*."

Mr. Malkiewich indicated no objection to removing the numbers and could see the point that the numbers might depend upon the definition of a plan.

Mr. Malkiewich referred to the third recommendation regarding Rule 4.2 of the *Nevada Code of Judicial Conduct* and removal of the last sentence in the Arguments Against Passage that read: "This provision has already reduced the need for fundraising in uncontested judicial campaigns."

Mr. Malkiewich explained that the language was the committee's attempt to condense a lengthier proposal submitted by Knight Allen, an interested party, who cited current election laws concerning sitting judges being barred from raising campaign funds until a challenger filed for their seat. Mr. Malkiewich said, however, the committee believed that the ballot question should reflect the most

accurate statement, which the Committee proposed as, "Rule 4.2 of the *Nevada Code of Judicial Conduct* currently provides that justices and judges cannot raise campaign funds if they run for election unopposed."

Additionally, Mr. Malkiewich referred to the sentence proposed for removal that read, "This provision has already reduced the need for fundraising in uncontested judicial campaigns." Mr. Malkiewich pointed out those candidates who had filed for election and were unopposed did not need to raise money, which was the reason the language was included.

Mr. Malkiewich reported that the fourth recommendation for clarifying language in the "No" vote received the best response from the committee because they had struggled with the same issue. Mr. Malkiewich said the committee wanted to avoid an overly long, complicated explanation that included all of the varying options in the "No" vote, and they believed that the proposed recommendation was a good idea.

Mr. Malkiewich suggested, however, that if the Commission wanted to adopt the recommended change, to retain the word "vacancies" in the plural form since the language referred to justices and judges. Mr. Malkiewich suggested the following language: "A "No" vote would retain the existing language in the *Nevada Constitution* that Supreme Court justices and District Court judges must be elected *except for those who are first appointed to fill vacancies and then stand for election.*"

Chair Oceguera asked the witnesses that had come forward for their response to the four proposals.

Knight Allen, a private citizen, expressed his gratitude to Mr. Malkiewich and to his staff for including his comments regarding paragraph 3 in the Arguments for Passage. Mr. Allen indicated that he had made a reasonable point that the third paragraph in the Argument for Passage concerning the ability of justices and judges to solicit money from campaign contributors should be counterbalanced with the language in the Argument Against Passage.

Additionally, Mr. Allen expressed agreement with the LCB committee's use of the *Nevada Code of Judicial Conduct* language rather than current law and their reasoning to avoid coloring the arguments for and against passage. Mr. Allen indicated that he believed the language in the Arguments Against Passage were accurate and should remain as provided by the LCB committee.

Chair Oceguera provided the following summary of the four recommendations:

- Include the word, "*independent*" in the last line of the Condensation and in the "Yes" vote.

Chair Oceguera noted that the only issue with including the word, "*independent*" appeared to be with including it in the language for the "Yes" vote and that it appeared to the Chair that if the word, "*independent*" was included in the Condensation, it should also be included in the "Yes" vote language.

- Modify paragraph 5 in Arguments for Passage by removing the language "The District of Columbia" and the numbers "24" and "15" so that the language would read: "At present, *several states across the country have already* adopted a nominating plan like this one for the appointment of judges to initial terms on the bench, *and many also hold* retention elections at the expiration of a judge's term."

Chair Oceguera indicated the proposed modification of paragraph 5 in the Arguments for Passage appeared reasonable.

- Remove the last sentence In the Arguments Against Passage that read, "This provision has already reduced the need for fundraising in uncontested judicial campaigns."

Chair Oceguera commented that it appeared staff was not in favor of removing the last sentence that appeared In the Arguments Against Passage and that Mr. Allen who had come forward as a witness also preferred that the language remain unchanged.

- Clarify language in "No" vote to read: "A "No" vote would retain the existing language in the *Nevada Constitution* that Supreme Court justices and District Court judges in Nevada must be elected *except for those who are first appointed to fill a vacancy and then stand for election*."

Chair Oceguera reiterated Mr. Malkiewich's suggestion to include language in the "No" vote to read, "must be elected *except for those who are first appointed to fill vacancies and then stand for election*," which he said appeared to resonate with the members of the Commission.

Senator Horsford indicated that including the last sentence in the Arguments Against Passage that read, "This provision has already reduced the need for fundraising in uncontested judicial campaigns" was redundant since Rule 4.2 of the

Nevada Code of Judicial Conduct currently provided that justices and judges could not raise campaign funds if they ran for election unopposed.

Assemblyman Anderson concurred with removing the last sentence because he said the language appeared to make a value judgment that the provision was already successful.

Senator McGuiness also expressed agreement with Senator Horsford to remove the language because of redundancy.

In response to the Chair's request for an expression of support or non-support to include clarifying language in the fourth recommendation, Mr. Malkiewich advised that there appeared to be no objection to retaining the word "vacancies" to match the plural language that referred to Supreme Court justices and District Court judges. Additionally, Mr. Malkiewich said that the recommendation for clarifying language to read, "A "No" vote would retain the existing language in the *Nevada Constitution* that Supreme Court justices and District Court judges in Nevada must be elected *except for those who are first appointed to fill vacancies and then stand for election*" appeared reasonable. Mr. Malkiewich said that, contrary to the interest of the person proposing the change, the language made it clear that even if appointed to fill vacancies, justices and judges had to stand for election.

Chair Oceguera, after asking for a show of hands, indicated that it appeared a majority of the Commission members supported the change.

Juli Star-Alexander identified herself as a legal reform activist and claimed "protection" under the Americans With Disabilities Act indicating that she needed to see a person speak in order to comprehend their response.

Ms. Star-Alexander submitted testimony in writing (Exhibit I); however, she indicated she would reiterate remarks she considered important for discussion in a public hearing. Ms. Star-Alexander also expressed her appreciation to Mr. Malkiewich for his testimony regarding the use of unbiased ballot-question language.

Ms. Star-Alexander testified that lawyer-legislators in Nevada were part of the judiciary and excluded from the open meeting law, which she indicated created a clear conflict of interest and, meant to her, that the entire ballot question, whether approved by the voters or not, was questionable and could be legally challenged. Ms. Star-Alexander discussed former Nevada Attorney General Brian Sandoval's appointment as a United States District Judge and his current campaign for Governor, which she indicated displayed "special favoritism toward the Judicial Branch" of government.

Additionally, Ms. Star-Alexander indicated that she assumed legislators serving in the Nevada Legislature and running for re-election would also like to be relieved of the burden of campaign fundraising and asked why SJR 2 would grant a special privilege to one branch of government over the other two, which she considered a serious concern.

Mr. Malkiewich responded by explaining how the group addressed concerns regarding the legality of the issues and advised that an entire body of law existed for the Supreme Court on whether measures should go to the voters and the potential legality of the measures. Additionally, he advised that the group determined that the Court could determine legal concerns and thus, those concerns did not need to be addressed in the ballot language.

Mr. Malkiewich advised that the group discussed the argument concerning application of the open meeting law and the Judiciary in detail and specifically discussed including language regarding the failure to apply the open meeting law in the Arguments Against Passage and language in the Arguments For Passage to indicate that the hearings were open hearings. He said the consensus was that it was best not to address the issue. Mr. Malkiewich said, however, that SJR 2 stated that the Commission on Judicial Selection could release a report including the Commission's vote for the retention of a judge no later than 6 weeks before a general election, which was also the language included in the ballot question.

Ms. Star-Alexander expressed concern that the Legislature's Judiciary Committee was staffed with lawyer-judges and again questioned the legality of the ballot question because she said that it appeared the Judicial Branch had "taken over the Legislative Branch" creating the means under which they would work in the future.

Mr. Malkiewich reiterated his previous testimony that any legal issues concerning whether the ballot question was an inappropriate way to amend the Constitution because of the manner in which it was produced would be resolved in a court of law.

Juanita Clark, representing Charleston Neighborhood Preservation, asked for a reiteration of the changes in the fifth paragraph of the Arguments for Passage.

Mr. Malkiewich advised that although the Commission had not yet voted, the proposed recommendation was to change the language to reflect the following:

> At present, *several states across the nation* have adopted a nominating plan like this one for the appointment of judges to initial terms on the bench, *and many also hold retention elections at the expiration of a judge's term*.

Ms. Clark expressed concern that 24 out of 50 could not be classified as many.

Chair Oceguera asked if there were additional questions or comments.

Assemblyman Anderson asked for fiscal note clarification concerning the cost of preparing and releasing information to the members of the public.

Mr. Malkiewich advised that enactment of the provisions of SJR 2 would increase the workload of the Commission on Judicial Selection requiring additional meeting preparation, travel expenses, room rental, and staff costs, but that the fiscal impact could not be determined because the number of meetings that would be required was unknown. Additionally, Mr. Malkiewich indicated that the group wanted to ensure that the language in the ballot question stayed "true to the language of the joint resolution," which specified that the Commission "shall prepare and release to the public a report." Mr. Malkiewich indicated that staff from the Legislature and the Administrative Office of the Courts would fill in the details concerning the fiscal note.

Assemblyman Anderson indicated that travel costs, room rental and staff costs for each meeting should be specifically mentioned in the fiscal note.

Mr. Malkiewich explained that staff from the Legislative Counsel Bureau's Fiscal Analysis Division staff prepared and sent the fiscal note to the Administrative Office of the Courts and received a three-paragraph response. Mr. Malkiewich advised that if it was the desire of the Legislative Commission, a sentence to the effect that, "*There will also be additional publication costs for providing these reports*" could be included in the language although there was some concern that the costs could be offset by reduced costs in other areas.

Assemblyman Anderson recommended adding the language suggested by Mr. Malkiewich to the top of page 4 of the ballot question.

Chair Oceguera asked if others wanted to support adding the language recommended by Assemblyman Anderson and hearing no support for the additional language asked Mr. Malkiewich to review the four recommendations for the Commission members:

Mr. Malkiewich advised that it was his understanding that the members of the Commission agreed to the following changes in the SJR 2 ballot-question language presented in order of appearance in the resolution:

The last line of the Condensation should read: "with subsequent retention of those justices and judges after *independent* performance evaluations and voter approval" and inclusion of the same language to a "Yes" vote to read: "with subsequent

retention of those justices and judges after *independent* performance evaluations by the Commission."

The "No" vote language starting after the phrase, "must be elected" should read: "*except for those who are first appointed to fill vacancies and then stand for election.*"

In the Arguments For Passage, remove the language that read: "The District of Columbia" and "24" and the portion of the next sentence that read "Fifteen of these states." The fifth paragraph would instead read: "At present*, several states across the nation* have adopted a nominating plan like this one for the appointment of judges to initial terms on the bench*, and many* also hold retention elections at the expiration of a judge's term."

The fourth change would remove the last sentence in the Arguments Against Passage that read: "This provision has already reduced the need for fundraising in uncontested judicial campaigns."

SENATOR HORSFORD MOVED APPROVAL OF THE CHANGES AS OUTLINED FOR SJR 2.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

4. Senate Joint Resolution (SJR) 9 of the 74th Legislative Session, (2007)

Chair Oceguera asked whether the members of the Commission had questions or concerns regarding Senate Joint Resolution (SJR) 9 of the 74th Legislative Session, (2007), which asked whether to amend the *Nevada Constitution* to allow for the establishment of an intermediate appellate court that would have jurisdiction over appeals of certain civil and criminal cases arising from the district courts.

Senator Cegavske referred to the language in the Fiscal Note on page 3 of the ballot question that referred to a minimum number of appellate judges and asked what the minimum number was.

Mr. Malkiewich advised that the language in SJR 9 provided that, If the Legislature creates a court of appeals pursuant to subsection 1, then: "***(****a) The court of appeals must consist of three judges or such greater number as the Legislature may provide by law.*"

In response to Senator Cegavske's question concerning whether the Legislature would set the salaries for appellate court judges, Mr. Malkiewich advised that the Legislature established the salaries for Supreme Court justices, District Court judges and would do so as well for appellate court judges.

Hearing no response to his request for public comment, Chair Oceguera indicated he would accept a motion for approval.

> ASSEMBLYMAN CONKLIN MOVED APPROVAL OF THE LANGUAGE FOR SJR 9.
>
> SENATOR HORSFORD SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

*C. Approval of Early Session Hires for the 2011 Legislative Session – Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau (LCB), requested the Commission's approval to hire temporary employees in preparation for the 2011 Legislative Session. Mr. Malkiewich referred to an April 29, 2010 memo to the Commission (Exhibit J) that provided a list of the proposed early session hires, which he said, in some cases, would supplement the LCB staff with professional staff.

Additionally, Mr. Malkiewich advised that he would return to the Commission's August meeting to request approval to hire the full complement of workers for the 2011 Legislative Session.

> ASSEMBLYMAN CONKLIN MOVED APPROVAL OF THE REQUEST FOR EARLY HIRES FOR THE 2011 LEGISLATIVE SESSION.
>
> SENATOR HORSFORD SECONDED THE MOTION.

Senator Horsford commended the Director for ensuring that the Legislature was in a position to hire qualified people and asked that the positions be promoted as broadly as possible across the state to make a good pool of candidates aware of the availability of the positions.

Mr. Malkiewich advised that the Legislative Counsel Bureau would broadly advertise the availability of the positions after the Commission's approval of the request.

THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

*D. Approval of Transfer of Appropriated Sums From Year-to-Year and Among Legislative Commission and Various Divisions of the Legislative Counsel Bureau – Lorne J. Malkiewich, Director

*E. Approval of Exception to Requirement for Furlough Leave During Legislative Session (S.B. 433 of the 75th Legislative Session (2009) – Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau (LCB), advised the members of the Commission that Items D and E were interrelated and that he would address them as a pair.

Beginning with Item D, the request to transfer money from year-to-year, Mr. Malkiewich referred to an April 29, 2010, memorandum (Exhibit K), which requested the Commission's approval to transfer money forward among LCB divisions. Mr. Malkiewich advised that the General Appropriations Act provided for the transfer of funds from one fiscal year to another and among the various divisions of the LCB, if necessary and with approval of the Legislative Commission.

Mr. Malkiewich reported, for example, that the Interim Legislature budget, which was small, might require a transfer because of the cost of two retirements late in the fiscal year and from which vacancy savings would not provide full recovery. Mr. Malkiewich advised, however, that the primary purpose of the request before the Commission was to move unspent money forward from fiscal year 2009-10 to fiscal year 2010-11 for projects in the Administrative Division, as outlined in the memo, and the Fiscal Analysis Division, which had budgeted to carry forward $100,000 from the first to the second fiscal year.

Additionally, Mr. Malkiewich advised that Item E requested approval to waive the requirement for furlough leave during the Legislative Session, and Item D requested approval to carry forward $300,000 from fiscal year 2010-11 to fiscal year 2011-12 to cover furlough expenses. Mr. Malkiewich commented that, contrary to what a great majority of the public believed, the staff of the Legislative Counsel Bureau had taken a furlough day every month of the interim.

Mr. Malkiewich indicated that the April 29, 2010, memorandum to the Commission (Exhibit L) advised that to approve the request for exception to furlough leave during the Legislative Session, the Legislative Commission had to determine that the positions were needed to provide appropriate services necessary for the protection of public welfare. Mr. Malkiewich advised that he believed there were no alternatives to having the staff available throughout the Legislative Session.

Mr. Malkiewich reported that the Legislative Counsel Bureau currently had 35 vacant positions and that because more positions were held vacant during the 2009-2010 fiscal year than necessary to stay within budget, overall costs were reduced by an amount sufficient to offset the savings that would have resulted by taking furlough leave during the session.

Mr. Malkiewich asked the Commission's approval to carry $300,000 forward from fiscal year 2010-11 to fiscal year 2011-12 to offset the savings lost from suspending furlough leave for the months February, March, April, and May 2011. Additionally, Mr. Malkiewich advised that Senate Bill (S.B.) 433 of the 75th Legislative Session (2009) that required each state employee to take one day of unpaid furlough leave each month also required that the Legislative Commission report to the Interim Finance Committee on positions for which the Commission granted an exemption to the furlough requirement.

Senator Carlton asked for clarification on whether the exemption applied to fulltime permanent LCB staff or to session workers hired on a temporary basis and paid for seven-days a week because they could not receive overtime pay.

Mr. Malkiewich responded that the request currently before the Commission applied only to fulltime permanent staff of the LCB and the staff of the Interim Legislature. Mr. Malkiewich explained that he planned to discuss the legal requirements associated with granting furlough exemptions to session workers with Legislative Counsel and indicated he was uncertain how to identify savings for the session budget, which was not yet established. Mr. Malkiewich advised that if determined that it was necessary to grant a waiver for furlough days to workers hired for the Legislative Session, he would request approval for the waiver at the Commission's August meeting.

ASSEMBLYMAN CONKLIN MOVED APPROVAL OF ITEMS D AND E.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED MOTION. (Assemblywoman Kirkpatrick was not present for the vote.)

*F. Approval of Bill Draft Request Concerning Informational Statements that Accompany Adopted Regulations (NRS 233B.066) – Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that at the January 28, 2010, meeting of the Legislative Commission, Senator Randolph Townsend indicated that it would be helpful to legislators in

reviewing adopted regulations to be able to contact witnesses who testified during prior hearings on the regulations.

Mr. Malkiewich advised that the language for *Nevada Revised Statutes* (NRS) 233B.066, which identified the information required to be included in informational statements that accompanied adopted regulations was contained within the April 29, 2010, memorandum (Exhibit M) to the Commission under Item F in Volume I of the meeting packet. Mr. Malkiewich further advised that NRS 233B.066 could be amended to require that witness contact information was provided to the agency and that the Chair of the Legislative Commission could request a bill draft to carry out the proposal.

SENATOR HORSFORD MOVED APPROVAL TO SUBMIT A BILL DRAFT REQUEST CONCERNING INFORMATIONAL STATEMENTS THAT ACCOMPANIED ADOPTED REGULATIONS.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

*G. Approval of Revisions Concerning Retention and Disposal of Records for Employee Files of Separated Employees – Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau (LCB), advised that a draft copy of the change to the Records Retention Schedule (Exhibit N) was included in the meeting packet. Mr. Malkiewich advised that currently the LCB permanently maintained former employee files, which could eventually create a storage problem.

After checking with other states, Mr. Malkiewich said staff determined that personnel files could be destroyed 30 years after an employee was separated from employment.

SENATOR CEGAVSKE MOVED APPROVAL TO DESTROY LCB PERSONNEL FILES 30 YEARS AFTER SEPARATION FROM EMPLOYMENT.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Kirkpatrick was not present for the vote.)

V. INFORMATIONAL ITEMS

Chair Oceguera asked the Commission members for questions or comments on the Informational Items.

A. Legislative Committee Reports

B. Miscellaneous Reports from State Agencies and Others:

1. Report from the Department of Business and Industry, Housing Division, Annual Housing Progress Report (NRS 278.235)
2. Report from the Board of Parole Commissioners - Comprehensive Review of Parole Standards (NRS 213.10885)
3. Report from the Department of Information Technology - Confidentiality of Certain Documents Related to Homeland Security (NRS 242.105)

C. Tax and Fee Reports, 2nd Quarter, Pursuant to Assembly Bill 193

Assemblywoman Kirkpatrick commented on the Department of Taxation's report and the total amount of all taxes and fees that remained legally due for the time period 0 to 3 months. Assemblywoman Kirkpatrick asked for information concerning collecting the fees and taxes for that period noting that collecting would be even more difficult as time progressed.

Mr. Malkiewich suggested that since Dino Dicianno, Director of the Department of Taxation, could not attend the hearing, he would forward Assemblywoman Kirkpatrick's questions and ask Mr. Dicianno to respond during the next meeting of the Commission.

Assemblywoman Kirkpatrick also questioned the Department of Employment, Training and Rehabilitation's report and asked for additional information concerning the negative figures reported. Assemblywoman Kirkpatrick noted that some of the agencies attached explanations to their reports and said that it would be helpful if all agencies provided explanations.

Assemblywoman Kirkpatrick also questioned the Department of Motor Vehicles' report and the amount of fees and taxes not collected for Motor Carrier Highway Funds.

Additionally, Assemblywoman Kirkpatrick asked that additional information be provided concerning the Department of Taxation's report for Sales and Use Tax and the taxes that were not collected.

Assemblyman Conklin also noted on the first page of the Department of Taxation's report that "the total amount of all taxes and fees that remained legally due" totaled $184,890,974.83. Assemblyman Conklin said that the collection of sales and use tax was "self-reported" and asked for Mr. Dicianno's comments at the Commission's next hearing concerning whether there was a "legal loophole" that needed to be closed to ensure the state's collection of sales and use taxes. Assemblyman Conklin pointed out that the collection of $185 million could have gone a long way during the 26th Special Session (2010) to address priority-funding issues.

Senator Horsford indicated he had some questions concerning the Commission on Economic Development's report concerning incentives and abatements and asked that a Commission representative appear before the Commission at the next meeting.

Chair Oceguera indicated that it would be appropriate to ask representatives of the Department of Taxation, the Department of Employment, Training and Rehabilitation, the Department of Motor Vehicles, and the Commission on Economic Development to attend the next Commission meeting to respond to questions concerning Tax and Fee reports.

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

Knight Allen, who identified himself as a private citizen, expressed his gratitude to Lorne Malkiewich, Director, Legislative Counsel Bureau, for the manner in which he and his staff handled the ballot questions and his appreciation that they incorporated his suggestion into the SJR 2-ballot question.

Mr. Allen also expressed his opposition to the new language that speakers' comments might be limited that appeared in the agenda for the current meeting under Public Comment.

Mr. Allen advised that public comment was limited during local government hearings but that Nevada citizens, in the past, could "always" appear before the Legislature after a long day of testimony and be accorded the same respect, without time limits, as professionals who had testified on various agenda items.

Chair Oceguera expressed his understanding of Mr. Allen's concern but provided assurance that the "boilerplate" language was included only to provide committee

chairs the ability to limit testimony in order to ensure everyone who wanted to testify had an opportunity to speak.

Mr. Allen recalled 1995 legislative property tax hearings when the committee room was filled with "ordinary citizens," who wanted to speak, and the chair gave everyone as much time as they needed only asking that comments be concise and not repetitive. Mr. Allen asked for removal of the "boilerplate" language, which he pointed out was not needed in 1995 or the period between 1995 and now.

Mr. Allen indicated that if a compromise was required, that perhaps the language could reflect only that speakers should avoid repetition of comments made by previous speakers but not that speakers might be limited because of time considerations.

Mr. Malkiewich advised that the new language that appeared beneath the Public Comment agenda item originated with staff and not members of the Legislature. Additionally, Mr. Malkiewich advised that there was no intent on the part of committee chairs to limit testimony but as previously indicated by Chair Oceguera, in the event that public comments did need to be limited, staff felt that the new language provided the Chair the authority to say so.

Mr. Allen again referred to past decades when legislative committee chairs, whose authority was always unquestioned, encountered situations in which many members of the public wanted to speak, the chair would simply "lay out the ground rules." Mr. Allen indicated that the new language appeared to be a way of communicating to the public that they were not on the same level as others who appeared before the committee.

Senator Cegavske expressed her appreciation to Mr. Allen for providing his philosophies, vision, and contributions to legislative committee meetings. Senator Cegavske also addressed on the Public Comment language and indicated she was glad to hear Mr. Malkiewich comment that the language, which she said she would not support, was a staff decision rather than legislators.

Assemblyman Anderson discussed the need, as Chair of the Assembly Committee on Judiciary, to limit public testimony because the Judiciary agendas attracted many speakers on a wide variety of subjects. Assemblyman Anderson also indicated, however, that Mr. Allen's contributions, as pointed out by Senator Cegavske, were clearly beneficial for all of the citizens of the state and that his contributions were always appreciated.

Carole Vilardo, President, Nevada Taxpayers Association, advised that after discussion on the ballot questions concluded, she became aware that the use of bolding and underlining was allowed to remain in the AJR 3 Arguments for

Passage. Ms. Vilardo indicated that she "obviously" wanted the ballot question on A.B. 403 to pass and had asked that language be underlined and bolded in the Arguments for Passage, which was rejected. Ms. Vilardo called for appropriate action to either include or omit the underlining and bolding for both initiatives.

Chair Oceguera agreed with the observation and said that if the Commission members agreed he would accept a motion to rescind the previous action for approval of the ballot question language for AJR 3.

> SENATOR HORSFORD MOVED APPROVAL TO RESCIND THE PREVIOUS ACTION FOR APPROVAL OF THE AJR 3 BALLOT LANGUAGE.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Chair Oceguera indicated he would accept a motion to remove any bolding or underlining in the Arguments for Passage for AJR 3 and that the removal of bolding and underlining remain consistent for all ballot questions.

> SENATOR HORSFORD MOVED APPROVAL TO REMOVE BOLDING AND UNDERLINING USED IN THE ARGUMENTS FOR PASSAGE IN THE OF THE AJR 3 BALLOT QUESTION AND THAT THE REMOVAL OF BOLDING AND UNDERLINING REMAIN CONSISTENT FOR ALL BALLOT QUESTIONS.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Senator McGinness pointed out that although the motion was made, the committee did not vote to rescind the first motion for approval of the AJR 3 ballot question.

Chair Oceguera called for a vote on the motion to rescind the first motion on AJR 3.

> THE MOTION CARRIED UNANIMOUSLY.

Lorne Malkiewich, Director, Legislative Counsel Bureau, apologized for the oversight that the bolding and underlining was not removed in the AJR 3 Arguments for Passage and agreed that all ballot question language should be presented in a consistent manner. Additionally, Mr. Malkiewich expressed his thanks to the Legislative Counsel Bureau group that spent many hours developing the language for the ballot questions.

Chair Oceguera adjourned the meeting at 12:42 p.m.

Respectfully submitted,

Connie Davis, Secretary
Legislative Commission

_____
Assemblyman John Oceguera, Chair
Nevada Legislative Commission

EXHIBITS Nevada Legislative Commission		
Exhibit	**Witness/Agency**	**Description**
A		Agenda
B		Guest List
C	Assemblywoman Sheila Leslie	April 14, 2010 Letter to the Members of the Legislative Commission regarding eight reports presented to the Audit Subcommittee on April 13, 2010.
D	Assemblywoman Sheila Leslie	April 14, 2010 Letter to the Members of the Legislative Commission regarding two six-month reports presented to the Audit Subcommittee on April 13, 2010
E	Paul Townsend, Legislative Auditor	Auditor Analysis of Six-Month Reports Presented to the Audit Subcommittee - Schedules 1 and 2
F	Leticia Bravo, Ombudsman for Consumer Affairs for Minorities, Executive Secretary for the Commission on Minority Affairs	April 27, 2010 Letter to the Assemblyman John Oceguera, Chair of the Legislative Commission re Recommendations for Appointment to the Commission on Minority Affairs
G	Legislative Counsel Bureau	State Agency Regulations to be Reviewed by the Legislative Commission on May 7, 2010
H	Health Division Radiation Control Program	Small Business Impact Questionnaires
I	Juli Star-Alexander	SJR-2 Response
J	Lorne J. Malkiewich, Director, Legislative Counsel Bureau	April 29, 2010 Memorandum to the Members of the Legislative Commission regarding early session hires.
K	Lorne J. Malkiewich, Director, Legislative Counsel Bureau	April 29, 2010 Memorandum to the Members of the Legislative Commission Request to Transfer Money from Year to Year
L	Lorne J. Malkiewich, Director, Legislative Counsel Bureau	April 29, 2010 Memorandum to the Members of the Legislative Commission Request for Exception to Furlough Leave
M	Lorne J. Malkiewich, Director, Legislative Counsel Bureau	April 29, 2010 Memorandum to the Members of the Legislative Commission – Bill Draft Request Concerning Informational Statements that Accompany Adopted Regulations