

**MINUTES OF THE
LEGISLATIVE COMMISSION'S
SUBCOMMITTEE TO REVIEW REGULATIONS**

December 29, 2011

The meeting of the Legislative Commission's Subcommittee to Review Regulations was called to order by Senator Mo Denis, Chair, at 3:17 p.m. on December 29, 2011, at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The Agenda is included as [Exhibit A](#) and the Attendance Roster is included as [Exhibit B](#). All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Senator Mo Denis, Chair, Senate District No. 2
Senator David R. Parks, Senate District No. 7
Senator Michael Roberson, Senate District No. 5
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1
Assemblyman Lynn Stewart, Assembly District No. 22

STAFF MEMBERS PRESENT:

Brenda Erdoes, Legislative Counsel
Angela Hartzler, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Barry W. Lovgren
Priscilla Maloney, Director, American Federation of State, County, and Municipal Employees, AFL-CIO (AFSCME)
Assemblyman Pat Hickey, Assembly District No. 25
Daniel Joseph
Marcia Nicholson
Alice Coulson
Helen Wright, Executive Director, Nevada State Board of Landscape Architecture
Ellis Antunez, Nevada State Board of Landscape Architecture (NSBLA)
Jim Wright, Deputy Director, Nevada Department of Public Safety

Legislative Commission's Subcommittee
To Review Regulations
Date: December 29, 2011
Page 2

Pete Mulvihill, Nevada Department of Public Safety, Fire Marshal Division
Mark Froese, Administrator, Nevada Department of Motor Vehicles
Terri Baltisberger, Nevada Department of Motor Vehicles
Mark Evans, Supervisor, Nevada Department of Personnel
Tanya Armendariz, Nevada Corrections Association
James "Greg" Cox, Director, Nevada Department of Corrections
Jeff Mohlenkamp, Director, Department of Administration
Maurice Lee, Nevada Alliance for Addictive Disorders, Advocacy, Prevention and Treatment
Services, (NVAADAPTS)
Richard Whitley, Administrator, Nevada Health Division
Debra McBride, Substance Abuse Prevention Treatment Agency (SAPTA)
Matthew Taylor, President, Nevada Registered Agent Association
John Wagner, Independent American Party
Juanita Clark, Charleston Neighborhood Preservation Group
Rita Hickey
Penny Hess
Ross Miller, Secretary of State
Stan Watson
Linda Buckardt
Woody Stroupe
Dan Hickey
Jim Moneyhun
Kim Bacchus
Betty Gilmour
Andrew Zak
Hermann Glockler
Diane Burnett
Robert Walker
Paul R. Petty
John Keatts
Senator James Settelmeyer, District: Capital
Shirley Shelton
Barbara LeTourneau
C.T. Wang
Kevin Niemeyer

Chair Denis opened the meeting of the Legislative Commission's Subcommittee to Review Regulations at 2:17 p.m. He requested a roll call of members present.

Ms. Angela Clark called the roll. All the Subcommittee members were present.

Chair Denis discussed the background of the Subcommittee. He said the Nevada Constitution was amended by vote of the people to give the Legislature specific authority to review all administrative regulations and to veto those regulations if necessary, [Exhibit C](#). He said the statute specified that the Legislative Commission or the Subcommittee to Review Regulations will carry out the duty. Chair Denis reviewed the customary procedure for conducting business. The procedure set up a consent agenda for the approval of the regulations without any questions or concerns. He said he would call the numbers of the regulations being considered today, [Exhibit C](#). If anyone requested discussion on a specific regulation, it would be held. He said those regulations not held for discussion would then be voted on in a motion to approve all of the regulations in a consent vote.

Chair Denis said the regulations held for discussion would be heard individually, including the 2010 regulation that was resubmitted after being rejected. After discussion, each regulation will be heard for a motion for approval or rejection of the regulation. If the regulation is approved, it will be filed and become effective the next day unless a later date is specified in regulation, [Exhibit C](#).

If the regulation is rejected, the agency is entitled to revise and resubmit the regulation pursuant to the procedure set out in chapter 233B of the Nevada Revised Statutes (NRS), [Exhibit C](#). If the regulation is neither approved nor rejected, it will be deferred to the next meeting.

Chair Denis said he would start and end the meeting today with public comment. He said the Subcommittee was ready to consider Item III on the Agenda. It was the only item for possible action today. Chair Denis stated he would hear regulations R111-11, R124-11, R080-11. He suggested the public wait to comment on those regulations when they were heard by the Subcommittee. He requested that members of the public come forward and state the number of the regulation they wanted to discuss.

Barry W. Lovgren said he was present to discuss R029-10.

Dan Hickey requested the Subcommittee hold R111-11 and R124-11.

Maurice Lee with the Nevada Alliance for Addictive Disorders, Advocacy, Prevention and Treatment Services, requested R029-10 be held for discussion.

Priscella Maloney with AFSCME Local 4041 requested comments on R077-11.

Assemblyman Pat Hickey presented as a citizen and a Legislator and commented on the process with respect to regulations. He said he voted in favor of Assembly Bill (A.B.) 81, A.B. 82 and A.B. 100 regarding voting and against A.B. 78 which dealt with business licensing. He was concerned the legislative intent concerning the above mentioned bill resulted in regulations that represented the sentiments expressed in the Legislature's votes. He said voting was sacred and it was important to protect the sanctity of the ballot box. He had a specific concern relating to R080-11 which imposed the state business license fee on small home-based businesses. The regulation seemed to be a regulatory way of circumventing the vote of the Legislature when A.B. 78 was defeated. He said the attendance in Las Vegas and Carson City proved Nevadan's were paying attention to the Legislature and it was his duty to oppose regulations that went against the will of the people or their best interests.

Daniel Joseph spoke against R080-11, the business license on small businesses. He said it was an attack on small businesses and a backdoor attempt to put enforcement in place for the Secretary of State to "grow his empire and hire subsequent investigators to seek out these wrong doers and prosecute them." He was against any efforts to attach small businesses making less than \$27,000. He recommended the Legislature look at the problem during the next Session. He said the process was tedious and cumbersome.

Chair Denis asked if there was further public comment at this time.

Marcia Nicholson spoke against approving R080-11. She said the regulation was an attempt to circumvent the legal process. She said the bill was defeated earlier.

Ms. Kirkpatrick asked the audience not to clap after testimony. She asked if the public would show the panel within the regulations where their specific concerns were located. She said it would help her a lot.

Chair Denis requested no clapping after public comment. He also asked that the comments point out the specific areas in the regulation they were discussing.

Alice Coulson said she was unsure what part of the regulation she was opposing. She said \$27,000 was chump change to most people.

Chair Denis requested that people only testify once on each regulation. He asked members of the Subcommittee if they had specific regulations they wanted pulled for further discussion.

Ms. Kirkpatrick asked that R217-03 and R090-10 be pulled for discussion.

Mr. Stewart requested R111-11 and R124-11 be held for further discussion.

Legislative Commission's Subcommittee
To Review Regulations
Date: December 29, 2011
Page 5

Chair Denis said he also planned to pull R080-11, R029-10, R077-11, and R036-11. He reiterated the regulations pulled for review: R217-03, R090-10, R036-11, R077-11, R080-11, R111-11, R124-11, and R029-10. He requested a motion to approve the remaining regulations on a consent agenda.

MS. KIRKPATRICK MOVED TO APPROVE R016-10, R102-10, R116 -10, R142-10, R004-11, R005-11, R024-11, R025-11, R026-11, R217-11, R033-11, R034-11, R040-11, R041-11, R050-11, R054-11, R056-11, R058-11, R064-11, R068-11, R069-11, R071-11, R073-11, R079-11, R085-11, R086-11, R087-11, R088-11, R089-11, R092-11, and R097-11

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Denis opened discussion on R217-03.

Ms. Kirkpatrick asked for clarification on the regulation which was intended to establish their best practices. She asked for clarification on their activities for the past seven years. She also had a question on section 13, subsections 4 and 5, concerning the hearing process. She said it allowed the President of the Board to appoint any given person on the Board as the hearing person. She wondered why it took seven years to adopt best practices.

Chair Denis asked representatives to come forward and address the Subcommittee.

Helen Wright, Executive Director, Nevada State Board of Landscape Architecture, said the regulation was brought to LCB in January, 2004. She said there was a change in administration and the regulation "fell through the cracks." They were contacted in 2009 concerning the regulation and the Board held a public workshop and public hearing. They adopted everything in the regulation in March 2010.

Ms. Kirkpatrick said her concern was about hearings which were a year long and that people tended to forget what they testified or what the regulation said. Her other concern was in section 13 where it stated the President of the Board or any other member of the Board appointed by the President shall chair the hearing. The hearings were done based on complaints. She asked what the process involved in the appointment and hearings.

Legislative Commission's Subcommittee
To Review Regulations
Date: December 29, 2011
Page 6

Ellis Antunez, Nevada State Board of Landscape Architecture, (NSBLA) said the industry was very small. There were only 400 registered people in Nevada. He said the regulation was put in place in case there was any conflict of interest from a board member. The Attorney General at the time said to give the President the authority to appoint a hearing officer in case there was a conflict of interest.

Ms. Kirkpatrick asked how the process occurred and if the complaint eventually came back to the full Board.

Mr. Antunez said the complaint came back to the full Board.

Chair Denis asked if there were further questions. He asked for a motion on the regulation.

MS. KIRKPATRICK MOVED TO APPROVE R217-03.

MR. STEWART SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Denis opened discussion on R090-10.

Jim Wright, Deputy Director, Nevada Department of Public Safety, said he was also formerly the State Fire Marshal. He introduced the new State Fire Marshal, Pete Mulvihill.

Ms. Kirkpatrick asked for a clarification regarding automatic sprinklers required in group homes. She asked if people who had group homes had to go back and retrofit for the sprinklers or if the regulation applied going forward.

Mr. Mulvihill said the section applied to new construction of apartments, multiple-family condominiums, hotels, and motels. It was not retroactively applicable. He said group homes were regulated separately by a different board of licensure.

Ms. Kirkpatrick asked what occurred when some of the fire sprinkler requirements were removed and other local governments decided to adopt the new requirements. She asked what occurred if a motel decided to remodel. Did the owners have to follow the new requirements in the new part of the building and install sprinklers in the new section?

Mr. Mulvihill said a remodel did not trigger the requirement. He said it would only apply if they did a major addition to the building and they did not separate the addition from the existing building.

Ms. Kirkpatrick asked if a third of the motel was gutted, would it then be considered new construction.

Mr. Mulvihill replied it did not apply if the remodeling of the existing structure did not change the occupancy classification or increase the occupant load.

MS. KIRKPATRICK MOVED TO APPROVE R090-10.

MR. STEWART SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Denis opened discussion on R036-11. He added if anyone wished to comment on the regulations they had heard, please come forward.

Mark Froese, Administrator, Department of Motor Vehicles, said he would be happy to answer any questions. He said Terri Baltisberger was also in attendance.

Chair Denis said his question concerned the listing of who people sold their cars to on the DMV website. He asked if this was a clean-up regulation.

Mr. Froese said this made temporary regulations permanent. He said the temporary regulations expired on November 1, 2011.

Chair Denis asked if it had to do with the issue of selling the vehicle.

Mr. Froese replied that Chair Denis was correct.

MR. STEWART MOVED TO APPROVE R036-11.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Denis opened discussion on R077-11. He opened the discussion for public comment.

Priscilla Maloney said her organization supported the change and approved of the regulation. She said they recognized the Department of Correction's budget issues and further negotiations reached an agreement. She requested subsection 2 be sunset on June 30, 2013. She said previously there was no salary cap, but this provision recognized the need for budget constrictions.

Mark Evans, Supervisor, Department of Personnel, said when the Personnel Division adopted the regulation, the cap was not approved or discussed with the Commission. He requested the adoption of the regulation so the Department of Corrections received the savings they needed for their budget.

Ms. Kirkpatrick said she did not think something could be moved forward without formal approval. She asked why the regulation was not held for the next Legislative Commission hearing in the next six weeks.

Mr. Evans said this was the first they had heard about putting a 2012 cap on it.

Ms. Kirkpatrick asked if it was needed for the budget.

Mr. Evans said it was specifically proposed by the Department of Corrections.

Tanya Armendariz, Nevada Corrections Association, supported the regulation change adopted by the State Personnel Commission. She said approval of the Commission would be appropriate and would further avoid discrepancy among correctional officers.

James "Greg" Cox, Director, Department of Corrections, responded that there was a significant budget hole for his organization. The possibility of a sunset on the regulation had been raised recently and he was not opposed to the idea. He said any delay would cause a bigger hole in his budget. He had 721 correctional officers on twelve-hour shifts. He said he did not oppose the sunset proposal.

Ms. Kirkpatrick asked what authority there was to return a separate regulation with the sunset option.

Mr. Cox replied that if the process required going through the Personnel Commission again to put the sunset language in the regulation, then that was the process he would follow. He recommended meeting soon to resolve the question.

Mr. Evans said the next Personnel Commission meeting was in February. He said they would have to hold a regulation workshop, give 30-days notice, have the language confirmed by LCB, and have enough time to give notice before the Personnel Commission. He added that the Commission also had to give 30-days notice as well.

Ms. Erdoes said the options for the Subcommittee were to accept the regulation and approve it, reject the regulation, or defer it. She said there could be no changes made to the regulation by the Committee or by the agency. The Subcommittee had to approve what was presented without added conditions. She said that was by statute in NRS 233B. She believed that the Personnel Commission could come back and ask for a revision of this particular regulation. They had already had the 30-day notice and hearing on the regulation. It could be revised to put a sunset on either the entire regulation or just that subsection of the regulation. It could then come back to the Subcommittee to Review Regulations or the Legislative Commission.

Chair Denis asked if they would still have enough time to make the change and bring it back to the Legislative Commission in February if the regulation was deferred by the Subcommittee.

Ms. Erdoes replied that it depended on the timing and when the Personnel Commission next met in February.

Jeff Mohlenkamp, Director, Department of Administration, said he discussed the issue with Director Cox. He said there was a hole in the budget for Corrections because they were paying shift differential which did not have budgeted funds. He preferred the Subcommittee approved the regulation. He pledged, in addition to Director Cox, his support for placing the sunset before the future Commission.

Ms. Kirkpatrick was concerned about the time frame for the sunset proposal. She did not want the proposed sunset to be lost.

Mr. Mohlenkamp pledged to put it on the agenda for the February meeting.

Chair Denis asked if there were other options for the Subcommittee.

Ms. Erdoes said because of the provisions in NRS 233B, the Committee did not have any other options. If they did not come back, they had no other means of enforcement.

Ms. Maloney was supportive of bringing the sunset provision back for approval in February.

Chair Denis said they could defer, approve or not approve the regulations.

MS. KIRKPATRICK MOVED TO APPROVE R077-11.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Denis opened discussion on R029-10. He requested that Ms. Erdoes explain the process on this regulation.

Ms. Erdoes said the regulation was rejected by the Subcommittee in June 2010. The main thrust of the objection was to add detox technicians to the regulation and to also make sure the appeal process applied. The regulation was amended on page 3 to add the definition of detoxification technician and on page 42 to add the appeal process.

Mr. Lovgren requested that the Subcommittee exercise its authority to return the regulation as it exceeded statutory authority. Mr. Lovgren read his testimony into the record, [Exhibit D](#). He reiterated that the regulation failed to carry out the legislative intent of Senate Bill 300 to protect client health and safety. He provided a copy of his testimony for attachment to the minutes.

Mr. Maurice Lee, Nevada Alliance for Addictive Disorders, Advocacy, Prevention and Treatment Services, (NVAADAPTS) said he totally supported the adoption of the revisions as presented in the regulation. He said previously mental health and substance abuse had operated independently in dealing with co-occurring disorders. He said integrated systems of care providing services without competition for funding or services were needed. He said the intent of the regulation was to bundle the services together. Some comments were made that raised concerns about client safety. He said his organization ran the biggest detoxification facilities in Las Vegas and Reno. He said the regulation provided some oversight of the technicians, some governance and a certification process ensuring that they were properly trained. He said the organization welcomed oversight. There was always a background check for all the employees. He reiterated that he fully supported the adoption of the regulation.

Ms. Kirkpatrick said last year the agency came before them requesting \$5.3 million in funding because they had used all their reserves. She said the regulation put broad language

in which allowed them to waive all the fees they insisted they had to have last year. Some treatment center fees went from hundreds to thousand of dollars. She did not understand why they waived any fees. She said she did not understand why anyone should be allowed to waive any of the fees. Ms. Kirkpatrick said she wanted to move for a rejection of the regulations. She said section 8 of the regulation throws out consistency.

Chair Denis said they had a motion, but he wanted the agency to respond to Ms. Kirkpatrick.

Richard Whitley, Administrator, Nevada Health Division, and Acting Administrator for Mental Health and Developmental Services, clarified that the fee package that was presented previously was from the Health Division and it was for facilities. The substantial increases were related to the Legislative requirement for frequent annual inspections.

Ms. Kirkpatrick said she called Mr. Whitley's office twice this week and she did not receive a response from them. She asked Mr. Whitley if any fees were waived last week.

Mr. Whitley replied no fees were waived for a facility. The regulation today was under Mental Health and Developmental Services with a fee attached to licensing a person, the detoxification person. The regulation today was not a part of the bundle from earlier sessions.

Ms. Kirkpatrick said section 26, under section 8, allowed waiving all the fees put in place for programs. She said the department did not do due diligence.

Chair Denis asked why the provisions were in the regulation to waive fees.

Debra McBride, Substance Abuse Prevention Treatment Agency, (SAPTA), said they were not waiving fees for SAPTA. The only fees they charged were for the certification process for each of the providers they certified. She said there was also a small charge for those certified as a detoxification technician.

Chair Denis said a new section was added to grant waivers. He asked what the purpose was for the waivers.

Ms. McBride said she did not have that requirement in her set of regulations.

Chair Denis said the requirement was located on page 4 of the Revised Adopted Regulation R029-10, [Exhibit E](#).

Mr. Whitley said he did not have the section in his regulations.

Ms. Erdoes said the copy the Legislators had was the copy LCB received as the adopted regulation from the Health Department. She said the regulation was originally submitted and rejected in June 2010, and a different agency was involved. She said when she received the changes they made them to the existing regulation and that was what they received as adopted. The regulation would have to be revised to remove the waiver requirement.

Mr. Whitley said there was confusion on the agency's part concerning the intent to have the exception. He said there was more work needed on the regulation.

Ms. McBride said they printed their copy off the website.

Ms. Benitez-Thompson asked why they would waive any type of physical inspection for any reason. The chief goal was to be sure of patient safety.

Mr. Whitley said he was shocked at the waiver being in the regulation. He said the intent for the substance abuse agency was making requirements for detoxification technicians, the person. The Bureau of Health Care Quality and Compliance within the Health Division regulated the facilities. The intent was licensing the person to protect the public. The inspection occurred on the health facility side, not on the technician's side. He said there was a mix-up in terms of how the regulation was put forward. He said it appeared the regulation blended the facility and they did not waive inspections on facilities.

Chair Denis said there was a motion to reject the regulation.

MS. KIRKPATRICK MOVED TO REJECT REGULATION R029-10.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Denis opened discussion on R080-11. He said a member asked for specific testimony concerning the regulations. He said after public comment the Agency would respond.

Matthew Taylor, President, Nevada Registered Agent Association, said he had strong concerns regarding the definitions proposed in R080-11. He said the regulations did nothing to assist the Secretary of State in the collection of an existing fee. He said it appeared to

broaden the definition of a business to include certain home-based businesses previously excluded by the Legislature. There was a tendency in the proposed regulation to refer to it as an exemption. He said it was a misclassification and it was actually an absence of a requirement to file or obtain a business license if you are not defined as a business. The regulation affected the State's smallest enterprises, which by definition was a person who operated a business from his or her home and earned \$27,000 or less in net profits. He said regulations may assist with carrying out the law and may have the authority to interpret what the law means. The Administrator does not have the authority or ability to broaden, redefine, or pass regulations against the clear meaning of the statute. He said in section 5, paragraph 2, the Secretary attempted to define a person operating a business from his or her home as meaning only a natural person. The definition was a distinctly different legal term as recognized in Nevada Revised Statutes. He said the Secretary tried to broaden the definition of a business to include home-based businesses that operate from homes outside of Nevada, or companies who open their homes to the public if such actions require a local business license. He said that exceeded the definition of a home-based business as it existed in statute and created an issue of uneven application throughout the State and the U.S. due to lack of consistency as to what activities may require a local business license. He said both the Nevada requirement and the issue of having a home open to the public are currently being challenged in the First District Court of Nevada in a lawsuit against the Secretary of State. He said to change the definition to mean only a natural person would have an immediate effect of raising revenue for the State by changing the computational basis of a fee. He said such action required a two-thirds vote of both houses of the Legislature and approval of the Governor and he did not believe the Secretary had the authority to create the regulations proposed in this format.

Chair Denis asked for further testimony. He said he wanted to limit the testimony to three minutes per person in order to hear everybody present.

John Wagner, Independent American Party, said many home-based businesses were people trying to help their husbands and were struggling in this economic time. He said some home-based businesses should be left alone. The discussions were heard last Session and did not need to be rediscussed.

Chair Denis asked if Mr. Wagner was referring to section 2 on page 2 of the regulation.

Mr. Wagner replied he was not sure of the exact section in the regulation.

Juanita Clark, Charleston Neighborhood Preservation, said she did not know in which section her concerns were located. She said she was opposed to R080-11. Entrepreneurs were taxed more or less than certain other constituents in order to prevent certain constituents from

Legislative Commission's Subcommittee
To Review Regulations
Date: December 29, 2011
Page 14

earning a living. She asked Chair Denis if that was the section in the regulation where the taxes were increased.

Chair Denis said the increase originally approved in 2003 at \$100 and in 2009 it was increased to \$200. No fees were increased by the regulation.

Ms. Clark said it was called a fee not a tax and it was a misnomer.

Chair Denis said whatever it was called, it was not in this regulation.

Ms. Clark declared bringing resolution R080-11 to a subcommittee after the bill A.B. 78 did not pass during the Session was an attempt to circumvent the Legislature. She asked Chair Denis if that was in the regulation.

Chair Denis said no, it was not in the regulation.

Ms. Clark said the regulation imposed fees on businesses earning more than \$27,000 a year. She said \$200 was the Nevada minimum state license fee. R080-11 would enslave some constituents to government dependence and enslave other constituents to pay for that enslavement, plus it increased government. She said she was opposed to R080-11.

Rita Hickey said she agreed with everything that had been said and urged the Subcommittee to oppose R080-11.

Penny Hess agreed with everything said earlier. She requested opposition to R080-11.

Ross Miller, Secretary of State, said he brought his Deputy for Commercial Recordings, Scott Anderson, to the meeting. Secretary Miller discussed the history of the evolution of the regulation. He said in 2003 the Legislature put in place the state business license. Individuals could apply for the license from the Department of Taxation. The statute imposed a fee of \$100 on all businesses. Within the statute, certain forms of entities were excluded and not defined as a business. Among the exclusions were non profits, motion picture companies, and a business that was operated out of a personal residence and earned less than $66 \frac{2}{3}$ of the gross annual wage. He said it was clear all of the individuals doing business in the State were supposed to pay the state business license. It was a revenue generator for the State and intended to apply to everyone with limited exceptions. He said the exemptions only applied to sole proprietors and general partners. If the person was an LLC or a corporation, he was not entitled to claim the exemption of operating out of the home and making less than \$27,000. The Department of Taxation put in place a regulation signed by Governor Guinn. Everyone understood it applied only to sole proprietors and general partners. In 2009, the

Legislature transferred the responsibility for the collection of the business license fee from the Department of Taxation to the Secretary of State's office. He said there were approximately 300,000 entities on file which only included LLCs, corporations and Title XII entities. He said they did not have anyone on file who was a sole proprietor or general partner. The fee was supposed to be collected from everybody on file along with the sole proprietors and general partners. The Department of Taxation was collecting fees from approximately 150,000. He said that was a significant revenue gap for the State. He said they realized they were not enforcing the statute with the letter of the law. The revenues they were receiving from the business license fees were not meeting their projections. He said they attempted to clarify the problem with A.B. 78, specifically clarifying the provision as to who was affected by the fees. He said the legislation passed in both houses, but was not signed by the Governor and was not enacted into law. The current regulation paralleled what was in place from 2003 to 2009. He said they asked the State Audit Committee to do a review of the businesses claiming the exemption. They discovered a number of businesses claimed the exemption, but were not entitled to it. He said upwards of 80 percent were claiming the exemption and widespread fraud was implicated. In one instance, they found corporations from China and Taiwan that had formed hundreds of businesses in Nevada and clearly were not operating out of their homes or making less than \$27,000 a year. The revenue gap was approximately \$9.2 million a year in LLCs and corporations claiming the exemption that may be claiming it fraudulently. He said they had broad support from the business community in the last session.

Senator Roberson requested that Mr. Taylor respond to some of the statements the Secretary of State had made. He asked what the basis was for excluding LLCs per legislative intent.

Secretary Miller said it was based on legislative testimony provided at the time. It was clear the exemption should only apply to a small Mom and Pop entity.

Senator Roberson said the clear language of the statute talked about a person. The definition of a person under NRS included many things other than a natural person. It also included an LLC.

Secretary Miller said the definition in other areas of a person certainly included corporations and LLCs. However, in this subdivision, it indicated it was a person who operated a business from his or her home. He said the intent of the Legislature was codified by regulation signed by Governor Guinn and it only applied to natural persons being sole proprietors or general partners. The additional step of incorporating as an LLC or a corporation meant they were no longer entitled to the home-based business exemption.

Senator Roberson said he respectfully disagreed with Secretary Miller. He said a definition was a definition. The Legislature did not say a natural person; they said a person, which was a much more broad term. He said his concern was where Secretary Miller had received the authority to change an existing definition in NRS.

Secretary Miller replied that his office was not changing anything. He said they were attempting to enforce the business license exemption in a manner consistent with the original intent. The goal was consistent enforcement with how it was applied to the Department of Taxation from 2003 to 2009. They were putting the regulation forward in the same manner the Department of Taxation put in place in 2004. He said his office checked with the Attorney General to be sure they were not exceeding their statutory authority. The term "person" and who the exception applied to were not defined, but the office was given regulatory authority through the chapter to further define it for proper enforcement.

Senator Roberson asked if the Attorney General had always held that opinion. He did not think the Attorney General had always held that opinion and had held a different position on this particular issue.

Secretary Miller said he did not know that to be the case. He had not seen an official Attorney General opinion on the issue.

Senator Roberson said for years Nevada had tried to be the Delaware of the West. He said the State's LLC statute was modeled after Delaware and tried to promote Nevada as a business-friendly state. The regulation will force a home-based business coming to Nevada for the protection of the LLC statute to choose between getting rid of the legal protection of the LLC statute or face a 160 percent fee increase. He said they were people making less than \$27,000 a year. He also asked where the Secretary planned to use the extra funds or revenue received from removing the exemption.

Secretary Miller replied that his office took the benefits of incorporation in Nevada very seriously and their website outlined the benefits of incorporating in Nevada. He said a substantial rise in incorporations had occurred since he took office. He said paying the business license fee was not indicated from 2003 to 2006 or from 2006 to 2009. The additional revenue coming into the State was not going to be used to "grow his kingdom" as mentioned by an earlier testifier. He said the extra revenue would go to the General Fund to pay for essential services in Nevada.

Senator Roberson asked Secretary Miller if he believed he had the authority to do this through regulation. If that was the case, why did he push so hard for approval through the Legislature under A.B. 78?

Secretary Miller said he saw there were different interpretations under the statute. He said his office was enforcing a statute that did not comport with the letter of the law in terms of how the Department of Taxation had enforced it. It was always the preference to go to the Legislature first to try and clarify the statutes. He said if the legislation did not go forward, his office had the regulatory authority to put it in place, adding that the Department of Taxation had put the regulation in place when Governor Guinn signed it into law in 2004.

Senator Roberson disagreed with the Tax Department's decision. He said there was strong opposition to the regulation in the Legislature and to bring it up before a subcommittee was a mistake. He asked that the full Legislative Commission hear the issue.

Ms. Kirkpatrick said only four people attended the workshop and comments were submitted. The first workshop had three people attending and one person testified. Five people attended the second workshop and one testified. She looked at the regulations from the Tax Commission in 2003. She said all the questions were addressed in 2004 and they amended the regulation addressing who the person was that operated a business from their home in 2006. She added that the members of the Tax Commission were business people and not Legislators. She wanted to be sure the intent was not for the person at the flea market selling their crafts. She also wanted clarification; if she had products within her home, would she have to pay for a business license. She asked why they chose to define governmental entities so it was clear.

Chair Denis asked Ms. Kirkpatrick to recap her questions to Secretary Miller.

Ms. Kirkpatrick said Secretary Miller knew her questions.

Secretary Miller said if she had further questions, she would point them out to him. He said she was correct, it was brought before the Nevada Tax Commission on February 2, 2004, and they proposed the regulation which was in substantially the same form as the current one. He said in 2006 the Tax Commission further refined the definition. The change the Secretary of State put in place was less strict than the regulation that Taxation enforced. It made it clear the exemption still applied for sole proprietors and general partners. He said sole proprietors and general partners operating out of the home, and making less than \$27,000 a year are still able to file an exemption.

Chair Denis had a question on page 2, section 2 of the regulation. The regulation stated no part of the residence was held open to the general public. He asked if somebody would be able to take advantage of the exemption if someone came to their house to pick up supplies or products and if they earned less than \$27,000.

Secretary Miller said the intention, under the statute, would allow applying under the exemption if you were a sole proprietor or general partner, operating from the home, and making less than \$27,000. The only exception was if the personal residence was open to the public in such a manner that it would require obtaining a business license per the municipal or county ordinances. He offered an example of a residence not in a residential neighborhood but a commercial area and claiming it was also the personal residence.

Chair Denis said regardless of whether they came to your home or not to pick something up they would still be eligible.

Secretary Miller said if the business was held open in a manner that did not require a county or local business license, a state business license was not required.

Chair Denis asked what the threshold was for the number of times someone came to the home.

Secretary Miller replied it would vary according to requirements of the various counties and municipalities and how it would apply.

Chair Denis said it was the threshold established by the municipality and if they required a license, then a state license was required.

Ms. Kirkpatrick said local governments were not consistent. She said there was a bill passed last session to have the business licensing consistent. She was concerned about the disparity among the local governments.

Secretary Miller said it would largely streamline the process. The intent was to simplify and consolidate the process into one easy effort that could be accomplished online. He said they would be able to use the data of the county and local business licensing information.

Ms. Kirkpatrick asked what happened if you had a home business that did not require a license and you had five vehicles coming to the house. She said to sell Girl Scout cookies in North Las Vegas you were required to buy a \$38 business license in every single entity. Would they be required to also buy a state license?

Secretary Miller said that was not the intention of his office. It would only apply to those provisions that required the posting of a business license at the establishment.

Senator Roberson said he had a hard time believing what he was hearing. He said the regulation would produce absurd results throughout the State. The same home-based business

in the same situation could potentially be created very differently if you lived in different areas. He said Nevadan's were being treated differently depending on what their local land uses were and should have nothing to do with the Secretary of State's regulation.

Secretary Miller said Senator Roberson was misinterpreting the regulations. He said counties and municipalities had the authority to treat individuals differently. The regulation said if the county required a business license be posted at the establishment, then a State business license was also required. He said there were approximately 40,000 sole proprietors and general partners in Nevada.

Senator Roberson asked how that had anything to do with what the Secretary of State or the Legislature was doing. He said they were treating Nevadans differently based on where they lived. That was the result of the regulation.

Secretary Miller said no, they were not treating them differently. The municipalities had the authority to determine their own business license rules through the statutes enacted in the Legislature and they already treated Nevadans differently.

Ms. Benitez-Thompson asked about fraud by people who claimed to be a home-based business. She said she did not realize it was in the 80th percentile of people. She said she paid her fees as a resident agent every year and the statutes had no intention of undermining small business growth or home-based business in Nevada. She said not having good regulation policies in place so that fraud did not occur was a disservice.

Chair Denis had similar comments. The intent was to follow what was already in statute and codify it. He said the fraud issue was a concern. His big concern was the residence in the different counties.

MR. STEWART MOVED TO DEFER R080-11 TO THE NEXT MEETING.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Denis asked for additional comments. He said the fee was not included in any of the discussions as that was already decided by the Legislature.

Ms. Kirkpatrick said a bipartisan effort was needed for moving forward.

Chair Denis opened discussion on R111-11 and R124-11.

Stan Watson commented on R080-11. He said whenever total sales were below \$500,000, he considered it to be a Mom and Pop business. He said it made no difference whether the person was an LLC, a Chapter C, a Chapter S, a sole proprietorship, a partnership, or a business trust organization. His point was that the business license fees should be strictly enforced when and if necessary and only by the State under provisions of law. He said anything under \$2 million in earnings should be classified as small business. He added that unemployment was 20 to 25 percent. He recommended keeping the State a tax haven for businesses. He said there was an emergency in the State.

Chair Denis reiterated that the Subcommittee was dealing only with the regulations.

Linda Buckardt opposed R111-11. She was concerned about how the identity of a person was established for voting. She said a current valid ID was issued by the military and she was happy to see they could vote. She was concerned about the variety of proof of ID. She asked if the regular print or the italic print was the current version.

Ms. Erdoes said the new language was in italics. She said Ms. Buckardt's copy was an old version and there were new versions on the table for her to read. She added that testimony had been taken into consideration and the regulation was revised.

Woody Stroupe said Ms. Buckardt had the adopted regulation that was placed on the desk.

Ms. Buckardt said the Secretary of State was going to be allowed to give a person a voting ID number which does not require any valid identification. She said there was a place where people could apply to become a voter in Nevada without any identification.

Ms. Kirkpatrick asked the people testifying to identify which regulation they were discussing. She also said quite a few things had changed since the workshops.

Chair Denis said R124-11 was the current regulation being discussed.

Ms. Buckardt said he was correct. She said when she went to vote, a stack of papers with people's names, addresses, and voter ID or social security number were available for people to take out of the building. She said the records should be kept private.

Chair Denis said she was making a comment but there was nothing in the regulation that she was commenting on.

Ms. Buckardt said an applicant applying to be a voter in Nevada might not be a citizen. She said the regulations would add to voter fraud.

Chair Denis asked Ms. Buckardt if she knew of any specific voter fraud. He said nothing had ever been filed as a complaint about voter fraud.

Ms. Buckardt said the newspaper reported somebody got 40,000 voters to vote in Nevada. She said registering by computer did not require any verification that the person lived in Nevada.

Ms. Kirkpatrick said she did not want misnomers circulating. Clark County had a pilot program to register by computer. The online process was actually harder because they had to provide more information than required on the paper registration. She said when her daughters went to vote, they were required to show their ID and a second form of identification after registering to vote by computer.

Chair Denis said rampant fraud was not occurring to his knowledge.

Senator Roberson mentioned ACORN in 2008 in this State.

Woody Stroupe said he was a past member of the California State Bar and his background was useful in reviewing R111-11 and R124-11. He said his desire was to have fair elections free from voter fraud. The Nevada Voters Rights Acts should be upheld and voter fraud disallowed. Provisions in R111-11 and R124-11 made it easier to conduct voter fraud. The current voter registration form required the applicant sign a 113-word declaration covering citizenship, age, legal residence, sole place of residence, no other residence being claimed, no felony convictions, and declaring under perjury the truth of the signed statement. There were 4 sections in R111-11 that eliminated the declaration of qualifications to vote. He referenced section 4 which did not mention an eligibility oath or declaration subject to perjury when applying to register to vote by computer. He said the intent of the regulation did not matter, but what was written down in the regulation. He said section 8, which applied to absentee ballot sent by facsimile, required the voter read and sign a 21-word declaration stating the voter resided within the precinct. Section 8 said the Secretary of State would create a standard paper form for use by persons who apply to register to vote in person or by mail. Mr. Stroupe said section 9 applied to an absentee ballot sent to a voter by facsimile and required a voter to read the 21 word declaration. He was concerned the 113-word declaration in the current voter registration form was eliminated. In addition, he said the Secretary of State apparently did not trust the military. He said the military required an absentee voter to sign a 130-word long declaration. He said the oath added words and more requirements.

Mr. Stroupe said he had two issues with R124-11. He said section 10.5 stated an inactive voter may vote in person at the polling place in the same manner as an active voter. He said it was a violation of NRS 293.525, which required an inactive voter attest to his or her new address before an election board officer. The section removed a layer of protection from fraudulent voters. He requested the Secretary of State strike the section. He said vague regulations cause arguments and law suits. Finally, in subsection K of 9.3 in R124-11 read... "any document that is primarily used for persons who are not U.S. citizens shall not be used to establish identity or residency." He said, for example, a document issued by the government with an individual tax identification number shall not be used to establish identity or residence. He said it would help prevent non-U.S. citizens from voting. He requested the regulations be vetoed. He referred to a lawsuit brought in the last election about voter fraud and intimidation of voters and the 100,000 voters registered of which 90,000 were found to be fraudulent after the election. He said they did not know how many of the 100,000 people voted. He said it was blatant voter fraud.

Dan Hickey spoke for all military members who were residents of the State, agreeing with Mr. Stroupe. He asked why it was more difficult for the people in the military to vote.

Jim Moneyhun said he represented Nevada Clean Up the Vote. He said the proposed changes to the Nevada Administrative Code were a perfect example of how to increase the potential for election fraud. He said he had seen buses running from one polling place to another at the end of the day. He had been involved in election fraud since the early 1970s in three different states. He said the process was used in the last regular election with buses going to polling places at the end of the day in both Reno and Las Vegas. He said section 2, paragraph (c), contained a contradictory definition of "waiting to vote" by including a person who "is in the parking lot of the polling place and is moving toward the entrance of the polling place with the intention of voting." He said this could allow the cycling of buses from one place to another to attempt illegal votes. He recommended striking the regulation.

Chair Denis said the provision had been removed from the regulation.

Mr. Moneyhun said with regard to regulation R111-11 the most serious situation was one which could easily result from the registration procedure. He said section 4 referred to registering by computer. He did not understand how the signature of the voter would be obtained. He said the proper action was to remove section 4 or reject the entire regulation.

John Wagner said he had studied the regulations. He said Janine Hansen discussed the two bills many times and they did not find anything that upset them. The last time he voted he had to sign his name and the signature was compared to the one on file. He said on the things

regarding the military voting, they were enacted by federal law, and these regulation brought Nevada into agreement with the federal law.

Kim Bacchus hoped everyone worked toward not creating an environment that created fraud by allowing lax regulation that can challenge people who enjoy creating fraud. She said much potential for fraud can happen by computer.

Rita Hickey said she was a poll watcher last year during the 2010 elections. She witnessed voter fraud. She said she had to stand behind a line and she was not allowed to take out her telephone. She said there was nothing she could do when a man committed voter fraud. She was unable to file a report because she did not know who the person was. He registered to vote at the polling place and then he voted. That was voter fraud.

Betty Gilmour commented on R124-11, section 9. She said it concerned documents used for residency. She concurred with the statements of the earlier speakers. The Federal Government issued a lot of documents to resident and non resident aliens. She said the residency requirements needed to be more specific. She said she knew fraudulent things had occurred. She said the regulation would change the law. She added the office of the Secretary of State was the most powerful office in this State because that person controlled the electoral process.

Chair Denis said the documents Ms. Gilmour mentioned were already in statute and were not being changed. He added that the speakers needed to address the particular regulations listed.

Andrew Zak said he was a former burn surgeon in the United States Army and was honorably discharged in 1999. He spoke about the regulations concerning the voting issues. He said he had read that one in four births in Nevada were to illegal immigrants. He said all the patients had to show ID, proof of insurance, and several other forms of ID and were often denied care if they had not paid the full prepay amount. He said it was mentioned an electric bill, a paycheck, or a student ID could be used for a voter registration and he thought that was completely insufficient. He said the writings were too vague and would be easy to interpret completely one way or completely the opposite way.

Hermann Glockler said voting fraud was a crime and enabling voter fraud was also a crime. He said it was necessary to increase the checks and balances needed to vote for someone.

Diane Burnett said she was part of a national movement called True the Vote started in Houston, Texas. She said it was started in response to the ACORN group fraudulently registering people to vote. She said it was seen in Northern Nevada by a group called

Organizing America, who was ACORN, who had a registration drive. She said voter fraud had started in Las Vegas, also.

Robert Walker said he agreed with the earlier speakers. The right to vote was very precious. He said the right to vote was earned and was not a natural right. It was earned by being born in the country or being a naturalized citizen. He referred to section 9 in R124-11. He said the IRS issued individual tax payer identification numbers to legal and illegal aliens. He said that was a government issued ID. He asked if such ID could be used to vote.

Chair Denis said what Mr. Walker was discussing was already in existing statute and not in the regulation being discussed today.

Paul R. Petty said he attended the last workshop on the issue. He said approximately 30 people spoke at the workshop and all said the same things being heard today. The last thing he heard at the workshop was that the regulations were adopted as amended. He said there was no thought process put toward redoing the regulations. He had not heard anyone speak in favor of the regulations except the Secretary of State's office. He recommended taking the regulations to a full committee rather than just a subcommittee. He said six people should not be making the decision.

Ms. Kirkpatrick said she had replied to both sides. She said the regulation process had advanced from 2005. She said many of the comments heard today were in existing regulations and had been in place a long time. She said there were two legislative hearings concerning these issues and many of the things mentioned were discussed by the full Legislature. She said the six members on the Subcommittee were not making new legislation.

Mr. Petty asked why there was a rush for approval of the regulations. He said many people had questions about the regulation opening up voter fraud.

Chair Denis said the Subcommittee's job was to determine the Secretary of State was not doing something different than the legislative intent.

John Keatts said he was a veteran. He concurred with everything Mr. Stroupe said.

Mr. Stroupe said the sections referred to in his testimony were R111-11, sections 4, 6, 8, and 9. He also referred to R124-11, section 10.45, and section 9.3 subsection (k).

Ms. Clark said they did not make an amended statement. She noted R111-11, section 5, appeared to have been adopted as stated. She was concerned about the right to petition. She requested that it not be amended as proposed.

Ms. Kirkpatrick asked for further clarification as she was unable to find it in the regulation she was reading. She asked where in section 5 it talked about petitioning and where it spoke to the other things she mentioned. She asked for specific parts.

Ms. Clark said the things were in there but were not to be addressed today. She said R111-11 and R124-11 needed to be brought before the full Legislature in 2013. She said the right of the people to petition was squashed and tightened up so the right of the people to petition was being choked. She requested the two regulations not be acted upon by the Subcommittee.

Ms. Buckardt said someone who lived in California can also vote in Nevada and Arizona. She said the Secretary of State had the power to determine who can vote. She hoped to get back to government by the people.

Senator Settelmeyer spoke as an individual and on behalf of his constituents. He said there were many things within the two bills approved in the Legislature and there were some things never discussed during the Session. He referred to R111-11, section 13, which he had not seen in any of the meetings he attended. He said on page 4 of R124-11 the concept of micromanaging the county clerks indicating they must wait to verify the votes before they released information until it was verified by the Secretary of State was never presented to the legislative body.

Shirley Shelton said she concurred with many things said today. Her main concern was the removal of the oath. She asked why there was a rush to approve the regulations.

Unidentified Speaker said she concurred with the statements made earlier.

C.T. Wang said everyone present was exercising their rights as citizens to petition and to assemble. He said the regulations were opportunities for voter fraud. He was concerned about an inactive voter voting in person at the polling place in the same manner as an active voter. He said that was ripe for voter fraud.

Ms. Coulson said in R111-11 almost anything could be used for an ID. She preferred something more stringent and similar to the military requirements. She said she understood in R124-11 that closing the polling place if a bus was en route had been eliminated from the regulations. She asked if that was true.

Chair Denis said it had been removed. He invited the Secretary of State to speak. He requested that he discuss the inactive voter issue.

Secretary Miller said Scott Gilles was with him. He thanked the public for their input even though they may disagree with each other. The democratic process was one of compromise. He said there were a number of broad concerns addressed that were not necessarily related to the specific areas of the regulations. A number of speakers suggested the proposed regulations disabled the safeguards in place and lead to voter fraud. He agreed that the sanctity of the ballot box was important as was ensuring that safeguards were in place to protect the electoral process. He said he heard reference to ACORN as a primary example of voter fraud. He said going back to the earlier 2000s there was concern about voter fraud. He formed the Election Integrity Task Force, a multijurisdictional task force to stop election fraud. He said they investigated ACORN and criminally charged the regional field director, the local field director, and ACORN with 36 felony counts. They all pled guilty to voter registration fraud. He said they were the only jurisdiction in the entire country that charged ACORN criminally and the only one with a criminal conviction of ACORN. He was aggressively pursuing voter registration fraud. His office formed the Election Integrity Task Force which was the only task force of its kind in the country. He said it combined the resources of local law enforcement, the FBI, and the U.S. Department of Justice and addressed all election law violations. He encouraged people to come forward with suggestions of voter fraud. He said they will investigate all complaints.

Secretary Miller addressed the questions regarding military voting. He said there were suggestions by the speaker that it was more difficult for the military men and women to vote. He said that was a fabrication and could not be further from the truth. His office put together a landmark piece of legislation that made it easier for the military people to vote. He added in 2009, they were allowed to return ballots electronically via email. He said Nevada preceded the federal authorities in putting that in place. He said A.B.100 made it even easier for the military to vote. He said his office led the way for military voting. He was selected as one of two Secretaries of State to go to Washington, D.C., to talk to the Overseas Vote Foundation about their efforts.

Secretary Miller said there were concerns about the regulatory authority of the regulations and whether or not they should go to the full Legislature, and whether his office was exceeding its authority. He said there were a number of bills last session dealing with elections and many of those statutes were the basis for the regulations. He said the election officials across the State were doing a good job. It was his office's job to ensure they had a clear understanding of the process. Secretary Miller addressed the implication that if certain regulations were not addressed in the proposed regulation, they were not addressed at all. He said there were many statutes applying to the voting regulations.

Secretary Miller addressed comments on the questions posed today regarding the regulations. He referred to R111-11, section 4, which dealt with basic language applied to online voter

registrations. He said some concerns pointed out the voter registration information could be used as a vehicle for voter fraud. He said what was in place for online voter registration was a photo ID voter registration system. A person cannot register to vote through the system without having a DMV issued Nevada driver's license or ID card. If a valid ID is not given at the beginning of the process, the person is rejected and told to try to register through the paper process. He said it was more secure than a paper-based system. The 90,000 voter registrations submitted by ACORN were paper-based registrations. He said ACORN was detected and never allowed on the voter rolls. In order to register in Nevada, proof of identity and residency status is required. In regard to the lack of declaration for online registration, it was not in the proposed regulations but was required in other areas. He said it was required under federal and State law. He said online voter registration did not require a signature because a Nevada driver's license or ID card was required which had a signature on file with DMV. The voter had to verify that the signature seen on the screen was their signature.

Secretary Miller said there were a number of concerns in R111-11, sections 6 and 9, regarding a required oath at the time of registration or submittal of the absentee ballot. The oath was required under federal law and under State law. He said a section of R111-11 dealt with inactive voters. An inactive voter was defined in 1993 federal legislation which said no voter registration body could cancel anybody from a voter registration list unless they failed to vote in two successive elections. He said active voters were individuals who voted in the last election and remained active on the voter rolls. The designation of an inactive voter was not somebody whose eligibility to vote was in question. He said they were somebody who did not vote in the last election. If they did not vote in 2010 and did not respond to a postcard sent by the Registrars Office asking them to activate their registration, they were designated inactive voters. He said inactive voters could still go to the polls and vote.

Secretary Miller said section 13 of R111-11 was brought up by Senator Settlemeyer regarding an oath as it applied to military voters. The oath was put in place and required by A.B. 100. He said it made it easier for military members to cast ballots through electronic transmission. He said Senator Settlemeyer voted for the bill that mandated the regulation.

Secretary Miller said R124-11, section 6, related to the timing upon which they can release the election results for the counties. He said Senator Settlemeyer also mentioned this regulation. Secretary Miller said the county clerks cannot post and release unofficial results pertaining to the election without first having approval from the Secretary of State's office. The approval rested on all the polls in the State being closed and that the file being sent to his office was an accurate file. He said a number of problems had occurred in previous elections. He said in 2010 a car crashed into a power transformer before 7:00 and caused a delay for people waiting to vote. He said they did not want the results reported before those people cast their ballots. He said another example in the last election occurred when a county sent the

wrong file to his office. He said anytime a county posted inaccurate results through a simple typo or another error it caused people to question the fairness of the vote count. He said it would not cause any delay and he had not received any opposition from the clerks. Section 9 of R124-11 concerned the ID requirements. He said NRS 293.517 was the registration statute. The statute specifically said nobody was allowed on the voter registration rolls without the county election official first verifying the identity and the residence of the person attempting to register to vote. He said the documents acceptable for proof of identification were put in place by Secretary of State Dean Heller. The list was more restrictive, and basically, with a few exceptions, the only forms of identification allowed were government issued photo IDs. He said without a photo ID the registration was flagged and listed as ID required and the individual had to show identification proving identity and residency. He said any member of any precinct with personal knowledge that an individual may be voting who is not the person they say they are or does not live in the precinct can challenge the voter. He said there were rare instances of somebody appearing at the polls impersonating someone else. He said it could happen, but there were many safeguards in place to prevent it from occurring.

Chair Denis asked about someone registering and voting on the same day.

Secretary Miller said Nevada did not have same day registration. He said there was a cutoff of approximately 30 days before the election where a person had to be registered to vote. He said in order to register to vote one had to show proof of identity and/or residency.

Senator Roberson asked Secretary Miller if his office was adequately staffed.

Secretary Miller said his office had seen extensive cutbacks and in 2008 he had to lay off about 16 percent of the personnel in his office. He said when he took office there were eleven people in the Elections Division and today there were six and they had two vacancies. He was understaffed. The mechanics of putting on elections were largely orchestrated by the county clerks and the local registrar of voters.

Senator Roberson said he understood it took up to 30 days for the Legislative Counsel Bureau to review regulations and they did not receive the regulations until November. Final regulations were not received until December 23, 2011. He said he had concerns about the process. He added the Secretary of State's office had previously talked about the importance of transparency in the election process. He said the acts of the office with regards to these regulations were contrary to his words.

Secretary Miller said his office had done a yeoman's job taking statutes passed through the multiple bills that dealt with elections. They reviewed the bills to determine what regulations

would apply to those bills. There was a statute put in place in 2007 that mandated the regulations were in place by December 31, 2011, for them to apply to the 2012 election. He said they also dealt with the first special election ever held for a congressional race in Nevada. He added that the regulations were made available to the public on November 22, 2011. The public had ample time to review the regulations.

Ms. Benitez-Thompson said she did not want to be represented as someone who was handed regulations too late in the process to be read thoroughly. She said she had studied them and looked forward to voting on the regulations today. She looked forward to and enjoyed hearing the input regarding the regulations. She did not believe the process had been circumvented or that she had a lack of time to review them. She wanted the tone of the conversation to be respectful and to include an exchange of a dialogue. She said she was uncomfortable when the conversation was too personal.

Senator Roberson said there was nothing personal in his comments. He said there was a difference of opinion of the subject. He had read the regulations, and he did not mind being in the meeting. The full Legislative Commission should hear the discussion. He felt a subcommittee of four Democrats and two Republicans should not make the decisions.

Ms. Kirkpatrick said the Subcommittee was acting in a normal manner. She said everyone on the Subcommittee was there to do a job. She did not consider regulations a party issue. She agreed with some of the issues raised by the public. She said she was ready to take a vote on the regulations, stating that it was a priority for her that voter fraud did not occur in Nevada.

Senator Parks said there was a lot of testimony today regarding voter fraud. He said there had been voter registration fraud in the past. The Registrar of Voters in Clark County, Larry Lomas, was quoted indicating voter registration fraud was detected, but he had no knowledge of any actual voter fraud.

Secretary Miller said Senator Parks was accurate in his description. He said there was a limited exception in 2002 with a case of voter fraud dealing with absent ballots. The individuals were caught and pled guilty. The cases dealing with ACORN and voter registration fraud were caught before they were allowed on the voter registration rolls. He said there was no evidence of people showing up at the polls impersonating someone else and casting an illegal ballot.

MS. BENITEZ-THOMPSON MOVED TO APPROVE R124-11 AND R111-11.

MS. KIRKPATRICK SECONDED THE MOTION.

Legislative Commission's Subcommittee
To Review Regulations
Date: December 29, 2011
Page 30

Mr. Stewart said Secretary Miller had answered most of his questions concerning the two regulations but he still had some doubts and would vote no on the motion.

Chair Denis thanked the Secretary for the work he did for the regulations.

**THE MOTION CARRIED. (SENATOR ROBERSON AND MR. STEWART
VOTED NO ON THE MOTION.)**

Chair Denis opened the discussion for public comment.

Ms. Shelton said she was not attacking anyone in her emails. She said she voted for Ross Miller and wanted it in the record. She was upset because of the timing and asked why the community did not hear about the issues sooner. She said the DMV workers were registering illegal aliens. She said she was fair and did not attack anybody. The regulations were about voter rights and many illegal aliens received the DMV official government identification.

Barbara LeTourneau said she was disappointed that it appeared more thought and consideration was given to business fraud than to voter fraud. She said her only voice was her vote. If the integrity of the vote was not protected, then she no longer had a voice.

Mr. Stroupe said he gave specific sections of the regulations he was concerned about. He said it was a poorly drafted regulation. He objected to section 6 which did not ever refer to all federal and state requirements. He said the Subcommittee had made up its mind before it met. Section 8 was mentioned, and it applied to paper forms for people who register by mail. Section 9 had the same problems. He said it was legislation drafted to be vague and written so it could be misinterpreted.

Chair Denis said nobody on the Subcommittee came to the meeting with their minds made up about the regulations. He said his questions were answered and he was offended that Mr. Stroupe believed they were wasting everybody's time and going through formalities. He said they listened to everybody and took the job seriously.

Mr. Hickey said the vote was "politics as usual."

Mr. Wang said he agreed with Mr. Stroupe and Mr. Hickey and it was partisan politics. He said the Subcommittee made a mistake. He said statistically speaking when Harry Reid beat

Sharron Angle he beat her by about 4 or 5 percent. The week before Ms. Angle was leading by 4 or 5 percent. He said it was a 9 percent swing within a week. He mentioned the Sequoia Voting Machine problem. He said a chip changed by a technician could change the way the machines operated. He said he did not have specific proof of his allegations.

Ms. Clark apologized to Assemblywoman Kirkpatrick for speaking over her. She said she was unable to finish her statement.

Ms. Kirkpatrick also apologized to Ms. Clark.

Ms. Clark said her concern was that things were removed from the most recent meeting other than this one that Ms. Kirkpatrick was unable to address. One of the items removed was the right to petition. She said another chokehold was put on the right to petition. She said it was a major concern for the group.

Ms. Burnett said her biggest concern was the inactive voter being able to vote at the polls just like an active voter. She thought the group did not understand what an inactive voter was. She said according to Secretary Miller it was just someone that did not vote in the last election and that was not quite true. She said anything else goes in the inactive file too, by federal law they cannot remove the voter from the rolls until two years later. She said anything other than a registered voter was an inactive voter, including people with fraudulent registrations. She said because of the regulations enacted today, fraudulent voters will be able to show up at the polls and vote and not prove anything.

Mr. Moneyhun said he worked in election fraud and voter fraud and anyone who did not believe it existed was extremely naïve. He said he had heard testimony from a number of people testifying that there was a lot of fraud. He suggested Secretary Miller add more staff for Scott Gilles. He said in the first workshop most of the suggestions were ignored.

Kevin Niemeyer said he rode the elevator with Ms. Kirkpatrick, and he said she said the decision was already made.

Ms. Kirkpatrick said he asked her if she was going to the meeting on voter fraud and she replied she was going to the meeting.

Mr. Niemeyer said at another time she said it was already decided.

Ms. Kirkpatrick said she thought he was wrong.

Legislative Commission's Subcommittee
To Review Regulations
Date: December 29, 2011
Page 32

Chair Denis thanked all the members for being present. He said there was no further business for the Subcommittee. Chair Denis adjourned the meeting at 8:13 p.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato, Interim Secretary

APPROVED BY:

Senator Mo Denis, Chair
Legislative Commission's Subcommittee to Review Regulations

DATE: _____

<u>EXHIBITS</u>

Legislative Commission's Subcommittee
To Review Regulations
Date: December 29, 2011
Page 33

**Committee Name: LEGISLATIVE COMMISSION’S SUBCOMMITTEE
TO REVIEW REGULATIONS**

Date: November 21, 2008

Time of Meeting: 9:00 a.m.

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