



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

The Legislative Commission held its second meeting in calendar year 2014 on Friday, March 28, 2014. The meeting began at 9:08 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and was videoconferenced to Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada.

**COMMISSION MEMBERS PRESENT:**

Assemblywoman Marilyn Kirkpatrick, Chair  
Assemblyman Jason M. Frierson, Vice Chair  
Senator Kelvin D. Atkinson  
Senator Joyce Woodhouse for Senator Moises (Mo) Denis  
Senator Ben Kieckhefer  
Senator Ruben J. Kihuen  
Senator Michael Roberson  
Senator James A. Settelmeyer  
Assemblyman Richard (Skip) Daly  
Assemblyman James Oscarson for Assemblyman Wesley K. Duncan  
Assemblyman Ira Hansen  
Assemblyman Lynn D. Stewart

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Rick Combs, Director  
Paul V. Townsend, Legislative Auditor, Audit Division  
Mark Krmpotic, Fiscal Analyst, Fiscal Division  
Brenda J. Erdoes, Legislative Counsel, Legal Division  
Risa B. Lang, Chief Deputy Legislative Counsel, Legal Division  
Donald O. Williams, Research Director, Research Division  
Janet Coons, Secretary for Minutes  
Sylvia Wiese, Secretary to the Director

Chair Kirkpatrick called the meeting to order. [Exhibit A](#) is the agenda; the attendance sign-in sheets are [Exhibit B](#). All exhibits are filed in the Director's Office of the Legislative Counsel Bureau (LCB) and are on the Legislative Commission's webpage: <http://www.leg.state.nv.us/Interim/77th2013/Committee/Interim/LC/?ID=2>. Agenda items taken out of order have been placed in proper agenda order in the minutes for purposes of continuity.

## **PUBLIC COMMENT**

Chair Kirkpatrick announced that the State Board of Osteopathic Medicine has withdrawn R190-12 and the State Board of Education has withdrawn R084-13 from the list of State agency regulations to be reviewed by the Commission. (Please see [Exhibit C](#).)

Chair Kirkpatrick called for public comment.

Barry Smith, Executive Director, Nevada Press Association, expressed concern over Section 2 of R107-13, which interprets the term "extraordinary use of its personnel or technological resources." (Please see [Exhibit D](#).) Stating that neither statute nor regulation defines this phrase, Mr. Smith expressed concern that when combined with other language in the regulation, the interpretation will open the door to exceedingly high costs to the public for accessing records.

He explained the standard for extraordinary use comes from an official Attorney General Opinion (AGO), AGO 2002-32 PUBLIC RECORDS; CONFIDENTIALITY COUNTIES, in which Washoe County asked whether it could define in its fee schedule the standard for extraordinary use of personnel and technological resources, which is in statute. The Attorney General (AG) approved the request, reasoning that State agencies could handle the vast majority of records requests in 30 minutes or less. Mr. Smith argued that if someday the agencies cannot handle the vast majority of requests in 30 minutes or less, that logic would no longer apply. He pointed out that Section 3 of R107-13 defines "readily available" and provides criteria for the review of confidentiality, which could easily take more than 30 minutes and go beyond the actual costs of copies provided for in statute.

Mr. Smith commented that the term "retrieve" was added to the regulation. He suggested this is a policy decision because the statute refers to the actual cost of reproducing copies and does not mention retrieving, which could result in a charge for accessing records. Mr. Smith stated that excessive fees, although not routine, sometimes deny or thwart access to public records. As he testified at the workshops and the hearing for R107-13, while the language intends to guide agencies on how to follow the records law, the regulation enables them to block access to legitimate public records.

Mr. Smith is of the opinion that Section 4 of the regulation changes the meaning of Section 4, paragraph (a) of NRS 239.010, which states, "A person may request a copy of a public record in any medium in which the public record is readily available. . . . Shall not refuse to provide a copy . . . because the . . . agent has already prepared . . . in a different medium." He suggested the language of Section 4 of R107-13 states a public record is available only in the format in which the public record exists within the agency. For example, if an agency has a record on microfilm, he questioned whether that is the only format in which the record would be available to the public. Mr. Smith suggested this was not the intent of the statute, but rather the agency must provide the record in any readily available medium.

Admitting he does not like the standard, Mr. Smith clarified that AGO 2002-32 stated if agency personnel took one hour to retrieve or reproduce a record, the public's charge would begin after the first 30 minutes. He pointed out this is not reflected in the regulation.

Mr. Smith discussed Section 27, subsection 2 of the regulation, which defines "nonrecords" as those things that can be disposed of which do not fall under the normal schedule for disposal according to NRS 239.080. He expressed concern that somebody could identify published materials, such as blank forms or catalogs, as nonrecords because this part of the regulation refers back to Sections 2 through 11, which define public records. Mr. Smith asked the Commission to further review R107-13 for possible amendments.

Noting that some Commission members also have concerns regarding R107-13, Chair Kirkpatrick recommended Mr. Smith stay for further discussion.

Chair Kirkpatrick asked for additional public comment; hearing none, she moved to the next agenda item.

**APPROVAL OF MINUTES OF THE FEBRUARY 25, 2014, MEETING—  
Assemblywoman Marilyn Kirkpatrick, Chair**

ASSEMBLYMAN FRIERSON MOVED APPROVAL OF THE  
MINUTES OF THE FEBRUARY 25, 2014, MEETING.

SENATOR ATKINSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

## LEGISLATIVE AUDITOR

### A. Summary of Audit Reports Presented to the Legislative Commission's Audit Subcommittee Pursuant to NRS 218G.240—Paul V. Townsend, Legislative Auditor

Paul V. Townsend, Legislative Auditor, Audit Division, LCB, directed the Commission's attention to a letter dated January 7, 2014, from Assemblywoman Maggie Carlton, Chair, Audit Subcommittee of the Legislative Commission, to members of the Legislative Commission regarding audit reports of the following entities:

1. Agency for Nuclear Projects, Office of the Governor;
2. Mail Services, Division of State Library and Archives, Department of Administration;
3. Nevada Transportation Authority, Department of Business and Industry;
4. State Fire Marshal Division, Department of Public Safety;
5. Commission on Mineral Resources, Division of Minerals; and
6. Division of Emergency Management, Department of Public Safety.  
(Please see [Exhibit E.](#))

Mr. Townsend presented a summary for each audit report.

#### Agency for Nuclear Projects, Office of the Governor

The purpose of the audit was to evaluate the Agency's financial and administrative practices over contract monitoring, property and equipment, employee compensation, and the ongoing monitoring of its system of internal controls. The audit found the Agency has adequate internal controls over key financial and administrative functions; there were no findings to report. (Please see [Exhibit F.](#))

#### Mail Services, Division of State Library and Archives, Department of Administration

The audit determined the process of billing State agencies for mail service was reasonably accurate and complete. However, minor control weaknesses at Mail Services and the Administrative Services Division of the Department of Administration, which assists in the billing, could allow errors and omissions to occur and not be identified. The report made two recommendations to improve oversight and control activities related to billing State agencies for mail services, both of which the agency accepted and implemented. (Please see [Exhibit G.](#))

#### Nevada Transportation Authority (NTA), Department of Business and Industry

The purpose of the audit was to: (1) evaluate the processes for selecting and conducting operational inspections; and (2) evaluate performance measures, including the reliability of reported results. The NTA administers and enforces laws related to passenger transportation, such as airport shuttles, charter buses,

limousines, and taxis outside Clark County. It also regulates household goods movers and tow cars. The audit discovered the inspection process needs improvement; the NTA did not inspect 18 of 315 carriers over a five-year period. These inspections help ensure the carriers are complying with laws and regulations, thereby protecting the public. The audit found the effectiveness and reliability of performance measures need improvement, as some measures did not accurately reflect performance. The report contained seven recommendations, all of which the NTA accepted. (Please see [Exhibit H.](#))

#### State Fire Marshal Division, Department of Public Safety

This audit evaluated the Division's permitting and licensing processes and controls over revenue collections. The audit found many businesses that store hazardous materials, such as fuels, gases, paints, and toxic chemicals, have not been identified and permitted according to program requirements. Identifying these businesses and collecting permit fees would help protect the public. In addition, maintaining a database of hazardous material report data would be useful for first responders. The audit estimated that approximately 1,700 facilities did not have a required permit, which would generate \$250,000 in fees to train emergency responders in handling hazardous material incidents. However, the Division needs the cooperation of local jurisdictions to enforce the permit requirements. The report contained three recommendations to improve the hazardous material programs and internal controls over revenues, which the Division accepted. During the January 7, 2014, meeting of the Audit Subcommittee, the Division indicated that it has revised its permitting and licensing processes, reaching out to several counties and permitting an additional 400 facilities. (Please see [Exhibit I.](#))

#### Division of Minerals, Commission on Mineral Resources

The purpose of this audit was to evaluate the Division's efforts to: (1) monitor oil, gas, and geothermal drilling operations for compliance with regulatory requirements; and (2) secure abandoned mines by notifying responsible parties. The report found the Division has not established an inspection process to ensure oil and geothermal drilling operations are meeting regulatory requirements. Periodic inspections would help the Division obtain greater assurance that operations are complying with regulations intended to ensure safety, protect the environment, and minimize the waste of natural resources. The audit found the Division's efforts in securing abandoned mines has been effective, but the Division should enhance its efforts to follow up when responsible parties do not respond to initial notifications to secure abandoned mines. The report contained four recommendations, all of which the Division accepted. (Please see [Exhibit J.](#))

#### Division of Emergency Management, Department of Public Safety

This audit determined whether the Division: (1) properly tracks, safeguards, and disposes of its equipment; and (2) provides sufficient oversight of equipment purchased by its subgrantees with federal funds. The audit concluded the Division needs stronger controls over equipment in its custody. Auditors discovered an

annual inventory had not been performed for two years, resulting in not being able to locate 7 of 50 items, a cost of about \$15,000. The report found the Division could also improve its oversight of equipment purchased by subgrantees with federal funds. Although the audit found no major problems, it did find that the Division should implement controls over commonly purchased items to ensure the equipment is properly safeguarded and available when needed. The report cited eight recommendations, all of which the Division accepted. (Please see [Exhibit K.](#))

Concluding his presentation, Mr. Townsend shared the Audit Subcommittee's recommendation for the Legislative Commission to accept the six audit reports.

Chair Kirkpatrick thanked Mr. Townsend and expressed her appreciation for the Audit Division's thorough work.

Assemblyman Daly pointed out that the current audit reports for the Division of Minerals and the State Fire Marshal Division identified weaknesses previously noted in their 2007 audit reports. He questioned the process agencies must follow in order to remedy previously documented findings.

Mr. Townsend explained there is a follow-up process that determines whether the agencies have taken appropriate action to implement audit recommendations. In 2007, he said the State Fire Marshal Division implemented additional procedures after its audit; however, the Division suffered significant staff reductions during the recession, making the follow-up process a lesser priority. Mr. Townsend repeated that the Division has taken corrective action regarding its current audit recommendations by permitting an additional 400 facilities.

Regarding the 2007 audit report of the Division of Minerals, he said the Division indicated it would inspect the blowout prevention devices in addition to revising its regulations, which the Audit Subcommittee accepted. However, the current audit found that the Division did not attempt to revise its regulations and inspections had ceased. Mr. Townsend stressed that the Audit Division always reviews the findings and recommendations of the previous audit. The Division of Minerals has indicated it is moving forward with regulation revisions, which the Audit Division will monitor.

Referring to the audio-visual equipment the Division of Emergency Management acquired in 2012 for \$257,000, which was not included in the State property records, Assemblyman Daly asked whether the Division could account for the replacement equipment and whether it maintains a disposal schedule for equipment.

Mr. Townsend explained that the Purchasing Division of the Department of Administration handles purchasing requirements for the disposal of equipment. He said the example for the Division of Emergency Management is unique because the Division initially purchased an entire video wall of televisions with a single inventory tag. The audit recommendation states that moving forward, the Division should tag individual items as it replaces them, as opposed to using one tag for the entire wall. This procedure will ensure that each unit is properly safeguarded.

Chair Kirkpatrick added that State inventory measures were introduced by the 2011 Legislature.

SENATOR ATKINSON MOVED APPROVAL OF THE SUMMARY OF THE AUDIT REPORTS.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

- B. Summary of Six-Month Status Reports on the Implementation of the Audit Recommendations by the Legislative Auditor as Submitted to the Legislative Commission's Audit Subcommittee Pursuant to NRS 218G.270—Paul V. Townsend, Legislative Auditor

Mr. Townsend directed the Commission's attention to an analysis of the six-month reports presented to the Audit Subcommittee. (Please see [Exhibit L](#).) He referred to a letter from the Chair of the Audit Subcommittee, dated January 7, 2014, to the members of the Legislative Commission that contained a schedule summarizing the implementation status of audit recommendations. (Please see [Exhibit M](#).)

On the second page of Schedule 1 ([Exhibit L](#)), Mr. Townsend pointed out that of the 95 recommendations reviewed at the Audit Subcommittee's last meeting, 85 have been fully implemented; 9 have been partially implemented; and 1 had no action. The recommendation having no action involved the Employment Security Division of the Department of Employment, Training and Rehabilitation, which will be requesting legislation during the 2015 Session. Once a bill draft request is submitted, he noted that action could begin on the recommendation. The Audit Division will monitor the nine partially implemented recommendations and report on their progress at a future meeting of the Audit Subcommittee.

If an agency has not implemented a recommendation, Mr. Townsend said the Audit Subcommittee requests the agency to provide an explanation during a future meeting. Referring to Schedule 2 ([Exhibit L](#)), he explained the Division of Enterprise Information Technology Services of the Department of Administration had two remaining recommendations from a 2012 audit not implemented:

(1) updating the State's emergency contingency plan; and (2) developing test procedures for that plan. The Division testified in January that it continues to work on the plan and anticipates its completion by June 2014, which the Audit Division will also monitor.

Mr. Townsend shared the Audit Subcommittee's recommendation that the Legislative Commission accept the six-month reports regarding the implementation of audit recommendations.

ASSEMBLYMAN STEWART MOVED APPROVAL OF THE SIX-MONTH STATUS REPORTS ON THE IMPLEMENTATION OF THE AUDIT RECOMMENDATIONS BY THE LEGISLATIVE AUDITOR AS SUBMITTED TO THE AUDIT SUBCOMMITTEE OF THE LEGISLATIVE COMMISSION.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

**PROGRESS REPORTS—Litigation Currently in Progress—Brenda J. Erdoes, Legislative Counsel**

Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB, reported the progress of six cases.

1. The federal case of *People's Legislature v. Miller* is still stayed.
2. In the State case of *People's Legislature v. Miller*, the Supreme Court of Nevada heard oral arguments on March 4, 2014. The State is awaiting a decision as to whether the Supreme Court will dismiss the case.
3. The case of *City of Fernley v. State, Dept. of Taxation* challenges the consolidated tax distribution formula. The parties are currently conducting discovery; the case will not go forward until discovery is completed.
4. The *Sandpointe Apt's., LLC v. Eighth Judicial District Court* case, the *Nielsen v. Eighth Judicial District Court* case, and other cases in the Supreme Court of Nevada have been combined to form the foreclosure deficiency judgment case in which the Supreme Court directed the LCB to file an amicus brief. On January 14, 2014, the Supreme Court denied a petition for a rehearing and the case is now closed. Assembly Bill 273 from the 2011 Session (Chapter 311, *Statutes of Nevada*) contained provisions that limited the amount of deficiency judgments in foreclosures. The Supreme Court held that the provisions of A.B. 273 which applied to deficiency judgments would only apply to cases where both the foreclosure of sale and the deficiency judgment occurred after the effective date of the bill.



5. Currently, *Black v. State of Nevada, Eighth Judicial District Court (Clark County)*, the prisoner case challenging the validity of NRS, has a motion before the court with a hearing scheduled for April 3, 2014.
6. *Little v. State of Nevada, First Judicial District Court (Carson City)*, the case that challenges NRS 231.1573 and 231.1577 regarding the Catalyst Account, is in the early stages of litigation. The courts have yet to take any action.

**LEGISLATIVE COMMISSION POLICY—REVIEW OF ADMINISTRATIVE REGULATIONS—Brenda J. Erdoes, Legislative Counsel (Copies of the permanent regulations are on file in the Director’s Office of the LCB.)**

From the list of State regulations to be reviewed by the Legislative Commission ([Exhibit C](#)), members asked Chair Kirkpatrick to hold R010-13, R099-13, R107-13, and R147-13 for discussion.

Chair Kirkpatrick repeated that R190-12 and R084-13 were withdrawn.

ASSEMBLYMAN FRIERSON MOVED APPROVAL OF R111-12, R019-13, R034-13, R040-13, R067-13, R087-13, R088-13, R096-13, R097-13, R098-13, R104-13, R116-13, R118-13, R119-13, R121-13, R131-13, R136-13, R140-13, R141-13, R150-13, AND R004-14.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 010-13

A REGULATION relating to governmental financial administration; requiring local governments to provide a total discounted estimated actuarial liabilities report concerning certain benefits; providing standards and requirements for actuarial studies; and providing other matters properly relating thereto.

Terry Rubald, Deputy Executive Director, Local Government Services, Department of Taxation, introduced John Sherman, Vice Chair, Committee on Local Government Finance (CLGF), Department of Taxation. She explained the regulation directs local governments on how to report liabilities associated with providing benefits required under Chapter 617 of NRS, “Occupational Diseases.” (Please see [Exhibit N](#).) Chapter 617 of NRS provides disability insurance and compensation to eligible public safety employees and eligible noncurrent public safety employees for occupational diseases such as cancer, hepatitis, and heart and lung diseases. Ms. Rubald stated that temporary regulations were in place for Fiscal Year 2013-2014. Regulation 010-13 requires local governments that employ public

safety personnel to file a report with the Department of Taxation regarding historical claims paid, the estimated future liability associated with benefits provided for in Chapter 617 of NRS, and the reserves accumulated to cover that liability. The Department compiles the information and publishes a summary of the reports.

Ms. Rubald stated that R010-13 requires information regarding the funding of the benefit. If the local government is self-funded, it must provide information about historical claims paid; the estimated future liability; information about the actuarial study used to estimate the future liability; information about the reserves; and the funded ratio of contributions compared to accrued liabilities for the current year. If the local government participates in an association, such as the Public Agency Compensation Trust (PACT), or if it has its own private insurer, then the local government must instruct the association or the insurer to provide the information about the historical claims, the future liability, the actuarial study, and the reserves. Ms. Rubald indicated that the PACT represents approximately 80 percent of local governments employing public safety personnel, and it takes care of the reporting responsibilities for those governments.

Continuing, Ms. Rubald explained that the regulation also provides guidance regarding the preparation of the actuarial studies in order to maintain consistency for comparison purposes among local governments. She said the Department of Taxation determined that R010-13 would have no direct and significant economic burden upon a small business, and the CLGF is of the opinion that the fiscal impact of producing the actuarial study will not be that great because local governments already produce actuarial studies for other purposes. Ms. Rubald noted the heart-lung liability projection would be one more component of a larger study, which is true in the case of the PACT study.

Addressing a letter by Marvin Leavitt, Chair, CLGF, to Chair Kirkpatrick ([Exhibit O](#)), Ms. Rubald stated the members of the CLGF strongly believe the regulation is necessary to promote transparency in government. She remarked the CLGF did not receive any negative comments from local governments, the public, or any public safety collective bargaining unit during the hearings for the temporary regulation and R010-13.

Assemblyman Daly expressed concern over the term “compensation and medical benefits.” He stated these benefits are not compensation; they are an exclusive remedy required by law in exchange for injured workers not suing public bodies. Assemblyman Daly also expressed concern about placing an unfunded mandate on local governments. He suggested the Commission defer R010-13 until his concerns are addressed.

Senator Settelmeyer stated that the smaller counties he represents generally support this regulation, but he requested more time to discuss it with them.

SENATOR SETTELMEYER MOVED TO DEFER R010-13 UNTIL  
THE NEXT MEETING OF THE LEGISLATIVE COMMISSION.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Kirkpatrick said she would call Ms. Rubald to discuss some additional issues regarding the regulation.

#### Regulation 099-13

A REGULATION relating to charter schools; establishing a procedure for requesting the issuance of bonds by the Director of the Department of Business and Industry to finance a project for the benefit of a charter school; requiring that such a project comply with applicable state and federal statutes and regulations; specifying certain mandatory and optional terms to be included in a financing agreement between the Director and an obligor; imposing certain requirements governing the sale of bonds, the investment of the proceeds of bonds and bonds which provide for a variable rate of interest; and providing other matters properly relating thereto.

Ash Mirchandani, Deputy Director, Department of Business and Industry, introduced himself.

Assemblyman Daly said he would not support the regulation because of the language in Section 11, subsection 2, which states, "Any person who wishes to obtain relief from the strict application of any such provision." He suggested subsection 2 would only invite litigation. (Please see [Exhibit P.](#))

Chair Kirkpatrick asked Mr. Mirchandani to explain why this language is necessary and under what circumstances someone might use it.

Mr. Mirchandani asked bond counselor Richard F. Jost, Attorney, Fennemore Craig Jones Vargas, to answer the question.

Mr. Jost explained that Chapter 233B of NRS, "Nevada Administrative Procedure Act," requires the provision to be in every regulation, to which Assemblyman Daly respectfully disagreed.

Responding to a question by Chair Kirkpatrick asking for an example of when someone might request "relief," Mr. Jost acknowledged this is the first time he has seen R099-13. He said he did not know who drafted the regulation or the process

used. Over the last 30 years, it has been his understanding that the provision regarding "relief" was routinely placed into each regulation drafted for the Department of Commerce and the Department of Business and Industry, as required by the Nevada Administrative Procedure Act.

Because charter school bonds are new for the Department of Business and Industry, Mr. Mirchandani explained the intent of the regulation was to outline administrative and application requirements, providing flexibility in the event something did not work. He said the State Board of Finance and the local jurisdictions must approve the bonds.

Chair Kirkpatrick asked Mr. Mirchandani whether he would agree to defer the regulation in order to clarify whether the specific language in question is necessary.

Senator Kieckhefer asked Legislative Counsel to provide clarification.

Brenda J. Erdoes, previously identified, stated she is unaware of any general requirement for such a waiver. She said the Legal Division will include such a provision upon request by an agency, but it is not something the Legal Division includes in all regulations. Ms. Erdoes noted an agency's rules of practice might contain provisions for this kind of waiver. She said the Legal Division is of the opinion that as agencies adopt their regulations, they have the authority to provide for such a waiver because they have authority to impose the provisions. The Legal Division looks at statutory provisions for requirements, which agencies cannot waive; agencies can only waive the actual provisions they put in a regulation.

Senator Kieckhefer asked whether deferring the regulation today would delay any applications, to which Mr. Mirchandani replied there are no applications in hand at this time, but he noted the Department has received inquiries regarding possible applications this summer.

Assemblyman Daly referred to Section 11, subsection 1, which states a person can ask for clarification of any provision of Sections 2 to 11. He suggested the regulation should specifically state that the waiver or relief applies to bond requirements only.

ASSEMBLYMAN DALY MOVED TO DEFER R099-13 UNTIL THE  
NEXT MEETING OF THE LEGISLATIVE COMMISSION.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

### Regulation 107-13

A REGULATION relating to public records; interpreting certain statutory terms relating to public records; setting forth requirements for a form to request to inspect, copy or receive a copy of certain public records; setting forth certain procedures for records officials; making various other changes relating to public records; and providing other matters properly relating thereto.

Jeffrey M. Kintop, State Archivist, Assistant Administrator, Division of State Library and Archives, Department of Administration, introduced Teri J. Mark, State Records Manager, Division of State Library and Archives (Division), Department of Administration, and stated they both worked on the development of R107-13. (Please see [Exhibit D.](#))

Chair Kirkpatrick asked the Division to respond to the concerns Barry Smith, previously identified, presented during Public Comment.

Ms. Mark stated the Division was aware of the concern regarding the 30-minute rule and researched what other State agencies currently use. She reported that several agencies, such as the Commission on Ethics, the Department of Corrections, the LCB, and the Office of the Secretary of State (SOS) recognize the 30-minute rule, as well as Clark and Washoe Counties and the City of Henderson. Since the 30-minute rule was recognized in the AGO 2002-32, as Mr. Smith acknowledged, the Division was of the opinion the rule was becoming more of a standard, thus incorporating it into the regulations.

Prior to R107-13, Ms. Mark stated there were no adequate guidelines for agencies of the Executive Branch within State government. She pointed out that the definition of an "official state record" in NRS 239.080 is a standard definition used by the federal government and many other states. Nevada excludes confidential records from its definition of public records; all public records are official records, but not all official records are public because of confidentiality. Ms. Mark said the Division wanted to use the existing definition of "official state record" to define "record."

Addressing Mr. Smith's concern about the concept of nonrecords, she explained the regulation is referring to convenience copies, backup reports, or items that are not official records of the entity that document the actions and transactions of that entity. Ms. Mark stated those items are excluded from the records retention schedule; therefore, the agency is not required to retain those records and should not be held accountable for them.

Ms. Mark said the records retention schedule is a State document approved by the Committee to Approve Schedules for the Retention and Disposition of Official State Records. Pursuant to NRS 239.073, the Committee establishes the length of time agencies must retain all their official records, including public and confidential

records. She commented the records officials, created by A.B. 31 (Chapter 414, *Statutes of Nevada 2013*), should have knowledge of the records within their agencies and how long they must retain those records. The records retention schedule is a guideline for the public and is accessible on an agency's website.

Ms. Mark said the changes in the regulation regarding medium do not mean a record is only available in a particular medium. For example, if a record is available in electronic form, "readily available" does not mean the public can only request a record in that form. The law clearly states the public can request a record in any form, but there may be a conversion issue if the agency holds the record in paper form but the public requested it in a different form.

Senator Settlemeyer asked for clarification of when charges begin regarding the 30-minute standard.

According to Ms. Mark, the regulation assumes the first 30 minutes would not be extraordinary if the record is in a readily available medium. She stated agencies are encouraged to know what records the public typically requests; some agencies hold frequently requested records in a readily available medium. Ms. Mark suggested that record requests become extraordinary when conversions are necessary or it takes a great deal of time to retrieve the records, at which time charges could start after the first 30 minutes. She added that the only instance a fee would be charged for reviewing records is when confidential information had to be redacted prior to inspection.

Senator Settlemeyer agreed with the redaction of confidential information but he expressed concern that each agency determines its own 30-minute standard.

Chair Kirkpatrick asked what would happen if R107-13 did not move forward today, to which Ms. Mark replied the Division would use a procedural guideline. She shared the Division has an open forum for State agencies scheduled on Wednesday, April 2, 2014, to discuss the Open Meeting Law and the Public Records Act.

Assemblyman Stewart and Mr. Kintop discussed the enforcement of the 30-minute rule. Mr. Kintop explained an agency has five days to respond to a request, during which time it can determine how long it will take staff to produce the record(s).

Senator Roberson requested that Barry Smith respond to the comments presented by the Division.

Discussion ensued between Assemblyman Hansen and Mr. Kintop regarding how often an unusually burdensome request for records occurs. Mr. Kintop said that depends on the agency. He presented an example of a graduate student from Las Vegas who requested the Division copy 4,500 pages of records regarding

former Governor James G. Scrugham. The Division estimated the cost would be \$450, which was less than the cost of the student flying to Carson City to review the records in person.

Continuing their discussion, Assemblyman Hansen asked whether current remedies exist to compensate agencies for requests of that nature, or whether agencies are required to fulfill these requests free of charge in the absence of regulations. Mr. Kintop said current statute allows the Division to estimate and charge for copies, but the Division cannot charge for personnel time because staff is required to provide information. However, if the staff has to review and redact confidential information, he said the Division could charge a research fee for that service. Acknowledging he does not know what other agencies do, Mr. Kintop said he hopes to learn more about their procedures during the training on April 2, 2014.

Assemblyman Hansen suggested the Commission defer the regulation until after the training. He asked whether there is a penalty for an agency's failure to provide requested documentation within five days, as required by law.

Ms. Mark replied there is no penalty right now; the only recourse is to take legal action against an agency.

Sharing that he has had unfortunate experiences trying to get records from government agencies, Assemblyman Hansen stated he is not comfortable with the regulation letting each agency determine how and what it may charge. In order to protect the public's right to obtain copies of records, he suggested the regulation clarify that agencies must respond within a certain period of time or face a penalty. Assemblyman Hansen is of the opinion that more dialogue with the press and State agencies is needed to address his concerns.

A discussion ensued addressing Mr. Smith's concern that "retrieve" is used in R107-13 but not in statute. Assemblyman Hansen questioned the Division's authority to add the term to the regulation as something it considers burdensome. Ms. Mark stated if records are stored somewhere else and not maintained in an easily accessible format, it may be burdensome to the agency to retrieve the records. She agreed with Assemblyman Hansen that the requestor should not carry that burden.

As a former public information officer for the Department of Health and Human Services, Senator Kieckhefer said he fulfilled many requests for public records. Acknowledging there are many types of requests and much diversity among State agencies regarding how they handle them, he agreed with Assemblyman Hansen that this is a problem. Assembly Bill 31 intended to provide a fixed process for all State agencies to use. Suggesting that leaving much up to the discretion of the agencies undermines the intent of the bill, Senator Kieckhefer agreed the Commission should defer the regulation for further review.

Chair Kirkpatrick asked whether the Division would be willing to defer the regulation in order to provide further clarification based on information it will obtain from its upcoming training session with the various State agencies.

Ms. Mark agreed to Chair Kirkpatrick's request.

Mr. Smith appreciated the efforts of Ms. Mark and the Division. Pointing out that the implementation of the 30-minute rule was for nuisance requests and not routine requests, Mr. Smith stressed the agencies may have to deal with people who try to interfere with the operations of an agency.

Assemblyman Daly presented his objections to the regulation: (1) Section 4 is inconsistent with A.B. 31 regarding "readily available medium"; (2) the regulation should clearly state that a request can be oral and does not have to be written; and (3) "receive" would be a better word to use in Section 11, subsection 2 than "obtain." He pointed out that Section 27, subsection 2, which discusses the exclusion of a record, uses the phrase "and any other documentation that does not serve as the record of an official action of an agency of the Executive Department." Assemblyman Daly said he would not approve any regulation that includes the phrase "and any other" due to some unfavorable experiences he has had when requesting records.

ASSEMBLYMAN DALY MOVED TO DEFER R107-13.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 147-13

A REGULATION relating to soliciting charitable contributions; establishing the requirements for certain corporations that solicit charitable contributions to file for exemptions from registration and filing requirements; and providing other matters properly relating thereto.

Senator Settlemeyer expressed appreciation for the changes made by the Office of the SOS through R147-13. He asked for clarification that this regulation does not apply to 4-H participants, Girl Scouts selling cookies, or door-to-door solicitations, to name a few examples. (Please see [Exhibit Q.](#))

Nicole Lamboley, Chief Deputy, Office of the SOS, replied that organizations are required to inform prospective donors that contributions may or may not qualify as a charitable contribution. However, if the organizations sell a product, she said the Internal Revenue Service would not recognize that as a charitable contribution. Ms. Lamboley stated the SOS website contains guidelines regarding payment for items of value and nonprofit charitable contributions. She indicated the SOS



continues to work with the nonprofit community by clarifying current legislation, and it anticipates additional legislation during the 2015 Session. Ms. Lamboley noted the SOS is meeting with the Office of the AG in the coming weeks to work on statutory language that will provide additional clarification for the nonprofit sector.

SENATOR SETTELMAYER MOVED APPROVAL OF R147-13.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

## INFORMATIONAL ITEMS

### A. Interim Committee Reports

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

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

1. Nevada Gaming Commission Report on the Offering of Rebates on Pari-Mutuel Wagers Pursuant to Senate Bill 425 (Chapter 498, *Statutes of Nevada 2013*)
2. Department of Business and Industry, Housing Division, and Department of Health and Human Services, Division of Welfare and Supportive Services, Report Concerning the Annual Evaluation of Programs of Energy Assistance Pursuant to NRS 702.280(2)(c)
3. Nevada Commission on Homeland Security, Governor's Annual Report, 2013, Pursuant to NRS 239C.200(2)
4. More Cops Revenue and Expenditure Reports Submitted Pursuant to Sections 13.5 and 13.7 of the Clark County Sales and Use Tax Act of 2005
5. Department of Business and Industry, Housing Division, Annual Affordable Housing Progress Report Pursuant to NRS 278.235(3)
6. Regional Transportation Commission of Southern Nevada, Report on the Status of the Demonstration Project for a Toll Road in Connection With the Boulder City Bypass Pursuant to Section 50 of S.B. 506 (Chapter 478, *Statutes of Nevada 2011*)

Chair Kirkpatrick asked for questions regarding the informational items; however, the Commission members had no questions.

## PUBLIC COMMENT

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

There being no further business to come before the Commission, the meeting was adjourned at 10:35 a.m.

Respectfully submitted,

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Janet Coons, Secretary for Minutes  
Legislative Commission

APPROVED BY:

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Assemblywoman Marilyn Kirkpatrick, Chair  
Legislative Commission

## LIST OF EXHIBITS

[Exhibit A](#) is the "Meeting Notice and Agenda," dated March 28, 2014, provided by Sylvia Wiese, Secretary, Director's Office, Legislative Counsel Bureau (LCB).

[Exhibit B](#) is the attendance sign-in sheets dated March 28, 2014, from Carson City and Las Vegas, Nevada.

[Exhibit C](#) is a list of State agency regulations reviewed by the Legislative Commission, dated March 28, 2014, submitted by Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB.

[Exhibit D](#) is the Digest for Adopted Regulation R107-13 and the Adopted Regulation of the State Library and Archives Administrator, LCB File No. R107-13, Effective March 28, 2014, submitted by the Legal Division, LCB.

[Exhibit E](#) is a letter dated January 7, 2014, to members of the Legislative Commission, from Assemblywoman Maggie Carlton, Chair, Audit Subcommittee of the Legislative Commission, regarding the audit reports of the Legislative Auditor, presented by Paul V. Townsend, Legislative Auditor, Audit Division, LCB.

[Exhibit F](#) is the Audit Highlights of the Legislative Auditor Report #LA14-08 for the Agency for Nuclear Projects, Office of the Governor, issued on January 7, 2014, presented by Paul V. Townsend, Legislative Auditor, Audit Division, LCB.

[Exhibit G](#) is the Audit Highlights of the Legislative Auditor Report #LA14-10 for the Nevada State Library and Archives, Mail Services, Department of Administration, issued on January 7, 2014, presented by Paul V. Townsend, Legislative Auditor, Audit Division, LCB.

[Exhibit H](#) is the Audit Highlights of the Legislative Auditor Report #LA14-07 for the Nevada Transportation Authority, Department of Business and Industry, issued on January 7, 2014, presented by Paul V. Townsend, Legislative Auditor, Audit Division, LCB.

[Exhibit I](#) is the Audit Highlights of the Legislative Auditor Report #LA14-09 for the State Fire Marshal Division, Department of Public Safety, issued on January 7, 2014, presented by Paul V. Townsend, Legislative Auditor, Audit Division, LCB.

[Exhibit J](#) is the Audit Highlights of the Legislative Auditor Report #LA14-12 for the Division of Minerals, Commission on Mineral Resources, issued on January 7, 2014, presented by Paul V. Townsend, Legislative Auditor, Audit Division, LCB.

[Exhibit K](#) is the Audit Highlights of the Legislative Auditor Report #LA14-11 for the Division of Emergency Management, Department of Public Safety, issued on January 7, 2014, presented by Paul V. Townsend, Legislative Auditor, Audit Division, LCB.

[Exhibit L](#) is the Legislative Auditor analysis of six-month reports presented to the Audit Subcommittee, dated January 7, 2014, submitted by Paul V. Townsend, Legislative Auditor, Audit Division, LCB.

[Exhibit M](#) is a letter dated January 7, 2014, to members of the Legislative Commission, from Assemblywoman Maggie Carlton, Chair, Audit Subcommittee of the Legislative Commission, regarding the six-month reports on the implementation of the audit recommendations made by the Legislative Auditor, presented by Paul V. Townsend, Legislative Auditor, Audit Division, LCB.

[Exhibit N](#) is the Digest for Adopted Regulation R010-13 and the Adopted Regulation of the Committee on Local Government Finance, LCB File No. R010-13, Effective March 28, 2014, furnished by the Legal Division, LCB.

[Exhibit O](#) is a letter to The Honorable Marilyn Kirkpatrick, Speaker of the Assembly and Chairman of the Legislative Commission, from Marvin Leavitt, Chairman, Committee on Local Government Finance, regarding LCB File No. R010-13, presented by Terry Rubald, Local Government Services, Deputy Executive Director, Department of Taxation.

[Exhibit P](#) is the Digest for Adopted Regulation R099-13 and the Adopted Regulation of the Director of the Department of Business and Industry, LCB File No. R099-13, Effective March 28, 2014, submitted by the Legal Division, LCB.

[Exhibit Q](#) is the Digest for Adopted Regulation R147-13 and the Adopted Regulation of the Secretary of State, LCB File No. R147-13, Effective March 28, 2014, furnished by the Legal Division, LCB.

<p>This set of “Minutes of the Legislative Commission” is an informational service. Exhibits in electronic format may not be complete. Copies of the complete exhibits are on file in the Director’s Office of the Legislative Counsel Bureau, Carson City, Nevada.</p>
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