



MINUTES OF THE  
LEGISLATIVE COMMISSION  
NEVADA LEGISLATIVE COUNSEL BUREAU  
October 22, 2013

The Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218E.150, held its third meeting in calendar year 2013 on Tuesday, October 22, 2013. The meeting began at 2:13 p.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and was simultaneously 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 Moises (Mo) Denis  
Senator Pete Goicoechea for Senator Ben Kieckhefer  
Senator Ruben J. Kihuen  
Senator Michael Roberson  
Senator James A. Settelmeyer  
Assemblyman Richard (Skip) Daly  
Assemblyman Wesley K. Duncan  
Assemblyman Ira Hansen  
Assemblyman Lynn D. Stewart

**OTHER LEGISLATORS IN ATTENDANCE:**

Assemblywoman Irene Bustamante Adams  
Assemblywoman Lucy Flores

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Rick Combs, Director, Legislative Counsel Bureau  
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, Research Division  
Tarron L. Collins, Committee Assistant, Research Division

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 on the Legislative Commission's webpage at <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.

#### I. PUBLIC COMMENT

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

Chair Kirkpatrick opened the meeting for public comment.

Marci Henson, Assistant Director and Planning Manager, Clark County Department of Comprehensive Planning, testified in support of R004-13 regarding the ownership of desert tortoises. (Please see [Exhibit C](#).) As the administrator of the Clark County Desert Conservation Program, she helps Boulder City, Clark County, Henderson, Las Vegas, Mesquite, and North Las Vegas comply with the federal Endangered Species Act as it relates to the management and conservation of the desert tortoise since its emergency listing in 1989. Ms. Henson said unregulated ownership and breeding has caused an overabundance of unwanted pet tortoises in Clark County, exceeding the capacity of the federal and State wildlife agencies as well as local, nongovernmental organizations, such as the Tortoise Group, to care for and provide homes for these animals. It is common for residents to turn in approximately 1,100 unwanted or stray tortoises each year.

Continuing, Ms. Henson stated that tortoise adoption programs have proven unsuccessful; placing these unwanted animals back into the wild is complicated, controversial, and expensive. Caring for unwanted tortoises tops nearly \$1.3 million per year, and the cost will increase exponentially if ownership and breeding remains unchecked. Because tortoise sterilization is difficult and costly, R004-13 limits ownership to one tortoise per person, as of May 1, 2013. She said the intent of the regulation is not to criminalize tortoise ownership but rather educate residents on how to responsibly own and care for desert tortoises. On behalf of Clark County, Ms. Henson requested the Commission's support of R004-13, a critical first step in the sensible ownership of desert tortoises.

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation, testified against R017-13. He stated that a person is required to register a trap, snare, or similar device pursuant to NRS 503.452, as amended by section 3 of Senate Bill No. 213 (Chapter 231, *Statutes of Nevada 2013*), and must obtain an

application form for registering the trap, snare, or similar device from any office of the Nevada Department of Wildlife (NDOW). (Please see [Exhibit D.](#))

Holding up an example of a mousetrap purchased at a Raley's grocery store for approximately 50 cents, Mr. Busselman stated that R017-13 requires him to pay a \$10 registration fee for affixing a metal tag in order to register the trap under his name. Mr. Busselman strongly urged the Commission to not approve R017-13—or at the very least—explain how Nevada citizens who own unregistered traps can comply with the regulation.

David Stowater, Director, District 7, Nevada Trappers Association, testified against the approval of R017-13. Because trapping season has already begun, he expressed concern that trappers would have to pull their traps from the field for stamping, which is a time-consuming process.

Mr. Stowater commented that NDOW required trap numbers in the past, but problems such as human contamination made them optional, at which time he removed the numbers from his traps. During his 30 years of trapping in Nevada, Mr. Stowater has had over 100 traps stolen; some had numbers, and some did not. As a rule, he supports NDOW, but Mr. Stowater does not support R017-13. He asked the Commission to at least delay the regulation because there is not enough time for proper enforcement since trapping season has already begun.

Assemblywoman Lucy Flores, Assembly District No. 28, commented on Regulation 028-13. (Please see [Exhibit E.](#)) She stated that Senator Denis, Senator Segerblom, Assemblywoman Bustamante Adams, and herself, all sponsors of Senate Bill 303 (Chapter 282, *Statutes of Nevada 2013*), met with Troy Dillard, Director of the Department of Motor Vehicles (DMV). She and a number of community leaders are concerned about the complicated translation requirement for some of the documents needed to obtain a driver authorization card. She stated the legislative intent of S.B. 303 was to provide a scheme that was not too burdensome while ensuring a certain level of fraud prevention.

Assemblywoman Flores requested the Commission approve R028-13 so that the driver authorization cards will go into effect on January 1, 2014, with some regulations in place. The sponsors of the bill have a verbal agreement with Director Dillard to work together in good-faith negotiations with community leaders to develop amendments regarding the translation requirement that will work for all interested parties.

Assemblywoman Irene Bustamante Adams, Assembly District No. 42, Chair of the Nevada Hispanic Legislative Caucus, and representative for the Asian business district in southern Nevada, recognized that holding up the process with the driver authorization card would affect other regulations. She thanked the community leaders, Director Dillard, Senator Kihuen, and others who were part of the discussion with the sponsors of the bill.

## II. LEGISLATIVE COMMISSION POLICY:

### A. Review of Administrative Regulations—Brenda J. Erdoes, Legislative Counsel, Legislative Counsel Bureau

(Copies of the permanent regulations are on file in the Director's Office of the LCB.)

Chair Kirkpatrick asked the Commission members to identify any regulations from the list of State Agency Regulations that they wanted to discuss. (Please see [Exhibit F.](#))

Senator Denis asked Chair Kirkpatrick to hold R007-13, R012-13, R027-13, R028-13, and R070-13 for discussion; Senator Settlemeyer requested discussion on R004-13 and R047-13.

Assemblyman Daly asked for discussion on R047-12, R021-13, R031-13, R045-13, and R149-09; Assemblyman Frierson wanted to discuss R067-12; Assemblyman Hansen requested discussion on R044-13 and R046-13; and Assemblyman Stewart asked that R017-13 be held for discussion.

Chair Kirkpatrick held R023-13, R024-13 and R032-13. She announced that the State Environmental Commission withdrew R041-13 and R042-13.

Chair Kirkpatrick called for a vote of the remaining regulations.

ASSEMBLYMAN STEWART MOVED APPROVAL OF R137-12, R006-13, R008-13, R013-13, R015-13, R022-13, R025-13, AND R051-13.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Assemblyman Stewart requested that State agencies be available prior to the day of the Commission's meetings and to be certain their contact information is up to date because many of the phone numbers he called were no longer in service. He also asked the agencies to explain the reason(s) for the change(s) in the regulation.

### Regulation 047-12

A REGULATION relating to private investigators; revising conditions under which the Private Investigator's Licensing Board may require a background investigation of a licensee who changes status to that of a qualifying agent for a corporate licensee; revising provisions governing out-of-state licensees who apply for authorization to work on a particular case in Nevada; revising provisions for determining whether an employee of a licensee is a "bona fide employee"; revising provisions relating to the administration of examinations to unlicensed

persons; revising provisions relating to the types of polygraphic instruments approved for use in conducting polygraphic examinations; revising the minimum standards of accuracy and reliability for polygraphic instruments; revising the phases of supervision of an internship in polygraphic examination by a supervising examiner; revising provisions governing whether a corporation may continue to conduct operations if its qualified agent is absent from this State for a certain period; eliminating certain obsolete provisions; and providing other matters properly relating thereto.

Referring to Section 3, Assemblyman Daly asked how the Private Investigator's Licensing Board would determine control of the licensee with regard to the performance of services. (Please see [Exhibit G](#).)

Kevin Ingram, Executive Director, Private Investigator's Licensing Board, stated that the definition given under the Commerce Clearing House's unemployment insurance reports changes over time. To keep from having to appear before the Commission on a regular basis, the Board took the approach that a person working under the license of a corporation or the individual licensee is in control of the license.

Assemblyman Hansen and Mr. Ingram discussed the 100 percent standard for passing the examination addressed in Section 5, subsection 2 on page 6 ([Exhibit G](#)). Mr. Ingram stated that anyone working in a security position should have basic security knowledge. Prior to taking the test, candidates receive study materials containing all the answers. He said that 100 percent of the candidates pass the test with the required passing rate because retaking the test is an option.

Responding to Assemblyman Hansen's question if a private investigator needs this level of security clearance, Mr. Ingram indicated the title of the Board is misleading because it licenses and regulates not only private investigators but also canine handlers, certified firearms instructors, private security guards, process servers, and repossessioners. He said the proposed language for *Nevada Administrative Code* (NAC) 648.341 presented in Section 5 of the regulation specifically refers to a private patrol officer or security guard.

Assemblyman Daly pointed out that Section 5, subsection 3, on page 6 ([Exhibit G](#)) deleted the exemption for a clerical employee taking the exam. Describing a scenario where the clerical employee of a small security agency quits, he asked if the owner must complete all clerical work until a new clerical employee who has passed the security test is hired. Assemblyman Daly questioned if there is any flexibility for the owner in this situation and if a fee is associated with the test.

Mr. Ingram replied that clerical employees not performing a security function do not have to take the test. He went on to explain the difference between a registration card and a license. To receive a registration card, an individual pays \$85 that covers the expense of the application process; a fingerprint background check through the FBI repository; and the test. When the Board receives all the necessary information, it grants a registration card that allows the individual to work for a licensee. Mr. Ingram noted that registration cards are good for five years.

A discussion ensued regarding the Board's usage of the manufacturer's specifications of polygraphic instruments. Assemblyman Daly asked if the Board could use a national accreditation standard instead of the manufacturer's specifications, which sometimes have a lower accuracy standard. Mr. Ingram replied that the industry standards are actually those set by the manufacturers. The Board chose to use the terminology set by the manufacturers because the minimum standards of accuracy and reliability change over time.

Assemblyman Daly and Mr. Ingram also discussed the removal of penalties for violating NAC 648.341 on page 15 ([Exhibit G](#)). Mr. Ingram explained that the current version of NAC 648.341 provided that it was a violation not to submit forms to the Board in a timely manner, which is now obsolete due to the electronic submission of documents.

SENATOR DENIS MOVED APPROVAL OF R047-12.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 067-12

A REGULATION relating to private investigators; revising various provisions pertaining to the certification of licensees or employees of licensees as firearms instructors and the maintenance of such certification; revising provisions regarding courses of training in carrying, handling and using firearms safely; increasing the fee assessed for the certification and qualification of a person by a certified firearms instructor; and providing other matters properly relating thereto.

Kevin Ingram, previously identified, remarked that R067-12 makes it more difficult to become a certified firearms instructor. An individual must prove that he or she has the appropriate experience, knowledge, and skills to become a certified firearms instructor. Candidates must pass a written exam, much like the test for a concealed weapons permit, demonstrating their knowledge of federal and State law. He stressed the Private Investigators Licensing Board has a duty to the citizens of Nevada to ensure that individuals licensed to carry firearms in the line of duty, as well as the certified instructors, truly understand the liability and the responsibility of carrying a firearm.

Assemblyman Frierson addressed Section 3, subsection 3 that allows the Executive Director to grant an exemption for an instructor to conduct a course of training outside Nevada. He questioned how the Board would regulate this behavior out of state. (Please see [Exhibit H](#).)

Mr. Ingram explained that R067-12 applies to out-of-state licensees who come to Nevada for approximately two to four weeks a year to work special shows. Many of the out-of-state licensees have chosen to certify in State, which has made management and oversight easier for the Board. In the event of an emergency, R067-12 allows the Executive Director to grant an exception, which otherwise requires a great deal of documentation and time.

Continuing, Mr. Ingram shared that R067-12 permits individuals to carry firearms in a federal establishment. For example, Hawthorne Army Depot, which hires a private security company for armed security guards, has a different set of training guidelines for its security staff. He said R067-12 gives the Executive Director the authority to allow for an exemption from the requirement to certify in State. The Army Depot must provide a reasonable course curriculum that meets the Board's minimum standards, however. He claimed the federal standards are actually lower than the standards established by the Board.

Assemblyman Daly and Mr. Ingram discussed the fee increase for certification and its relation to new revenue as stated in Section No. 11 of the Informational Statement ([Exhibit H](#)). Mr. Ingram admitted the "Not Applicable" response is his mistake. He said the certified firearms instructor incurs a \$25 fee for the initial card and a \$25 replacement fee for a lost card. A person wishing to maintain certification must successfully qualify every six months, which carries a \$5 administrative fee. Assemblyman Daly asked for verification that even though the Board receives more revenue, the fees balance with the Board's actual costs. Mr. Ingram verified that was correct.

Responding to Assemblyman Frierson's question if out-of-state instruction is standard, Mr. Ingram replied that most states allow out-of-state instruction on an ongoing basis, but Nevada regulates it more closely.

Referencing page 7 ([Exhibit H](#)), Assemblyman Hansen asked how the requirement of shooting five rounds of ammunition using both hands from a distance of 3 yards in 15 seconds protects the citizens of Nevada.

Mr. Ingram provided an example of a bank security guard shot in his or her dominant arm while on duty. The shooting requirement ensures that the guard can fire with his or her support arm. He remarked that most of these requirements come from national law enforcement standards.

ASSEMBLYMAN DALY MOVED APPROVAL OF R067-12.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 047-13

A REGULATION relating to public employees; revising provisions relating to the eligibility of certain persons for coverage as dependent under the Public Employees' Benefits Program; and providing other matters properly relating thereto.

James R. Wells, Executive Officer, Board of the Public Employees' Benefits Program (PEBP), testified that the Affordable Care Act expanded coverage to children up to age 26. However, its narrow definition of children did not include grandchildren under the guardianship of other family members. Regulation 047-13 allows these individuals to stay on PEBP's plan. (Please see [Exhibit I.](#))

Senator Settelmeyer indicated that he had contacted Mr. Wells' office regarding this issue. He is of the opinion that it is wrong to drop these people from coverage arbitrarily without bringing it before the Commission. He asked if R047-13 solves the issues for the constituents discussed.

Mr. Wells replied that PEBP created an emergency regulation to continue coverage of these individuals beyond July 1, 2013, and that regulation expires October 28, 2013. Regulation 047-13 will allow these individuals to stay on PEBP's plan just as they would if they were a child of the plan participant.

SENATOR SETTELMAYER MOVED APPROVAL OF R047-13.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 137-12

A REGULATION relating to state personnel; revising provisions relating to the confidentiality of employee information; and providing other matters properly relating thereto.

Chair Kirkpatrick requested that Shelley D. Blotter, Deputy Administrator, Division of Human Resource Management (DHRM), Department of Administration, present a short overview of an organizational climate study.

Ms. Blotter explained that organizational climate studies were started a number of years ago by the DHRM to assist organizations with identifying personnel issues, such as employee grievances, morale, or turnover. The DHRM completes an outside,



independent study and works with management to develop strategies to overcome any problems. The study begins with employee surveys and concludes with follow-up one year later to see if the suggested changes have made any improvements. She said if something in the study reflects poorly on an employee's performance, R137-12 allows that information to remain confidential. Only the employee and management have access to the information. Ms. Blotter commented the DHRM does not want employees to be reticent about participating in the studies; it wants them to be honest about what is wrong with their organization. She declared the DHRM has conducted studies in a number of organizations with a great level of success.

Chair Kirkpatrick reminded the Commission that it already approved R137-12, but she wanted this information on the record.

Responding to a question by Assemblyman Daly regarding the meaning of "independent" as it relates to the "Organizational climate study" in Section 1, Ms. Blotter replied that the DHRM conducts the study using its own internal staff. (Please see [Exhibit J.](#))

#### Regulation 007-13

A REGULATION relating to educational personnel; establishing the statewide performance evaluation system for school-level administrators and teachers; and providing other matters properly relating thereto.

Senator Denis asked for an overview of the regulation. (Please see [Exhibit K.](#))

Robert McCord, Ed.D., member of the Teachers and Leaders Council of Nevada, Nevada's Department of Education (NDE), reported that R007-13 is a result of Assembly Bill 222 (Chapter 487, *Statutes of Nevada 2011*) as amended by Senate Bill 407 (Chapter 496, *Statutes of Nevada 2013*). The regulation required immense cooperation between members of the Council, principals, and teachers to comply with the specifications of the law, and it is extremely important to the continued growth and improvement of Nevada's schools. Dr. McCord acknowledged that even though R007-13 logically identifies standards for performance and provides a solid foundation, it needs more work. He added that the State Board of Education approved R007-13 earlier this month.

Responding to Senator Denis's inquiry if R007-13 addresses the evaluation of an art teacher versus the evaluation of a regular teacher, Dr. McCord shared that teachers in non-tested subject areas present a challenge around the country. He said not all issues have been resolved, but there is great cooperation among the participating teachers regarding teacher evaluations. Benchmarks—such as instructional leadership, performance standards, and professional responsibilities—measure teacher and administrator performance. Dr. McCord stated this will not be an easy transition, and Nevada will make some mistakes along the way, but that is the reason for a third-party, independent study of the work. While teachers should be concerned

about the close monitoring of their performance, he said they can feel reassured the Council is doing its best to characterize fairness and the philosophical assumption that everyone can improve, even the most talented teacher in the State.

Assemblyman Daly acknowledged that teacher evaluations are a major investment, and there must be incentives to improve classroom performance. He understands the evaluation process should measure teacher performance fairly by recognizing that a teacher doing his or her best may need extra help and will receive the needed resources and tools for improvement. Assemblyman Daly suggested a beginning teacher—or even a teacher with permanent status—must put forth the effort to improve or face possible termination.

Responding to Assemblyman Daly’s request for clarification that teachers worked on R007-13, Dr. McCord confirmed that four extraordinary teachers serve on the Teachers and Leaders Council of Nevada.

A discussion ensued regarding R007-13 as it applies to charter schools. Dr. McCord stated that teachers and administrators of charter schools are exempt from the regulation. As a member of the State Public Charter School Authority, he added that one notable charter school said it would voluntarily participate because it believes in the standards.

Dale Erquiaga, Superintendent of Public Instruction, NDE, thanked Dr. McCord and the Teachers and Leaders Council of Nevada for their outstanding work.

ASSEMBLYMAN STEWART MOVED APPROVAL OF R007-13.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 012-13

A REGULATION relating to educational personnel; revising the qualifications for an endorsement to teach English as a second language; and providing other matters properly relating thereto.

Senator Denis asked for an overview of the reason(s) for R012-13. (Please see [Exhibit L.](#))

Jeanette Calkins, representing the Office of Teacher Licensure, NDE, explained that NAC 391.237 did not clearly define the 12 credits required to obtain an endorsement in teaching English as a second language (ESL). Regulation 012-13 suggests a more defined endorsement, allowing the teacher to study assessment, curriculum, methods, and theories of ESL.

A discussion took place regarding the credits for endorsement. Senator Denis suggested the change is positive because currently a teacher can take all 12 credit hours in theory and not have experience in the other three areas of study. Ms. Calkins concurred and added that the Office of Teacher Licensure hopes to make training even stronger. Assemblyman Daly agreed that training in the four areas makes sense, but he expressed concern that removal of the provisional license may not enable the State to meet its demand for ESL teachers. Ms. Calkins recognized that Nevada's university partners are preparing its future teachers with the necessary testing requirements. She added that if out-of-state candidates have tested in their home states, those results are considered.

SENATOR DENIS MOVED APPROVAL OF R012-13.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 021-13

A REGULATION relating to state personnel; revising certain provisions concerning family and medical leave; and providing other matter properly relating thereto.

Assemblyman Daly called attention to No. 1 of the Informational Statement ([Exhibit M](#)) that indicates R021-13 is necessary for compliance with the Family and Medical Leave Act (FMLA). He requested an explanation for the change because he is concerned the State may be taking benefits away from employees.

Shelley D. Blotter, previously identified, stated that R021-13 benefits State employees. Currently, if a State employee has an FMLA qualifying event, the employee must concurrently use any accrued sick or annual leave, whichever one applies. She said that Nevada's regulations are more restrictive than the federal regulations. The federal regulation states that if an employee has a short- or long-term disability plan and receives benefits from that plan, the employer cannot require the employee to exhaust his or her paid leave because, in a sense, the short- or long-term disability plan is paying the employee. According to R021-13, an employer cannot require an employee to use his or her accrued leave when the employee is accepting benefits from a short- or long-term disability plan. However, the employee can choose, with the agreement of management, to exhaust his or her paid leave at the same time.

Assemblyman Daly asked why the appointing authority must agree to the employee using paid leave at the same time if the employee has a short- or long-term disability plan. He also wondered what would happen if the appointing authority refused to agree.

Ms. Blotter replied that if State employees want a short-term disability plan, they must purchase an outside plan because the State benefit package does not offer one. She said the State does offer a long-term disability plan, but employees can purchase an outside supplemental plan as well. Ms. Blotter agreed that an employer typically wants employees to exhaust accrued leave at the same time as FMLA, but the regulation states employees can choose, along with the employer's consent. This follows the wording of the federal regulation.

ASSEMBLYMAN STEWART MOVED APPROVAL OF R021-13.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 023-13

A REGULATION relating to state personnel; revising certain provisions concerning vacancies in state employment; and providing other matters properly relating thereto.

There was no discussion on the regulation.

ASSEMBLYMAN STEWART MOVED APPROVAL OF R023-13.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Regulation 024-13

A REGULATION relating to state personnel; reducing the number of days within which an eligible person must respond to certain inquiries concerning the eligible person's availability to fill a vacancy in state employment; and providing other matters properly relating thereto.

Chair Kirkpatrick asked for clarification that the two days mentioned in Section 1, subsection 2 are business days. (Please see [Exhibit N.](#))

Shelley D. Blotter, previously identified, confirmed that the two days are working business days, Monday through Friday, excluding holidays recognized by the State.

ASSEMBLYMAN DALY MOVED APPROVAL OF R024-13.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

### Regulation 045-13

A REGULATION relating to state personnel; revising provisions relating to the confidentiality of employee information; and providing other matters properly relating thereto.

Assemblyman Daly asked for an overview of the confidentiality of employee information as it relates to the organizational studies and surveys. (Please see [Exhibit O](#).)

Shelley D. Blotter, previously identified, explained that the DHRM wants agency employees to express their feelings freely so that it can assist an organization with identifying real problems and solutions. After consulting with its Deputy Attorney General, the DHRM decided it was necessary to protect those records that named a specific employee and performance issues as though they were an employee's actual performance evaluation. She noted that NRS 284.335 covers employee performance evaluations.

Chair Kirkpatrick suggested to Ms. Blotter that presenting related regulations together rather than individually would be helpful to the Commission. She also asked Ms. Blotter to contact Assemblywoman Dina Neal regarding R025-13.

ASSEMBLYMAN DALY MOVED APPROVAL OF R045-13.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

### Regulation 027-13

A REGULATION relating to autonomous vehicles; revising certain provisions concerning the registration of autonomous vehicles; revising certain provisions relating to an application to test autonomous vehicles; and providing other matters properly relating thereto.

Senator Denis asked if R027-13 helps align the agency's regulations with the insurance requirements in statute. (Please see [Exhibit P](#)).

Jude Hurin, Services Manager III, Management Services and Programs Division, DMV, replied that R027-13 aligns with the insurance requirements of Senate Bill 313 (Chapter 377, *Statutes of Nevada 2013*).

SENATOR DENIS MOVED APPROVAL OF R027-13.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

### Regulation 004-13

A REGULATION relating to desert tortoises; prohibiting a person from possessing more than one desert tortoise under certain circumstances; and providing other matters properly relating thereto.

Referring to the last page of the regulation that states R004-13 will not affect any animals purchased before a certain date, Senator Settlemeyer questioned how NDOW would determine the date. (Please see [Exhibit C.](#))

Tony Wasley, Director, NDOW, provided background information that explains the need for R004-13. In 1980, the United States Fish and Wildlife Service listed the desert tortoise as a threatened species. In the 33 years since that listing, significant development in the Las Vegas area has prompted the establishment of the Desert Tortoise Conservation Center, whose primary function is to hold and transfer displaced tortoises and assist in the recovery of the species. Unfortunately, backyard breeding has turned the Conservation Center into an unwanted pet facility, costing over \$1.3 million a year to operate. By limiting ownership to one desert tortoise, Mr. Wasley said NDOW could hopefully eliminate backyard breeding and reduce the number of unwanted tortoises coming to the Conservation Center.

Laura B. Richards, Chief, Wildlife Diversity Division, NDOW, stated the regulation restricts the number of pet tortoises for possession to one per person as of May 1, 2013. The U.S. Fish and Wildlife Service worked with NDOW to create an online adoption system, and NDOW encourages anyone who wants to own a tortoise after May 1, 2013, to register the tortoise online to allow for tracking.

Responding to Senator Settlemeyer's question regarding the penalty if someone does not register his or her tortoise online, Ms. Richards replied that a violation of R004-13 is a misdemeanor with a possible citation issued. However, she said the game wardens will only respond to complaints of violations and will likely issue a verbal warning for a first offense.

Senator Settlemeyer called R004-13 a "nuisance law." Describing a scenario where someone complains about a neighbor violating the regulation, and the neighbor states he or she has owned the tortoise since March 2013, he questioned how NDOW would prove the date of ownership. Senator Settlemeyer considers the regulation vague and unenforceable.

Ms. Richards explained that when a person adopts a tortoise, he or she is required to register the tortoise online through the official adoption program of the Tortoise Group.

Senator Settlemeyer asked if there is a current law that requires the registration of tortoises, to which Ms. Richards replied there is.

Assemblyman Hansen claimed there are no penalties for unwanted dogs and cats, yet R004-13 punishes people for reproducing an endangered species. Concerned with the penalty a person may face for having more than one tortoise, he stated he would be voting no on R004-13.

Senator Atkinson pointed out that southern Nevada has regulations regarding cats and dogs. He then discussed the damage that tortoises can cause in a person's backyard, and opined that backyard breeding is a real problem that needs addressing.

Assemblyman Stewart commented that Clark County sends approximately 1,000 unwanted tortoises to the San Diego Zoo annually. He suggested the regulation would prevent the unnecessary movement of tortoises from a desert to an ocean climate.

ASSEMBLYMAN HANSEN MOVED THAT THE COMMISSION NOT APPROVE R004-13.

THE MOTION FAILED FOR LACK OF A SECOND.

SENATOR ATKINSON MOVED APPROVAL OF R004-13.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

Declaring the tortoise a southern issue for Clark County, Senator Goicoechea said he would vote yes even though the regulation needs more work.

THE PREVIOUS MOTION BY SENATOR ATKINSON TO APPROVE R004-13 AND SECONDED BY ASSEMBLYMAN FRIERSON PASSED. (Senator Settlemeyer and Assembly Members Duncan and Hansen voted no.)

#### Regulation 017-13

A REGULATION relating to trapping; revising provisions governing the registration of a trap, snare or similar device; setting forth the requirements for affixing a registration number to the trap, snare or similar device; and providing other matters properly relating thereto.

Having received over 80 calls regarding R017-13, Chair Kirkpatrick directed Commission members to discuss their concerns about R017-13 rather than how or why this regulation came to be. (Please see [Exhibit D.](#))

Assemblyman Stewart expressed concern that R017-13 requires people trying to control pests on their own property, such as gophers, mice, and rats, to register the traps, which was not the intent of Senate Bill 213 (Chapter 231, *Statutes of Nevada 2013*).

Senator Goicoechea concurred it was not the intent of the bill to apply to any device, snare, or trap on private property. He recognized that the Legislature missed the point when it stated “any device” in statute; therefore, he opposed the regulation. Senator Goicoechea shared his preference to address this issue through legislation next session.

Discussion ensued regarding the intent of S.B. 213. Senator Settlemeyer echoed the statements that R017-13 interferes with private property rights. He surmised the intent of S.B. 213 was clear during the discussions of the Senate Committee on Natural Resources. He stated his opposition to the regulation because it does not reflect the intent of the bill. Assemblyman Hansen said he voted no on S.B. 213 during the 2013 Session and opposes R017-13 as well. Assemblyman Daly suggested the need for further legislation to clear up the confusion and ensure that the law only applies to fur-bearing animals.

Chair Kirkpatrick asserted that legislative intent must be very clear on the record in legislative hearings. She insisted that members commit to addressing this issue during the 2015 Session. Chair Kirkpatrick asked Ms. Erdoes to advise the Commission on the steps it could take.

Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB, explained that Chapter 233B, “Nevada Administrative Procedure Act,” of the NRS, allows the Commission to approve, defer, or disapprove the regulation. If the Commission defers, NDOW can make changes to the regulation without going through another 30-day hearing—or—NDOW can make changes and choose to have another 30-day hearing. If the Commission chooses to disapprove the regulation, the law requires the agency to make changes and bring it back before the Commission within 60 days. If the Commission rejects the revised regulation, the agency has 30 days, at that point, to appear before the Commission with an amended regulation.

Addressing Chair Kirkpatrick’s request for a response from NDOW, Tony Wasley, previously identified, verified that NDOW would support the Commission’s decision. He questioned if appropriate language even exists that would be consistent with the legislative intent of S.B. 213 and NDOW’s authority as the bill currently reads.

Assemblyman Hansen stated the intent of S.B. 213 was to ensure the markings of commercial traps. If R017-13 passed today, he said enforcement would not be feasible because trapping season has already started. He recommended rejecting the regulation so that NDOW and LCB can develop a reasonable compromise that will assure private property owners they are not breaking the law when using traps on their property.



Responding to Chair Kirkpatrick's request for clarification of what would happen if the Commission rejected the regulation today, Ms. Erdoes explained that NDOW would be required to come back in 60 days with a revised version. If the Commission rejected the regulation again, NDOW would have to come back within 30 days with a second revised version.

Assemblyman Daly repeated his understanding that the intent of S.B. 213 was to apply to anyone with a trapping license for fur-bearing mammals. He thought NDOW could narrow down the regulation to address only commercial trappers and fur-bearing mammals.

Senator Settelmeyer is of the opinion that NDOW has done its job. He suggested it is impossible for the agency to develop a revised regulation because the law does not clearly state what the Legislature intended.

SENATOR SETTELMAYER MOVED TO DEFER R017-13 UNTIL  
AFTER THE 2015 LEGISLATIVE SESSION.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

Chair Kirkpatrick asked the Legal Division if the motion was acceptable. She repeated her request for a commitment from Commission members to address this issue during the 2015 Session.

Ms. Erdoes said the enforcement of the provision is up to the Legislative Commission.

Senator Denis asked if the Commission, which is only a portion of the Legislature, is able to reject a regulation for S.B. 213 that passed during the 2013 Session.

Ms. Erdoes explained that statute requires regulations be approved by the Commission in order to implement a new law, rather than have the new law be self-executing. Therefore, the motion of deferral until the 2015 Session is acceptable.

A discussion ensued regarding the enforcement of S.B. 213. Senator Goicoechea asked if S.B. 213 is enforceable—as stated—if there are no regulations imposed. According to Ms. Erdoes, the law states that NDOW must prescribe the numbering of the traps through regulations. She said this is a condition precedent, which precludes NDOW from enforcing the registration requirement. Senator Goicoechea expressed comfort knowing that a person could not violate the law if there is no regulation in place for the registration of the traps.

THE PREVIOUS MOTION BY SENATOR SETTELMAYER TO  
DEFER R017-13 UNTIL AFTER THE 2015 LEGISLATIVE  
SESSION AND SECONDED BY ASSEMBLYMAN HANSEN  
CARRIED UNANIMOUSLY.

### Regulation 028-13

A REGULATION relating to the Department of Motor Vehicles; providing that certain provisions of state law which apply to drivers' licenses also apply to driver authorization cards and similarly obtained instruction permits; revising provisions prescribing the expiration date for a driver's license or identification card and a commercial driver's license; prescribing the documentation required for an applicant for a driver authorization card to prove his or her name, age and residence in this State; revising provisions relating to correcting certain information on a driver's license or identification card; revising provisions relating to the renewal of a driver's license or identification card by mail; increasing the fees for the costs of production of photographs for drivers' licenses and identification cards; and providing other matters properly relating thereto.

Senator Denis asked if there is a separate permit for the driver authorization card.

Jude Hurin, previously identified, stated that was correct. Individuals under the age of 18 can get an instructional permit.

Senator Kihuen thanked his colleagues, community leaders, and Mr. Dillard for working on the driver authorization card.

Chair Kirkpatrick asked Mr. Dillard if there would be future regulations regarding the driver authorization card.

Troy Dillard, previously identified, suggested that R028-13, as submitted ([Exhibit E](#)), is workable and fair, but there is room for improvement. He stated his commitment to continue discussing this regulation and making the necessary modifications as issues arise.

SENATOR DENIS MOVED APPROVAL OF R028-13.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

### Regulation 031-13

A REGULATION relating to accountants; revising the requirements for the experience of an applicant for a certificate of certified public accountant; revising the continuing education required for the renewal of a permit to engage in the practice of public accounting; revising the educational standards which must be met for a program of learning to qualify as a program of continuing education; reducing the number of years an applicant must retain records relating to continuing education; and providing other matters properly relating thereto.

Assemblyman Daly said he could not find subsection 45 of NAC 628.060 as stated in Section 1, subsection 3(f) on page 2 of the regulation. He suggested subsection 45 is a typographical error and should read as subsection 6. (Please see [Exhibit Q.](#))

Karen A. Peterson, Attorney, Allison MacKenzie Pavlakis Wright & Fagan Ltd., Attorneys and Counselors at Law, representing the Nevada State Board of Accountancy, confirmed there is no subsection 45. She introduced Viki A. Windfeldt, Executive Director of the Nevada State Board of Accountancy.

Assemblyman Daly suggested the regulation recognizes accredited national minimum standards for consistency with other states.

Ms. Peterson stated the regulation evolved from concerns raised by Assembly Bill 136, sponsored by Assemblyman Stewart during the 2013 Session, on behalf of a constituent Certified Public Accountant (CPA) who expressed concerns about the experience requirements in statute. After meeting with the CPA and other members of the profession, the Board determined that it could address their concerns through regulations rather than revising the statutory requirement. Therefore, the Board adopted temporary regulations that were effective July 1, 2013, and expire November 1, 2013. Regulation 031-13 represents permanent regulations that address the concerns raised by A.B. 136. Ms. Peterson said the State is not adopting standards consistent with national standards. They are the same standards that were in place, but they now broaden the type of experience allowed for licensure.

A discussion ensued regarding the typographical error in Section 1. Assemblyman Daly asked the Legal Division what subsection 45 on page two should be. Chair Kirkpatrick suggested the Legal Division would combine the regulations, codify them in statute, make any necessary changes, and correct any typographical errors. Ms. Erdoes confirmed that is what the Legal Division would do.

ASSEMBLYMAN DALY MOVED APPROVAL OF R031-13.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 032-13

A REGULATION relating to education; revising provisions relating to recommendations for the adoption of textbooks or electronic media; and providing other matters properly relating thereto.

Chair Kirkpatrick stated she did not see the issue of diversity and its relationship to textbook selection mentioned in the regulation. (Please see [Exhibit R.](#))

Christine Hull, Education Programs Professional, NDE, stated that diversity appears in the documents the districts fill out for the adoption of textbooks.

Referring to the statement in Section 1 of the regulation that discusses “compliance with the policies of the Department,” Chair Kirkpatrick asked Ms. Hull if NDE works with the districts to determine compliance and if diversity is included. Ms. Hull replied that was the case.

ASSEMBLYMAN FRIERSON MOVED APPROVAL OF R032-13.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 044-13

A REGULATION relating to motor vehicles; establishing fees to be charged for the expedited processing or mailing of certain certificates of title; and providing other matters properly relating thereto.

Assemblyman Hansen referred to No. 1(e) of the Informational Statement ([Exhibit S](#)) which states:

One concern consistent among the written comments was the Department’s decision to discontinue its same day (over-the-counter) title service. The Department explained that the Department cannot continue this service due to the exorbitant cost to replace these highly sophisticated printers and the ability to obtain replacement parts for its current printers.

He asked how much money this involved because the elimination of the same-day service would clearly inconvenience the people that utilize this title service.

Sean P. McDonald, Administrator, Central Services and Records Division, DMV, replied that the desktop title printers no longer have support for software or replacement parts. Not able to find a replacement printer to meet the same requirements, the DMV’s answer to producing titles in a timely manner for dealerships and title services was the expedited title process.

A discussion about the printers ensued. Assemblyman Hansen asked if the DMV used a request for proposal to see if these printers were available at a reasonable cost, or did the DMV determine on its own that these printers did not exist on the market. Mr. McDonald commented that the DMV’s Management Services and Programs Division researched the printers and discovered that the lettering of the titles could be removed with a razor blade or even erased, which is why the DMV went to the expedited process.

Senator Settlemeyer stated that car dealerships and individual constituents who attend auctions have expressed to him their appreciation of the same-day title service. He asked for clarification of how long it will now take his constituents to obtain the necessary paperwork, and he questioned what other states are doing.

Troy Dillard, previously identified, said the DMV is moving to an electronic lien and title system, which means businesses will not have to perfect paper titles any longer. He stated the printers that can print the ink so that it adheres and does not come off are expensive and take up a great deal of room. The current printers do not meet the requirements any longer; therefore, the DMV needs to return to secured, centralized printers. Mr. Dillard identified two advantages to the electronic lien and title system: (1) individuals who previously were not able to get an expedited title will now have an avenue to do so, and (2) issues that the dealers had with the same-day titles will be resolved.

Senator Settlemeyer and Mr. Dillard discussed the expedited process. Unaware that the electronic lien and title system would eliminate the same-day title registration, Senator Settlemeyer asked how long the expedited process would take. Mr. Dillard said the timeframe depends on the request; the information would come to Carson City, batch print overnight, and go out via overnight mail, which would take roughly between two and five days. Senator Settlemeyer asked if an individual could pay an expedited shipping fee, to which Mr. Dillard replied a person could request an expedited title with either standard mailing or expedited mailing. He added that the Las Vegas region lost two printers in the last few months; the same-day title demand for those printers did not move to other offices, and there have been no complaints.

A discussion occurred regarding the modernization of the DMV. Chair Kirkpatrick requested the DMV provide a list of the computer software and printers needed to enhance Nevada's efficiency for 2014. Mr. Dillard said the DMV has discussed modernization options with multiple companies and intends to present proposals during the 2015 Session.

Senator Settlemeyer said he would be voting no on R044-13 because many of his constituents take advantage of the same-day title service. He suggested the DMV find a different solution such as using another computer system or looking at the processes of other states.

SENATOR ATKINSON MOVED APPROVAL OF R044-13.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION CARRIED. (Senator Settlemeyer and Assemblyman Hansen voted no.)

### Regulation 046-13

A REGULATION relating to accountants; revising the amounts and applicability of certain fees charged by the Nevada State Board of Accountancy; establishing administrative penalties for failure to comply with continuing education requirements; authorizing the Board to charge a fee for providing a copy of a public record; amending provisions concerning the examination of certified public accountants; removing authorization for the Board to grant a certificate as a certified public accountant by temporary permit; amending certain reporting and notification requirements for persons engaged in the practice of public accounting; amending the requirements for reinstatement of a certificate of certified public accountant; authorizing certain persons engaged in the practice of certified public accounting to use a fictitious name not registered with and approved by the Board under certain circumstances; establishing the procedure to be followed if a licensee is incapacitated, disappears or dies; and providing other matters properly relating thereto.

Assemblyman Hansen questioned the reason for the enormous increases in fees in Section 2. (Please see [Exhibit T.](#))

Viki A. Windfeldt, previously identified, testified that the Nevada State Board of Accountancy, a staff of two, has not increased its fees in over ten years. She explained the fee increase from \$1,000 to \$5,000 is for an individual review of a person who does not qualify for certification under normal standards. In this instance, a Board representative reviews an applicant's workpapers and experience for equivalency to someone receiving the normal two or four years of public accounting supervision. Even though most of the review is electronic, the cost has increased over time. Ms. Windfeldt acknowledged the fee increase gives the Board flexibility to recoup its costs.

Discussion occurred regarding the fee increase. Assemblyman Hansen said he is still uncomfortable with the amount, despite Ms. Windfeldt's explanation. Senator Roberson agreed with Assemblyman Hansen that having the flexibility to charge up to \$5,000 for a review is unreasonable; therefore, he would not support the regulation.

Responding to Assemblyman Daly's question regarding a charge for electronic copies, Karen A. Peterson, previously identified, replied there was no charge.

Referring to Section 4, page 5 ([Exhibit T](#)), Assemblyman Daly asked why the Board is moving away from a uniform examination. He questioned if adopting another examination risks reciprocal recognition or accreditation with other states.

Ms. Winfeldt explained that Nevada is not looking to use a different exam from the other states. Years ago, she said a controversy arose regarding whether it was a conflict of interest for the American Institute of CPAs (AICPA) to be the vendor

of the Uniform Accountancy Act, at which time, state boards considered pulling away from the AICPA and using a different vendor. This does not seem to be the case now, but it could arise again. The phrase “or an examination approved by the Board” gives the Board flexibility to use another vendor, if warranted, and does not affect reciprocity. Ms. Winfeldt stressed that the Board is conscientious of the fact that all state boards use one exam.

Noting the deletion of the filing fee for reports in NAC 628.180 in Section 15 on page 17 ([Exhibit T](#)), Assemblyman Daly asked if the fee is now wrapped up in NAC 628.190, to which Ms. Winfeldt stated that was the case.

Chair Kirkpatrick expressed concerned that the phrase “will not exceed” gives the Board a great deal of flexibility but provides no certainty for the business community. She wondered why the Board has not asked for an increase in fees over the last ten years if the cost of doing business determines the fees.

Ms. Winfeldt explained that Nevada is in the bottom 10 percent of accountancy boards across the United States, and the increased fee amounts coincide with the national average. Due to increased electronic means and personnel costs, she said the Board desires the flexibility to raise fees, should the need arise.

Chair Kirkpatrick asked if the Board used a cost allocation formula to determine its increase in fees, to which Ms. Peterson stated the Board is a self-contained agency, and its approved budget sets the licensing fees. She indicated the Board’s willingness to complete a study and come back before the Commission with set fees and an explanation of the study.

Senator Roberson requested a brief explanation of the State’s licensure process for accountants.

Ms. Winfeldt explained that the Board requires licensees to have two years of public accounting experience or four years of experience in an internal audit governmental agency. She stated that an individual who lacks supervision by a CPA and falls short of the regular two- or four-year requirement might ask for an individual review. The Board performs maybe one individual review a year for the \$5,000 fee, the reimbursement cost for the Board’s investigator.

Responding to Senator Roberson’s request for a specific example, Ms. Winfeldt described a scenario where an applicant seeking a license works for an internal audit department at a gaming property where the director of the audit department is not a CPA. In this case, the Board would need to review the continuing education, processes, and workpapers of the person seeking licensure to verify that he or she has had exposure to the same professional standards and engagements as someone under a two-year public accounting firm or a four-year internal audit governmental agency,

each having a CPA supervisor. The applicant pays for the Board's review in addition to taking the exam and following other requirements of licensure.

A discussion ensued regarding the language of R046-13. Senator Roberson suggested more specificity by stating the Board may charge the applicant with certain hard costs for an individual review rather than saying the Board can charge \$5,000 to anyone who comes before it. Ms. Peterson agreed that the proposed change makes sense.

Assemblyman Hansen said the \$5,000 fee is still a major concern, and he would vote no based on the current language. He recommended deferring the regulation until the Commission's December meeting.

ASSEMBLYMAN HANSEN MOVED TO DEFER R046-13 TO THE  
NEXT MEETING OF THE LEGISLATIVE COMMISSION.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

Chair Kirkpatrick requested to see the Board's cost allocation and its approved budget.

THE PREVIOUS MOTION BY ASSEMBLYMAN HANSEN TO  
DEFER R046-13 TO THE NEXT MEETING OF THE LEGISLATIVE  
COMMISSION AND SECONDED BY ASSEMBLYMAN STEWART  
CARRIED UNANIMOUSLY.

#### Regulation 070-13

A REGULATION relating to pesticides; increasing the amount of the annual fee to register a pesticide; and providing other matters properly relating thereto.

Senator Denis asked when the State Department of Agriculture last raised its fee to register a pesticide and the reason for the current increase. (Please see [Exhibit U.](#)) Jim R. Barbee, Director, State Department of Agriculture, testified that pesticide registration is the only funding Nevada has to support regulatory controls over invasive plant species or noxious weeds, and the last rate change was in 2006. He said an increase in registration would create \$260,000 in additional funding to help cover the cost of: (1) implementation of a geographic information system program to map invasive plant species; (2) improvement of sage-grouse habitat areas where invasive plant species are a threat; and (3) staff representation on the Sagebrush Ecosystem Council.

A discussion regarding the Department's budget followed. Chair Kirkpatrick questioned why this increase was not in the Department's regular budget. Senator Goicoechea commented the regulation is industry-supported, and the Department is trying to move away from General Fund support. Mr. Barbee said R070-13 is the only statutory authority identifying money specifically for invasive plants. He stated the Department's



budget did not contain this money because the development of the SageBrush Ecosystem Council took place during the budget process of the 2013 Session, and the Department was not aware of its representative position at that time.

SENATOR GOICOECHEA MOVED APPROVAL OF R070-13.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 149-09

A REGULATION relating to industrial insurance; adopting criteria by which the Division of Industrial Relations of the Department of Business and Industry may refuse to recommend approval of certain applications for a certificate of registration as an administrator; adopting provisions relating to untimely payments to injured workers; establishing certain provisions relating to employee leasing companies; and providing other matters properly relating thereto.

Donald C. Smith, General Counsel, Division of Industrial Relations (DIR), Department of Business and Industry, introduced Donald E. Jayne, Administrator, DIR.

Assemblyman Daly remarked that prior to today's meeting, he received an explanation that the benefit penalty is still in place if a person violates the law, and the number of benefit penalties triggers an enhancement or additional penalties. He asked for a brief explanation of those provisions of the regulation.

Mr. Jayne said the question of the benefit penalty is a key source of confusion with R149-09. (Please see [Exhibit V](#).) He stated the minimum of \$5,000 for the benefit penalty remains and several categories within the regulation allow for additional points. One category specifically reviews an insurer's past experience and history for a pattern of untimely payments. Mr. Jayne stated the DIR also recognizes the size and scale of the insurance companies, which explains why this scheme looks at the past three years to determine if insurers had more than 4,000 claims on average. Five occurrences with a violation still reflect that the insurance companies were 99.87 percent correct with their dealings, but one more incident would be an additive point on top of the \$5,000 penalty. He added that points could be assigned for compensation filed and due as well as economic or physical harm. Mr. Jayne stressed that benefit penalties go to the injured worker, not to the agency or the DIR's budget.

ASSEMBLYMAN DALY MOVED APPROVAL OF R149-09.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

B. Requests to Continue Administrative Regulations Not Adopted Within 2 Years  
After Submission to the Legislative Counsel (NRS 233B.040)

Chair Kirkpatrick asked Legislative Counsel to explain the duties of the Commission with respect to this agenda item.

Brenda J. Erdoes, previously identified, stated that Assembly Bill 252 (Chapter 29, *Statutes of Nevada 2013*) added a new subsection to NRS 233B.040, effective July 1, 2013, that states an agency is required to adopt a regulation within two years of starting the regulation process. If this does not happen, the executive head of the agency must appear personally before the Legislative Commission to explain why it has not adopted the proposed regulation within the required two-year period.

Continuing, Ms. Erdoes acknowledged that today is the first time an agency has requested to appear under this item since the law became effective. She said that James V. deProse, Administrator, Manufactured Housing Division, Department of Business and Industry, is here to present R177-09. (Please see [Exhibit W](#).) Ms. Erdoes added that R177-09 does not have an Informational Statement because it is a revised, proposed regulation. The Commission can either approve the agency going forward with this regulation or request the agency start the regulation process over.

Senator Goicoechea asked how long it has been since the Division has held any workshops or public hearings.

Chair Kirkpatrick reminded Commission members that the manner in which they handle this request would inform other agencies how the Commission will handle future similar requests. She asked Mr. deProse to state when the Division's last workshop was held and to explain the reason(s) for the delay. Chair Kirkpatrick added that the moratorium on regulations would not be a valid consideration for delay because the Commission reviewed 50 regulations in December 2012.

Mr. deProse stated the Division's last workshop was in December 2012. During the spring of 2013, he ran two agencies and admitted he did not have the time or staff to work on the regulation. The Division has scheduled an adoption hearing for November 21, 2013; if the Commission does not approve R177-09, he will withdraw it from the agenda.

Assemblyman Hansen suggested the Commission reject the regulation and the agency start the process over. He is of the opinion that exempting agencies from the two-year requirement for minor reasons would set a dangerous precedent.

Chair Kirkpatrick agreed with Assemblyman Hansen. She asked Mr. deProse the cost of the regulation.

Mr. deProsse could not determine a true, hard cost, but he said the regulation does benefit the industry. He added that future drafts would use much of the language currently found in R177-09.

ASSEMBLYMAN DUNCAN MOVED TO REJECT R177-09.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

### III. APPOINTMENTS OF MEMBERS TO COMMITTEES—

Assemblywoman Marilyn Kirkpatrick, Chair

#### A. Appointments to Ongoing Statutory Committee—Subcommittee to Review Regulations (NRS 233B.067)

Assemblyman Frierson, who represented the Assembly, nominated Assembly Members Marilyn Kirkpatrick, Chair, and Teresa Benitez-Thompson for the Democratic Caucus, and Assembly Members Ira Hansen and Lynn D. Stewart for the Republican Caucus.

Senator Denis, who represented the Senate Democratic Caucus, nominated Senators Kelvin D. Atkinson and Moises (Mo) Denis, and Senator Roberson, who represented the Senate Republican Caucus, nominated Senator James A. Settelmeyer.

Chair Kirkpatrick stated there were some instances last interim when regulations were delegated to the Subcommittee notwithstanding the controversial nature of the regulations. Because the true function of the Subcommittee is to hear emergency regulations, she gave her word that if a regulation does not receive bipartisan agreement, it will return to the full Legislative Commission.

Senator Goicoechea stressed that the Subcommittee should only hear emergency measures.

ASSEMBLYMAN FRIERSON MOVED APPROVAL  
OF THE NOMINATIONS TO THE SUBCOMMITTEE TO  
REVIEW REGULATIONS.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### B. Appointments to Interim Study—Committee to Conduct an Interim Study Concerning the Impact of Technology Upon the Regulation of Gaming and Upon the Distinction Between Restricted and Nonrestricted Gaming Licensees (Assembly Bill 360 [Chapter 508, *Statutes of Nevada 2013*])

Assemblyman Frierson, who represented the Assembly, nominated Assembly Members William C. Horne, Chair, and Olivia Diaz for the Democratic Caucus, and Assemblyman Randy Kirner for the Republican Caucus.

Senator Denis, who represented the Senate Democratic Caucus, nominated Senators Tick Segerblom and Justin C. Jones, and Senator Roberson, who represented the Senate Republican Caucus, nominated Senator Greg Brower.

Chair Kirkpatrick called for the nominations of the five nonvoting members of the Committee.

Assemblyman Frierson nominated Michael Cohen to represent the nonrestricted gaming licensees; Mark Lipparelli to represent the manufacturers or developers of gaming technology; Randy Miller to represent restricted gaming licensees; Mike Sloan to represent entities engaged in the business of interactive gaming; and Whitney Thier to represent the operators of race books and sports pools.

ASSEMBLYMAN FRIERSON MOVED APPROVAL OF THE  
NOMINATIONS TO THE COMMITTEE TO CONDUCT AN  
INTERIM STUDY CONCERNING THE IMPACT OF TECHNOLOGY  
UPON GAMING.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

C. Appointment of Chair and Vice Chair of Certain Committees:

1. Commission on Special License Plates—Vice Chair (NRS 482.367004)

Chair Kirkpatrick stated that Senator Mark A. Manendo was appointed Chair of the Commission on Special License Plates at the October 3, 2013, meeting of the Legislative Commission.

Assemblyman Frierson nominated Assemblyman Richard Carrillo as Vice Chair.

ASSEMBLYMAN FRIERSON MOVED APPROVAL OF THE  
NOMINATION OF VICE CHAIR FOR THE COMMISSION ON  
SPECIAL LICENSE PLATES.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

## 2. Legislative Committee on Health Care (NRS 439B.200)

Senator Denis nominated Justin C. Jones for Chair of the Legislative Committee on Health Care.

Assemblyman Frierson nominated Assemblywoman Marilyn Dondero Loop for Vice Chair.

SENATOR DENIS MOVED APPROVAL OF THE NOMINATIONS FOR CHAIR AND VICE CHAIR FOR THE LEGISLATIVE COMMITTEE ON HEALTH CARE.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

## 3. Committee to Conduct an Interim Study Concerning the Impact of Technology Upon the Regulation of Gaming and Upon the Distinction Between Restricted and Nonrestricted Gaming Licensees (Assembly Bill 360 [Chapter 508, *Statutes of Nevada 2013*])

Chair Kirkpatrick stated that earlier in the meeting, the Commission approved Assemblyman William C. Horne as Chair at the same time it approved the member nominations to the Committee.

### IV. PUBLIC COMMENT:

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

Chair Kirkpatrick called for additional public comment.

Vanessa Spinazola, Legislative and Advisory Director, American Civil Liberties Union of Nevada (ACLU), thanked the Commission for passing R028-13 and thanked the DMV and the Nevada Hispanic Legislative Caucus for its collaboration and commitment. Ms. Spinazola agreed with the earlier comments of Assembly Members Bustamante Adams and Flores but expressed concern with the appearance of the driver authorization card. She remarked that this past Thursday the ACLU learned that the front of the card would contain the phrase, "Not valid for Identification (I.D.)." Ms. Spinazola stated that law enforcement requires "satisfactory evidence of identification at a traffic stop" in order to avoid arrest. Concerned that individuals with this authorization card will still face arrest at traffic stops, the ACLU will be discussing this issue with law enforcement's legal department in the upcoming months. She hopes the DMV and the Nevada Hispanic Legislative Caucus will continue working

with the ACLU, particularly if law enforcement does not accept these authorization cards as evidence of identification.

Chair Kirkpatrick asked Ms. Spinazola if she attended the hearings during the 2013 Legislative Session as these discussions came up during Assembly hearings. She recalled that Nevada's law is based on Utah's law, which has been rather successful.

Ms. Spinazola replied that she attended all the legislative meetings and public comment hearings regarding the authorization card. She said Utah's law does not use vague language like Nevada's law, which states enforcement must accept "satisfactory evidence of I.D." at traffic stops. There is only one Nevada Supreme Court case interpreting what that language means; it is not on point in this situation, so it is an open legal question. During the legislative hearings, the ACLU advocated for the minimum number of changes from drivers' licenses, but the DMV chose to use the phrase "Not Valid for I.D." on the front of the card. She maintained this was not part of public comment, and the ACLU just learned about it this past Thursday.

Astrid Silva, Progressive Leadership Alliance of Nevada, echoed the comments of the ACLU. She said although translators are not specifically required in the bill, it would create an underground business that would hurt those who the bill intended to help. The Leadership Alliance is open to continuing dialogue.

There was no additional public comment.

There being no further business to come before the Commission, Chair Kirkpatrick adjourned the meeting at 5:28 p.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 October 22, 2013, provided by Sylvia Wiese, Secretary, Director's Office, Legislative Counsel Bureau (LCB).

[Exhibit B](#) is the attendance sign-in sheets dated October 22, 2013, from Carson City, Nevada, and Las Vegas, Nevada.

[Exhibit C](#) is the Adopted Regulation of the Board of Wildlife Commissioners, LCB File No. R004-13, effective October 23, 2013, presented by the Legal Division, LCB.

[Exhibit D](#) is the Adopted Regulation of the Board of Wildlife Commissioners, LCB File No. R017-13, effective October 23, 2013, submitted by the Legal Division, LCB.

[Exhibit E](#) is the Adopted Regulation of the Director of the Department of Motor Vehicles, LCB File No. R028-13, furnished by the Legal Division, LCB.

[Exhibit F](#) is the list of State Agency Regulations to be Reviewed by the Legislative Commission, dated October 22, 2013, submitted by Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB.

[Exhibit G](#) is the Adopted Regulation of the Private Investigator's Licensing Board, LCB File No. R047-12, effective October 23, 2013, presented by the Legal Division, LCB.

[Exhibit H](#) is the Adopted Regulation of the Private Investigator's Licensing Board, LCB File No. R067-12, effective October 23, 2013, furnished by the Legal Division, LCB.

[Exhibit I](#) is the Adopted Regulation of the Board of the Public Employees' Benefit Program, LCB File No. R047-13, effective October 23, 2013, presented by the Legal Division, LCB.

[Exhibit J](#) is the Adopted Regulation of the Personnel Commission, LCB File No. R137-12, effective October 23, 2013, submitted by the Legal Division, LCB.

[Exhibit K](#) is the Adopted Regulation of the State Board of Education, LCB File No. R007-13, effective October 23, 2013, presented by the Legal Division, LCB.



[Exhibit L](#) is the Adopted Regulation of the Commission on Professional Standards in Education, LCB File No. R012-13, effective October 23, 2013, furnished by the Legal Division, LCB.

[Exhibit M](#) is the Adopted Regulation of the Personnel Commission, LCB File No. R021-13, effective October 23, 2013, submitted by the Legal Division, LCB.

[Exhibit N](#) is the Adopted Regulation of the Personnel Commission, LCB File No. R024-13, effective October 23, 2013, presented by the Legal Division, LCB.

[Exhibit O](#) is the Adopted Regulation of the Personnel Commission, LCB File No. R045-13, effective October 23, 2013, submitted by the Legal Division, LCB.

[Exhibit P](#) is the Adopted Regulation of the Department of Motor Vehicles, LCB File No. R027-13, effective October 23, 2013, furnished by the Legal Division, LCB.

[Exhibit Q](#) is the Adopted Regulation of the Nevada State Board of Accountancy, LCB File No. R031-13, effective October 23, 2013, submitted by the Legal Division, LCB.

[Exhibit R](#) is the Adopted Regulation of the State Board of Education, LCB File No. R032-13, effective October 23, 2013, presented by the Legal Division, LCB.

[Exhibit S](#) is the Adopted Regulation of the Department of Motor Vehicles, LCB File No. R044-13, effective October 23, 2013, furnished by the Legal Division, LCB.

[Exhibit T](#) is the Adopted Regulation of the Nevada State Board of Accountancy, LCB File No. R046-13, effective October 23, 2013, submitted by the Legal Division, LCB.

[Exhibit U](#) is the Adopted Regulation of the Director of the State Department of Agriculture, LCB File No. R070-13, effective October 23, 2013, presented by the Legal Division, LCB.

[Exhibit V](#) is the Adopted Regulation of the Administrator of the Division of Industrial Relations of the Department of Business and Industry, LCB File No. R149-09, effective October 23, 2013, submitted by the Legal Division, LCB.

[Exhibit W](#) is the Revised Proposed Regulation of the Administrator of the Manufactured Housing Division of the Department of Business and Industry, LCB File No. R177-09, dated July 3, 2012, presented by the Legal Division, LCB.

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.