

MINUTES OF THE
LEGISLATIVE COMMISSION
NEVADA LEGISLATIVE COUNSEL BUREAU (LCB)
May 30, 2012

The third meeting in calendar year 2012 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218E.150, was held on Wednesday, May 30, 2012. The meeting began at 9:12 a.m. in Room 4401 of the Grant Sawyer Office Building, 555 E. Washington Avenue, Las Vegas, Nevada. A simultaneous videoconference was broadcast to Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada.

COMMISSION MEMBERS PRESENT:

Senator Steven A. Horsford, Chair
Senator Mo Denis, Vice Chair
Senator Don Gustavson
Senator Michael Roberson
Senator Michael Schneider
Senator James A. Settelmeyer
Assemblyman Marcus Conklin
Assemblyman Ira Hansen
Assemblywoman Marilyn Kirkpatrick
Assemblyman Richard McArthur
Assemblywoman Debbie Smith
Assemblyman Lynn D. Stewart

OTHER LEGISLATORS IN ATTENDANCE:

Senator John Lee, Clark County Senatorial District No. 1

LEGISLATIVE COUNSEL BUREAU STAFF:

Tammy Grace, Acting Director
Brenda J. Erdoes, Legislative Counsel
Risa B. Lang, Chief Deputy Legislative Counsel
Rick Combs, Assembly Fiscal Analyst
Mark Krmpotic, Senate Fiscal Analyst
Paul V. Townsend, Legislative Auditor
Donald O. Williams, Research Director
Connie Davis, Legislative Commission Secretary
Tarron Collins, Committee Assistant

Chair Horsford called the meeting to order at 9:12 a.m. Exhibit A is the agenda. Exhibit B is the guest list. All exhibits are on file in the Director's office of the Legislative Counsel Bureau. Certain items may have been taken out of order but were placed in 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.)

Barry W. Lovgren, a private citizen, appeared before the Commission to provide public comment concerning the Department of Health and Human Services' Substance Abuse Prevention and Treatment Agency (SAPTA). Mr. Lovgren advised that the recent SAPTA audit conducted by the Legislative Audit Division of the Legislative Counsel Bureau revealed that the agency had not met its fiscal responsibilities. A Legislative audit for SAPTA conducted in 2000, he said, revealed that SAPTA had not met some of its other responsibilities including that the agency had not publicized the availability of services for pregnant women.

Mr. Lovgren reported that SAPTA assigned a subgrant requirement to each treatment program to publicize, through public service announcements and outreach efforts, that the SAPTA programs offered treatment and admission priority to pregnant women who were drug or alcohol abusers. He indicated that he doubted anyone in the room had heard or seen a public service announcement that a SAPTA-funded program offered those services for pregnant drug or alcohol abusers. Mr. Lovgren noted that the number of pregnant women who received treatment had fallen to 38 percent of what it was in 2004. Since then, he said, the number of births had increased, and a study revealed that Nevada had the nation's highest rate of pregnant women who were alcohol and drug abusers.

Additionally, Mr. Lovgren reported that another subgrant requirement was billing for treatment on a sliding-fee scale based on 400 percent of the federal poverty level. SAPTA, he said, prohibited programs from complying with the requirement and instead used the SAPTA sliding-fee scale. Mr. Lovgren said that SAPTA's sliding-fee scale penalized families with "increasing severity as household size increased." A report on treatment costs that Mr. Lovgren made to the Statewide Maternal and Child Health Coalition (Exhibit C) described the two different SAPTA sliding-fee scales.

In an example Mr. Lovgren provided that applied to both sliding-fee scales, a pregnant teenager in a household of eight with income low enough to qualify for Medicaid would not qualify for SAPTA-funded treatment. Mr. Lovgren reported that since Medicaid did not pay for substance-abuse treatment, the client's family could be billed full fee for service rates. SAPTA, he said, would not deny treatment because of an inability to pay but did not regulate collection practices. He pointed out that because of the practice, unaffordable debt continued to increase even after a family had been bankrupted.

Additionally, Mr. Lovgren discussed multiple versions of the criteria used to certify programs, which were discussed in a letter (Exhibit D) to Richard Whitely, Acting Mental Health and Developmental Services (MHDS) Administrator. Mr. Lovgren said there were no division criteria for specialty treatment of co-occurring disorders, only a draft that MHDS had not adopted. SAPTA, he charged, continued to "unlawfully" certify programs as being in compliance with MHDS' criteria that did not exist, and many of the programs were unlawfully funded based on false certification claims.

Mr. Lovgren also discussed SAPTA's failure to carry out its responsibilities under the plan approved by the Legislature and the Governor in 2007 for its transfer from the Health Division to MHDS. The problems were described in a letter (Exhibit E) to Mike Willden, Director, Department of Health and Human Services (DHHS). Since that time, Mr. Lovgren said there had been no evaluation centers or treatment programs to which a court could "lawfully" assign defendants under Driving Under the Influence (DUI) statutes.

Additionally, Mr. Lovgren pointed out that SAPTA continued to certify and fund the Washoe County Jail's Civil Protective Custody program (CPC), which he discussed in a letter (Exhibit E) to the Attorney General, the Washoe County Sheriff, the Reno Chief of Police, the Director of the Bristlecone Family Resources, and the Director of WestCare Nevada Community Triage Center. The letter included information that a peace officer was required by law to deliver a public inebriate to Bristlecone Family Resources or to the WestCare Nevada Community Triage Center rather than to be placed in CPC because it was not a licensed treatment facility. Mr. Lovgren indicated that he was puzzled that SAPTA used state liquor taxes to fund a CPC program that could not be lawfully used.

Concluding his remarks, Mr. Lovgren said he was hopeful that the Acting Administrator for the Division of Mental Health and Development Services could remedy the problems at SAPTA before the 2013 Legislative Session. He pointed out that funding cutbacks that left substance abuse untreated hurt everyone.

Seaton Curran, an attorney for the law firm of Howard & Howard in Las Vegas, appeared before the Commission on behalf of the Intellectual Property Section of the State Bar of Nevada. Mr. Curran expressed the Section's interest in participating and offering its expertise to the Committee on Trademark and Copyright Law. He indicated that he looked forward to introducing the Section and himself to the Chair and Vice Chair proposed for appointment under agenda Item V. F.

Ron Cuzze, President, Nevada State Law Enforcement Officers' Association (NSLEDA) appeared before the Commission concerning proposed Regulation 008-12, which related to an expiration date for the revision of provisions governing the payment of a differential rate of pay for certain shifts.

Mr. Cuzze advised that although NSLEDA representatives argued against changing the qualifying shift hours for differential pay, the change was adopted, which resulted in many shift workers especially law enforcement and correctional officers working hours for which they were not being compensated. Mr. Cuzze discussed the problems being encountered to recruit and retain state law enforcement employees. Although the regulation included an expiration date, Mr. Cuzze said the provisions governing the shift differential pay should be made a priority to revert to the hours before the change was adopted as soon as it became fiscally possible to do so.

Chair Horsford recalled an Interim Finance Committee meeting discussion regarding the recruitment and retention problems for law enforcement employees and agreed to ask for additional discussion on Regulation 008-12.

II. APPROVAL OF MINUTES OF THE MARCH 29, 2012 MEETING – Senator Steven Horsford, Chair

ASSEMBLYMAN CONKLIN MOVED APPROVAL OF THE MINUTES FOR THE MARCH 29, 2012, MEETING.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman McArthur was not present for the vote.)

III. APPROVAL OF MINUTES OF THE FEBRUARY 15, 2012, MEETING – Senator Steven Horsford, Chair

ASSEMBLYMAN CONKLIN MOVED APPROVAL OF THE MINUTES FOR THE FEBRUARY 15, 2012, MEETING.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman McArthur was not present for the vote.)

IV. LEGISLATIVE AUDITOR:

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

Paul V. Townsend, Legislative Auditor, Legislative Counsel Bureau, referenced a letter dated April 18, 2012, from Senator Parks, Chair, Audit Subcommittee of the Legislative Commission (Exhibit G). The letter stated that the four following audit reports were presented to the Audit Subcommittee on April 17, 2012:

- State of Nevada Single Audit Report
- Housing Division, Department of Business and Industry
- Substance Abuse Prevention and Treatment Agency, Department of Health and Human Services
- Review of Governmental and Private Facilities for Children, April 2012

Mr. Townsend provided the following summaries for each audit:

State of Nevada Single Audit Report

A letter included in the packet material described the Single Audit of the State of Nevada conducted annually under contract with Kafoury, Armstrong & Company. Mr. Townsend reported that the auditor issued an unqualified opinion on the state's financial statements and disclosed no material weaknesses over internal control.

Additionally, Mr. Townsend advised that the auditor reported the Schedule of Expenditures of Federal Awards for the year that ended June 30, 2011, was fairly stated. The schedule showed expenditures of federal financial awards of \$4.9 billion. Mr. Townsend also reported that the Single Audit Report included 64 findings related to internal control over compliance with federal program requirements.

Housing Division, Department of Business and Industry

Mr. Townsend reported that the purpose of the Housing Division audit was to determine whether the Housing Division had established adequate controls to ensure program compliance with the American Recovery and Reinvestment Act (ARRA) weatherization requirements and accurate reporting of performance information. Mr. Townsend indicated that there had been concerns about program compliance with ARRA. He explained that a review of audit reports from other states with similar programs found problems that included substandard workmanship, unreasonable material costs, and increased risk of fraud, waste, and abuse. Mr. Townsend advised, however, the audit of Nevada's Housing Division did not find those problems. The audit, he said, found that the Housing Division's oversight of ARRA weatherization funding was effective and helped to ensure that the funding was spent appropriately. As of December 2011, about \$35.7 million had been expended to install weatherization measures in low-income homes.

Mr. Townsend reported that the audit included a review of 100 files totaling about \$1 million in project costs and identified that funds were spent on priority measures that were billed according to preapproved contractor prices. The audit, he said, also found that the Housing Division had established controls to monitor subrecipients. A review of the 100 files found that subrecipients were timely when approving applications, performing energy assessments, completing projects, and performing final project inspections.

Additionally, Mr. Townsend said the audit found that the Housing Division established controls to ensure effective monitoring of contractors' work. An inspection of 40 homes in which weatherization measures had been installed identified only a few instances in which measures paid for were not installed. The cost for the uninstalled measures was refunded.

Mr. Townsend reported that although the process to determine applicant eligibility for the weatherization program could be improved, weatherization performance data reported by the Division was found to be reliable. He said that some additional training and monitoring to the subrecipients could help improve data accuracy in a few areas.

The audit report made three recommendations that were accepted by the Housing Division.

Substance Abuse Prevention and Treatment Agency (SAPTA), Department of Health and Human Services

Mr. Townsend reported that the purpose of the audit for the Substance Abuse Prevention and Treatment Agency (SAPTA) was to determine whether the agency provided adequate fiscal oversight of subrecipients awarded federal and state grants for the prevention and treatment of substance abuse.

The audit found that SAPTA had not provided adequate fiscal oversight. In fiscal years 2010 and 2011, subrecipients received over \$46 million to provide prevention and treatment services to Nevada citizens. Mr. Townsend said that without adequate fiscal oversight, there was undue risk that subrecipients would not use grant funds for intended purposes.

Mr. Townsend reported that the audit found SAPTA needed to improve its oversight of subrecipients to ensure audit requirements were met. He said that one of the primary means that SAPTA used in oversight was to require the submission of independent audit reports. The audit found that SAPTA accepted audit reports on subrecipients that did not include procedures to determine whether the funds had been spent in accordance with grant requirements. Additionally, some reports were not submitted timely, and staff did not always verify subrecipients had corrected problems identified in the audits. In one instance, SAPTA continued to fund a subrecipient despite no submission of audit reports for 3 years. The agency subsequently cut off funding and notified federal and state authorities of concerns that the subrecipient had possibly misused funds. The audit also identified a situation in which a subrecipient provided forged audit reports for fiscal years 2007 through 2010.

Additionally, Mr. Townsend advised that the audit discovered problems in SAPTA's direct fiscal monitoring reviews of subrecipients. Of the 5 coalitions tested, none had timely fiscal monitoring visits, which, he said, were late from 6 months to over 3 years and averaged about 20 months past due. Additionally, half of the 10 treatment providers had untimely fiscal monitoring site visits.

The audit report contained 16 recommendations concerning the deficiencies found, which the agency accepted.

Review of Governmental and Private Facilities for Children

Mr. Townsend advised that pursuant to statutory requirements, the Legislative Auditor was authorized to conduct reviews of governmental and private facilities for children. The report provided on April 17, 2012, included the results of reviews of 5 children's facilities, unannounced site visits to 7 children's facilities, and a survey of 56 children's facilities. Based on the procedures performed, and, except as otherwise noted, Mr. Townsend advised that the review found the policies, procedures, and processes in place at the 5 facilities provided reasonable assurance that the health, safety, and welfare of the youth were adequately protected and that civil and other rights of youth were respected.

Additionally, Mr. Townsend said, that during the 7 unannounced site visits, nothing was noted that caused concerns, although there were several observations. All 5 facilities, he said, needed to develop or update policies and procedures, and medication administration processes needed improvement as well. Mr. Townsend explained that youth medical files did not always contain complete or clear documentation of dispensed medication. Some youth files were missing evidence of physician orders or prescriptions, and medication administration records were missing at one of the 5 facilities for up to 5 months. Mr. Townsend advised that the action taken by the Legislature when it passed Senate Bill (S.B.) No. 246, 76th Legislature (2011), effective January 1, 2012, should help improve the administration of medication. The bill required children's facilities to adopt policies to address the deficiencies bulleted in the summary of the review, which included:

- Document the orders of the treating physician of a child
- Administer medication to a child
- Store, handle, and dispose of medication
- Document the administration of medication and any errors in the administration of medication
- Minimize errors in the administration of medication
- Address errors in the administration of medication
- Ensure each employee who administered medication received a copy of and understood the policies

Mr. Townsend advised that each facility, subject to a review by the Legislative Auditor, was requested to submit information on the facility's policies and implementation of the requirements contained in S.B. 246. Those policies, he said, would be reviewed and tested during future visits and reviews.

Having concluded his presentation, Mr. Townsend advised that Senator Parks, Chair, Audit Subcommittee of the Legislative Commission, recommended that the Legislative Commission accept the four reports.

Assemblyman Stewart commended Mr. Townsend's work and indicated he would move approval to accept the audits.

ASSEMBLYMAN STEWART MOVED APPROVAL TO ACCEPT
THE AUDIT REPORTS.

SENATOR DENIS SECONDED THE MOTION.

Assemblyman Conklin noted an error rate of 4 percent in the weatherization report for the Housing Division audit and asked Mr. Townsend to provide additional information.

Mr. Townsend responded that flexibility on performance measures was, at times, permitted. He advised that in the audit for the Housing Division's Low-Income Weatherization Assistance Program, many errors focused in one area. An example was that the amount of draft coming into a residence was measured before and after installation of weatherization measures to determine the effectiveness of the installation. Because the audit revealed inconsistent reporting and mathematical errors, he said it was determined that the divisions and subrecipients needed to provide additional training for the contractors to ensure they were correctly completing "input" forms to track data.

Assemblywoman Kirkpatrick noted that 19 of the 100-weatherization files tested required better documentation for eligibility, and an additional 28 files contained conflicting documentation concerning household size. Assemblywoman Kirkpatrick said it appeared that that the Housing Division should change its policy and education concerning contractors.

Mr. Townsend agreed and advised that the process to determine applicant eligibility was recommended for improvement. Additionally, he pointed out that the 19 files that required better documentation and the 28 files that contained conflicting household size data might not have been mutually exclusive. He explained that the data concerning household size required improvement because although more members in a household would make it easier to qualify, the ability to qualify would be reduced if those individuals were employed and had income. Mr. Townsend further explained that when the contractors noted the numbers of individuals living in a house, the numbers were different from the numbers on the original application. Of the 40 households visited, Mr. Townsend said some had a disparity in numbers, but there were no disqualifications for eligibility. The audit, he said, recommended improvement in subrecipients' verification of applicant eligibility.

Chair Horsford asked whether the audit for the Housing Division also reviewed applicability of state law and conformance with state and federal law.

Mr. Townsend responded that the audit for the Housing Division verified that the Housing Division took action to ensure compliance with state and federal law. The audit, he said, reviewed whether program requirements and obligations had been met and whether contractors had fulfilled their duties. Additionally, Mr. Townsend said the Housing Division had allocated funding by population, issued a request for proposal (RFP), a panel scored the responses to the RFP, and written agreements were prepared with subrecipients. The agreements required that the Housing Division monitor contractors to ensure they paid prevailing wage, offered health insurance, and complied with workforce training requirements. Additionally, the audit reviewed the manner in which the Housing Division monitored contractors and noted that they received quarterly reports that included the names of employees, hire dates, the date the training program was completed, and that insurance had been provided and a percentage of field inspections conducted.

In response to Chair Horsford who asked whether any abnormalities had been seen in areas such as prevailing wage or in the requirement for training, Mr. Townsend advised that none had been seen in either area.

Chair Horsford asked whether the audit saw a pattern regarding providers, geographic areas, or population in the 19-weatherization files tested. Chair Horsford advised that he had submitted a letter of protest to the Housing Division regarding the “drastic” reduction of weatherization funds for North Las Vegas. He further advised that the response to his inquiry indicated that North Las Vegas did not include many low-income individuals. The Chair asked Mr. Townsend to provide information to his office regarding the methodology used to allocate weatherization funding.

Chair Horsford also asked for information concerning the SAPTA audit and the subrecipient who had forged audit reports for several years.

Mr. Townsend advised that the information concerning the forged audit reports that involved the Churchill County Coalition was reported to the Attorney General's Office. The Attorney General's Office, whose jurisdiction covered crimes committed by state employees, provided the information to the Churchill County Sheriff's office. The Churchill County Sheriff's office conducted an investigation and subsequently referred the case to the Churchill County District Attorney's Office.

Assemblywoman Kirkpatrick questioned whether funding to the Churchill County Coalition was stopped because of the forged audit reports.

Mr. Townsend advised that funding to the Coalition continued to be provided because services continued to be needed. He further advised that SAPTA worked with the Coalition and \$8,800 in actual costs had been reimbursed. Additionally, he said SAPTA contracted with a Certified Public Accounting firm that was currently in the process of reviewing the four years in which the forged reports were submitted.

Assemblywoman Kirkpatrick expressed concern that SAPTA would allow a subrecipient that had forged reports over a period of years to continue to receive funding. Although she agreed that services needed to be continued, Assemblywoman Kirkpatrick said that perhaps another organization in the community could provide the services and that the errant subrecipient should face stringent penalties.

In response to Chair Horsford who asked whether representatives of SAPTA were in the Carson City audience, Mr. Townsend advised that SAPTA representatives were not in attendance. He explained that he did not normally ask agency representatives to attend meetings in which summary presentations were made.

Senator Settlemeyer advised that he had been in contact with Arthur E. Mallory, the District Attorney in Churchill County, with whom the case currently resided. Additionally, Senator Settlemeyer indicated that he had been in contact with other subrecipients awarded grants for the prevention and treatment of substance abuse, and those subrecipients were reviewing data every six months rather than once a year. Senator Settlemeyer expressed confidence that Mr. Mallory's office would appropriately represent the state, and he indicated that he hoped Assemblywoman Kirkpatrick's concerns had been addressed.

Chair Horsford commended Mr. Townsend and the Audit Division for their work in uncovering the facts in the SAPTA audit. He indicated, however, that he wanted to hear from SAPTA representatives. He suggested that the Commission members proceed with the motion on the floor to approve the audit report and requested that SAPTA representatives be required to attend the next Commission meeting to address the concerns of the members. The Chair indicated a list of questions for the agency representatives would be prepared in advance of the meeting.

Chair Horsford called for a vote to accept the audit reports as previously moved by Assemblyman Stewart and seconded by Senator Denis.

THE MOTION CARRIED UNANIMOUSLY.

- B. Request for Approval of Basic Audit Program, (NRS 218E.205 and NRS 218G.120) – Paul V. Townsend, Legislative Auditor, Legislative Counsel Bureau

Paul V. Townsend, Legislative Auditor, Legislative Counsel Bureau, appeared before the Commission to request approval of the Basic Audit Program for the next biennium. Mr. Townsend referenced Schedule 1 (Exhibit H), which listed the audits currently in progress and asked for the Commission's approval to continue the audits in the event the Audit Division was unable to present all of them to the Audit Subcommittee of the Legislative Commission prior to the start of the 2013 Legislative Session.

Additionally, Mr. Townsend referenced Schedule 2 (Exhibit I), which listed the proposed audits that would be conducted over the next biennium. Mr. Townsend advised that the

proposed audits were selected using a risk-assessment process. The process considered factors, such as the amount of agency revenues and expenditures, a history of prior problems, legislative and public interest, and agency or program complexity. Audit objectives, he said, might include determining whether an agency operated in an economical or efficient manner, or determining the extent to which an agency achieved a desired level of program results. Audit objectives could also include evaluating agencies' compliance with laws and regulations and determining whether appropriate information technology security controls were in place to protect sensitive information against unauthorized use.

In closing, Mr. Townsend advised that in addition to the audits that appeared on Schedules 1 and 2, the Audit Division was available to perform any audits as directed by the Legislative Commission or the Legislature through legislation passed during the 2013 Legislative Session.

SENATOR DENIS MOVED APPROVAL OF THE REQUEST FOR THE BASIC AUDIT PROGRAM.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

V. PROGRESS REPORTS AND APPOINTMENTS:

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

Brenda J. Erdoes, Legislative Counsel, Legislative Counsel Bureau, provided an update on the following seven court cases currently in progress:

- RED ROCK CANYON CASE
Gypsum Resources, LLC v. Masto, Nevada Supreme Court

Ms. Erdoes reported that the case had been briefed before the Nevada Supreme Court, and the parties were awaiting the court to decide whether it wanted to hear oral arguments or proceed only on the briefs.

- CARRIGAN v. COMMISSION ON ETHICS CASE
Michael A. Carrigan, Fourth Ward City Council Member of the City of Sparks v. Commission on Ethics, Nevada Supreme Court

Ms. Erdoes reported the Nevada Supreme Court heard oral arguments on March 5, 2012, and the parties were awaiting a decision from the court.

- HOA ARBITRATION CASE
Elsinore, LLC v. State ex rel. Legislature, Clark County District Court

Ms. Erdoes reported that the plaintiffs challenged the constitutionality of the mediation and arbitration provisions in Nevada Revised Statutes (NRS) 38.310. The statute required the parties to submit disputes regarding homeowners' associations to mediation or arbitration before commencing a civil action in district court.

On February 8, 2012, the Legislature filed a motion to dismiss. After the Legislature filed its motion to dismiss, the plaintiffs decided not to proceed with their case, and on April 4, 2012, the parties filed a stipulation dismissing the case with prejudice.

- ARENA INITIATIVE & SENATE BILL (S.B.) NO. 495 (2011) CASE
Arena Initiative Committee v. State ex rel. Legislature, Carson City District Court and Nevada Supreme Court

Ms. Erdoes reported that on April 3, 2012, the Carson City District Court entered an order rejecting the plaintiff's constitutional claims and upholding the constitutionality of the Legislature's competing measure (S.B. 495) to the arena initiative.

On April 4, 2012, the plaintiff filed its notice of appeal to the Nevada Supreme Court, and on May 29, 2012, the plaintiff filed its opening brief on appeal. The Legislature's answering brief would be due on or before June 28, 2012.

- PEOPLE'S LEGISLATURE v. MILLER Case No. 1 (Federal Case)
People's Legislature v. Miller, United States District Court, District of Nevada

Ms. Erdoes reported that on April 3, 2012, as requested by the Legislature in its motion to remand, the federal district court severed the plaintiffs' state constitutional single-subject claims challenging the validity of Senate Bill (S.B.) No. 224 (2005) and Assembly Bill (A.B.) No. 81 (2011), and the federal district court remanded those state constitutional claims to the state district court for determination.

On May 22, 2012, the plaintiffs filed a second amended complaint based on federal constitutional claims under the First and Fourteenth Amendments. [The claims challenged the constitutionality of various aspects of the initiative process, including the statutory single-subject rule for initiatives, and the requirement to collect signatures from petition districts.] The Legislature would defend against those federal constitutional claims in the federal court.

- PEOPLE'S LEGISLATURE v. MILLER Case No. 2 (State Case)
People's Legislature v. Miller, Clark County District Court, and Nevada Supreme Court

Ms. Erdoes reported that on May 23, 2012, the Clark County District Court rejected the plaintiffs' state constitutional single-subject claims and upheld the constitutionality of S. B. 224 (2005) and A.B. 81 (2011).

On May 24, 2012, the plaintiffs filed their notice of appeal to the Nevada Supreme Court.

- o C-TAX CASE

City of Fernley v. State Department of Taxation, United States District Court, District of Nevada

Ms. Erdoes reported that on April 6, 2012, the City of Fernley filed a complaint in the federal district court challenging the constitutionality of the Consolidated Tax (C-Tax) formula.

To date, the City had not served the complaint on the state defendants. Under the Federal Rules of Civil Procedure, the City must serve the complaint no later than 120 days after filing it on April 6, 2012.

- B. Appointment of the Director of the Legislative Counsel Bureau – Tammy Grace, Acting Director, Legislative Counsel Bureau

Tammy Grace, Acting Director, Legislative Counsel Bureau (LCB), referenced a memo (Exhibit J), contained within the Commission's packet of materials. The memo outlined the activities regarding the appointment of the new Director of the LCB. Ms. Grace reported that the Committee to Consult with the Director contracted with Ralph Andersen and Associates to conduct a nationwide recruitment for the new Director. The project manager, President, and Chief Executive Officer of Ralph Anderson and Associates, Ms. Heather Renschler, contacted the members of the Committee to Consult with the Director and interviewed key staff members of the LCB to solicit input concerning the characteristics and competencies necessary to succeed as the Director of the LCB.

Ms. Grace advised that Ms. Renschler advertised the position throughout the United States and received 38 resumes. The Committee instructed her to narrow the pool to between three and six candidates to bring forward as finalists for the position. Ms. Renschler narrowed the list to five candidates that included Paul Townsend, Kevin Powers, Bryant Howe, Richard Combs, and Nicholas Anthony.

The members of the Committee to Consult with the Director interviewed the five finalists on May 15, 2012, and unanimously recommended that the Legislative Commission consider Richard Combs for the position of Director. Additionally, Ms. Grace advised that if the Commission appointed Mr. Combs, he would require the month of June to transition from the Fiscal Analysis Division.

Senator Denis, Chair, Committee to Consult with the Director, described the process of selecting the Director, including working with Ms. Renschler and LCB staff, as a good experience that resulted in good candidates. He said, however, it was difficult to choose from the five because "every one of them could have done a great job." Senator Denis expressed his appreciation to the members of the Committee to Consult with the Director for coming together with a unanimous vote and said he looked forward to working with Mr. Combs.

Assemblyman Stewart commented that it was interesting that four of the five final applicants were from within the LCB, which, he said, spoke highly of the caliber of LCB employees.

Assemblyman Conklin agreed with the previous speakers' comments concerning the candidates. Although the LCB would suffer from turnover, he said there were many talented staff members within the Bureau. Assemblyman Conklin expressed excitement concerning the future and wanted his Senate colleagues to understand the sacrifice the Assembly was making since Mr. Combs' Assembly Fiscal Analyst position would leave a vacancy. Assemblyman Conklin said, however, that it was Mr. Combs' work as Assembly Fiscal Analyst during the 2011 Legislative Session that provided the confidence to know that the right person for the job had been selected.

ASSEMBLYMAN CONKLIN MOVED APPROVAL TO NAME
RICK COMBS THE DIRECTOR OF THE LEGISLATIVE COUNSEL
BUREAU.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Rick Combs, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, thanked the members of the Committee to Consult with the Director for their recommendation and hard work and the members of the Legislative Commission for their support. Mr. Combs advised that the first order of business, in his new position as Director, would be to maintain the level of services to which legislative members had become accustomed. He agreed that there would be challenges concerning turnover, but also expressed confidence that the Bureau had a staff of talented and dedicated people who would be willing to serve.

Chair Horsford congratulated Mr. Combs who he described as ready and committed to the work of the Director in managing the Legislative Counsel Bureau.

- C. Appointment of Member to Host Committee for 2013 Annual Meeting of the
Council of State Governments-West (CSG-WEST) –
Tammy Grace, Acting Director, Legislative Counsel Bureau

Tammy Grace, Acting Director, Legislative Counsel Bureau, referenced a memo (Exhibit K) contained within the Commission's packet of materials. The memo discussed the resignation

of former Senator Sheila Leslie, which created a vacancy on the Host Committee for the 2013 Annual Meeting of the Council of State Governments-West.

Ms. Grace advised that the Committee met recently, and Chair Atkinson asked for the Commission's consideration of Assemblywoman Debbie Smith for appointment to the Host Committee.

SENATOR SCHNEIDER MOVED APPROVAL TO APPOINT ASSEMBLYWOMAN DEBBIE SMITH TO REPLACE FORMER SENATOR SHEILA LESLIE TO THE HOST COMMITTEE FOR THE 2013 ANNUAL MEETING OF THE COUNCIL OF STATE GOVERNMENTS-WEST.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

D. Appointment to Nevada Commission on Minority Affairs (NRS 232.852) Tammy Grace, Acting Director, Legislative Counsel Bureau

Tammy Grace, Acting Director, Legislative Counsel Bureau, advised that Christina Fuentes, Ombudsman of Minority Affairs, Department of Business and Industry, on behalf of Director Terry Johnson, had recommended Edward Vento for the appointment of Commissioner to the Commission on Minority Affairs.

Assemblywoman Kirkpatrick recalled that during a previous Legislative Commission meeting she had asked to see all of the names submitted for appointment to boards and commissions. She explained that many constituents submitted letters of interest to serve on boards and commissions, and the members of the Commission were not made aware of who was being considered. Assemblywoman Kirkpatrick asked that all of the names submitted to serve on any board or commission in the future be included in the packet of materials for consideration by the members of the Legislative Commission.

Ms. Fuentes, who was present, advised that, if appointed, Edward Vento would fill the only remaining vacancy on the Commission on Minority Affairs and would serve as the northern Nevada representative. Ms. Fuentes advised that the names of all candidates had been submitted to the Legislative Commission and that Mr. Vento was the only name submitted for appointment.

Chair Horsford made it clear that any time in the future when there were openings to boards and commissions, the Legislative Commission wanted to see the names and resumes of all candidates

Mrs. Kirkpatrick reiterated that the Commission wanted to see the names and resumes of all candidates for future appointments to all boards and commissions.

Senator Denis indicated he was pleased to see the appointment of Mr. Vento to the Commission on Minority Affairs, which he said would allow the Commission to move forward with their work.

SENATOR DENIS MOVED APPROVAL FOR THE APPOINTMENT OF EDWARD VENTO TO THE COMMISSION ON MINORITY AFFAIRS.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

E. Nominations to the Commission on Nuclear Projects (NRS 459.0091)
Tammy Grace, Acting Director, Legislative Counsel Bureau

Tammy Grace, Acting Director, Legislative Counsel Bureau, advised that historically only two names, Richard H. Bryan and Paul Workman, had been submitted to serve as Legislative Commission appointees to the Commission on Nuclear Projects. Ms. Grace advised, however, that the Governor's Office had advised they intended to appoint Richard H. Bryan as a Governor's appointee.

Ms. Grace advised that Mr. Workman had expressed an interest in continuing to serve on behalf of the Legislative Commission. Additionally, applications for three new parties, Dr. Eugene Paslov, former Nevada State Superintendent of Schools, Dr. Marie Boutte, School of Community Health Sciences at the University of Nevada Reno (UNR), and Mr. Dennis Bechtel, retired former Director of the Clark County Nuclear Waste were included for the Commission's review.

Ms. Grace advised that the Commission was charged with submitting a list of three names to the Governor for his choice and that the Governor would appoint two.

ASSEMBLYWOMAN SMITH RECOMMENDED PAUL WORKMAN, DR. MARIE BOUTTE, AND DENNIS BECHTEL FOR NOMINATION TO THE COMMISSION ON NUCLEAR PROJECTS.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

F. Appointment of Chair and Vice Chair of the Committee on Trademark and Copyright Law – A.B. 383 (2011)

Chair Horsford advised that he would entertain a motion for the appointment of chair and vice chair of the Committee on Trademark and Copyright Law.

ASSEMBLYWOMAN SMITH MOVED APPROVAL TO APPOINT ASSEMBLYMAN TICK SEGERBLOM AS CHAIR AND SENATOR MARK MANENDO AS VICE CHAIR OF THE COMMITTEE ON TRADEMARK AND COPYRIGHT LAW.

SENATOR DENIS SECONDED THE MOTION.

Chair Horsford asked the record to reflect that staff would conduct the study, and the Committee on Trademark and Copyright Law, whose members he and Assemblyman John Ocegüera appointed, would review the study. [The members included Assemblyman Tick Segerblom, Chair, Senator Mark A. Manendo, Vice Chair, Senator Greg Brower, Senator Mo Denis, Assemblyman Jason Frierson, and Assemblyman Pat Hickey.]

Assemblywoman Smith commented that during public comment at the beginning of the meeting, Seaton Curran, an attorney with Howard & Howard, expressed an interest in being involved in the study. Assemblywoman Smith recommended that staff contact Mr. Seaton.

THE MOTION CARRIED UNANIMOUSLY.

LEGISLATIVE COMMISSION POLICY:

- A. Review of Administrative Regulations – Brenda J. Erdoes, Legislative Counsel, Legislative Counsel Bureau – The list of regulations may be accessed electronically at: <http://www.leg.state.nv.us/register/Indexes/RegsReviewed.htm>

Chair Horsford noted that Regulation 042-11 was inaccurately listed as the Commission on Professional Standards in Education. The Chair asked the record to reflect that Regulation 042-11 should be listed as the Commission on Post Secondary Education.

Chair Horsford asked the members to identify regulations that required additional discussion.

Chair Horsford held R008-12
Assemblyman Stewart held R019-11 and R131-11
Assemblywoman Smith held R114-11
Senator Settlemeyer held R070-11
Assemblyman Hansen held R125-08 and R093-10

Chair Horsford entertained a motion to approve all of the regulations not held for discussion.

ASSEMBLYWOMAN SMITH MOVED APPROVAL OF THE
REGULATIONS NOT HELD FOR DISCUSSION.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 125-08

A REGULATION relating to mining; requiring each operator of an underground mine to establish a ground support plan for underground mine excavation; revising certain provisions relating to health and safety standards for a mine; and providing other matters properly relating thereto

Assemblyman Hansen asked for additional information on the need for a mining regulation.

Jeff Bixler, Chief Administrative Officer, Mine Safety and Training Section (MSATS), Division of Industrial Relations, Department of Business and Industry, identified himself for the record. Mr. Bixler advised that the ground support plan for underground mine excavation was being modified for improvement to allow, for example, the replacement of damaged or dislodged timbers in underground mines.

In response to Assemblyman Hansen who asked whether any underground accidents had occurred that were caused by mining companies' noncompliance with existing regulations, Mr. Bixler advised that none had occurred because of noncompliance.

Assemblyman Hansen said that mining was a "huge industry" in his district and that the protection and safety of miners was of primary concern. He said, however, miners should be permitted to work without too much bureaucratic involvement. Assemblyman Hansen noted that there were no objections to the regulation.

Chair Horsford noted that the regulation was reviewed by the Mining Oversight and Accountability Commission and through the process for the adoption of regulations, additional opportunity had been provided for all stakeholders to comment on the impact of R125-08.

ASSEMBLYMAN HANSEN MOVED APPROVAL FOR THE
ADOPTION OF R125-08.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 093-10

A REGULATION relating to licensing of real estate brokers and salespersons; revising the continuing education requirements for licensure; and providing other matters properly relating thereto

Assemblyman Hansen disclosed that his wife, a Nevada real estate licensee, would not be affected by the regulation.

Assemblyman Hansen asked for information concerning the reason mandatory instruction for real estate licensees was being increased from 24 to 48 hours. Additionally, he questioned why continuing education in a live classroom setting was a requirement rather than allowing licensees to continue to participate in online classes. Assemblyman Hansen said that that information provided with the regulation claimed there would be no adverse or beneficial effects on regulated businesses. He said, however, an economic impact would be created for businesses that provided online services and for licensees required to spend three additional eight-hour days in classroom instruction before their licenses could be renewed.

Assemblyman Hansen discussed the need for additional review of the regulation to determine necessity and whether, for example, realtors had contributed to the new requirements because of a violation of ethics or because they had not followed the law. Assemblyman Hansen asked that the members of the Commission address the questions he had brought forward before moving on to a vote.

Chair Horsford noted that the Real Estate Division's representative was available in Las Vegas to respond to Assemblyman Hansen's concerns.

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry, advised that the licensing time period terms for realtors were doubled by legislation passed in 2009 and became effective on July 1, 2011. Ms. Anderson explained that the regulation

increased the number of hours of continuing education for licensees from 24 to 48 hours and maintained current requirements that 24 of the 48 hours of continuing education be completed every two years rather than every four years. [A first-time licensee would be required to complete 12 hours of continuing education within the first two years after initial licensing.]

Ms. Anderson advised that the reason for completing 24 hours of continuing education every two years rather than every four was that many licensees waited to take their classes until just before their licenses were renewed. She pointed out there were concerns that four years was too lengthy a time for a licensee who might go without taking classes in areas designated by the Real Estate Commission.

Ms. Anderson asked David Boyer, President of the Real Estate Commission, to address the instruction requirement.

David Boyer, President, Nevada Real Estate Commission, advised that after several public hearings on the proposed regulation, a determination was made that more interaction existed between instructors and students in a live classroom setting than in online classes. Recognizing that there were businesses that would be affected by the instruction requirement, the determination was made that only half of the required classes would be required to be taken in a live setting. An exception was made for those licensees who lived long distances from major metropolitan areas in the state. Mr. Boyer further advised that an attempt was made to accommodate all learning styles without specifically saying which courses had to be taken live or from a distance but allowing the licensees to make that choice.

Assemblyman Hansen asked whether online training under the current situation was considered inferior and whether online participants were unable to pass the tests.

Mr. Boyer advised that while no tests were required for most continuing education classes in a live setting, tests were required for distance learning. As previously indicated, Mr. Boyer said it was the consensus of the members of the Nevada Real Estate Commission and the licensees who participated in the regulation process that there was more education potential in a live setting than there was in a distance setting.

As a representative of Assembly District No. 32 that included portions of several large rural counties, Assemblyman Hansen said the current system that permitted everyone to take online classes should be continued. Additionally, he pointed out there was no evidence that realtors who had participated in long-distance learning had committed ethical or any other type of violations because online classes were inadequate.

Mr. Boyer advised that while there was no evidence that distance learning had any more or less effect on licensees' making ethical violations or other mistakes, there was anecdotal evidence of licensees having their assistants or teenagers "cycle through the Internet program" rather than reading the material themselves. Mr. Boyer pointed out there was no

way to track who was on the computer when online classes were taken, and he said that if a test was not passed it had to be taken again.

Assemblyman Hansen asked that the regulation be reviewed again to allow the realtors in Nevada an opportunity to continue their education over the Internet rather than in a live setting. The current online system, he pointed out, had not been proven to provide an inadequate education. Additionally, Assemblyman Hansen said it appeared that all licensees were being forced to participate in a live classroom setting because of anecdotal evidence that some licensees would allow their assistants or teenagers to cheat.

Assemblywoman Kirkpatrick advised that many opportunities existed for rural Nevadans to attend continuing education classes. One example was a recent Water Resources water-planning meeting she had attended. The meeting included many rural real estate licensees who attended because water planning was an important selling point for them and because they could receive continuing education credit. Assemblywoman Kirkpatrick suggested that it might be helpful for Assemblyman Hansen to see some of the continuing education classes offered to renewing licensees that assisted in expanding their business.

Assemblyman Hansen expressed agreement with Assemblywoman Kirkpatrick's response but advised that his concern was that the regulation made continuing education in a live setting mandatory rather than optional.

SENATOR SCHNEIDER MOVED APPROVAL FOR THE
ADOPTION OF REGULATION 093-10.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

Assemblywoman Smith noted that the regulation dated to 2010, and, with the general support from the Realtors' Association, said there appeared to be no reason to delay a vote.

Assemblyman Hansen pointed out that the Administrative Procedures Act required that the estimated economic impact of a regulation on businesses be addressed and that simply saying that there were no adverse effects to businesses was inadequate. The regulation, he said, did not address the economic impact for the average realtor in Nevada being forced to drive to a classroom setting to attend three days of continuing education. Assemblyman Hansen said that it appeared all of the regulations presented to the Legislative Commission for consideration indicated no economic impact to the businesses being regulated. He said, however, he was challenging Regulation 093-10 because he believed an economic impact would be created, which was not addressed in the information presented.

Senator Schneider pointed out that realtors dealt with one of the largest investments made during a lifetime. He said that because of the collapse of the industry, all realtors should go back to the classroom to be retrained.

Senator Schneider suggested moving forward to approve the regulation, and, he said that if problems were encountered in the future, there would be a new Chair of the Senate Committee on Commerce, Labor, and Energy who could review it during the Legislative Session.

Chair Horsford called for a vote on approval of the regulation previously moved by Senator Schneider and seconded by Assemblywoman Kirkpatrick.

THE MOTION CARRIED (Assemblyman Hansen voted no.)

Assemblyman Conklin assumed the duties of the Chair and announced that the Commission would consider R019-11.

Regulation 019-11

A REGULATION relating to education; adopting the Common Core Standards at certain grade levels for English language arts and mathematics; providing for the implementation of the Common Core Standards in prescribed school years; repealing certain existing standards in English language arts and mathematics; and providing other matters properly relating thereto

Assemblyman Stewart asked for additional information concerning whether proficiency testing would be eliminated with the adoption of Common Core Standards.

Carol Crothers, Director of the Office of Assessment, Program Accountability and Curriculum, Department of Education, advised that the regulation specifically replaced the existing standards within Nevada in English language, arts, and mathematics, commonly referred to as the Common Core Standards. Ms. Crothers said, however, that testing was not related to the adoption of the standards.

Assemblyman Stewart asked for additional information concerning the adoption of the Common Core Standards. He noted that if proficiency testing in reading, writing, and mathematics was not eliminated, it appeared there would be two standards. Assemblyman Stewart expressed concern that the students would be confused regarding their classes and graduation requirements.

Ms. Crothers advised that an implementation schedule had been developed and assessments had been coordinated to the implementation of the Common Core Standards. With appropriate time for instruction, Ms. Crothers said students would be introduced to the Common Core Standards on the assessments over the next several years. She explained that, because of the time it took to introduce students to the Common Core Standards at the high school level, it was expected that the high school proficiency examination, as it currently existed, would remain in effect through the graduating class of 2018. Ms. Crothers said that proficiency testing remaining in effect until 2018 would not be a disadvantage to students as they were instructed on the Common Core Standards. It was expected, she said, that

students would be even better prepared for the high school proficiency examination once they received instruction in the Common Core Standards.

In response to additional questions Assemblyman Stewart asked, Ms. Crothers pointed out that the process was gradual, and, assuming no change in legislation, after 2018 smarter balanced assessments would be used for the high school proficiency examination.

In response to Assemblyman Hansen who asked for information concerning students who did not meet proficiency, Ms. Crothers advised that there would be no changes from the current practice. She explained that in grades 3 through 8, there were no ramifications for students who did not achieve proficiency on the tests designed to measure the standards.

ASSEMBLYMAN STEWART MOVED APPROVAL OF
REGULATION 019-11.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED (Assemblyman McArthur voted no.)

Assemblyman Conklin announced the Commission would next consider Regulation 070-11.

Regulation 070-11

A REGULATION relating to business entities; adopting procedures for the imposition of penalties on persons purporting to transact business in this State as a business entity without complying with certain requirements concerning filings with the Secretary of State; and providing other matters properly relating thereto

Senator Settlemeyer, who represented Capital Senatorial District [included portions of Douglas, Lyon, and Storey Counties, and portions of Carson City], said that the district attorneys in his district had expressed concerns regarding language in the regulation. Senator Settlemeyer asked representatives of the Office of the Secretary of State whether they had discussed the regulation with representatives of the Nevada District Attorneys Association.

Nicole Lambole, Chief Deputy Secretary of State, advised that the meeting minutes for public hearings conducted during the regulation process did not reflect comments from representatives of the District Attorneys Association. Ms. Lambole reported first learning of concerns about the regulation late in the afternoon of the previous day, May 29, 2012. Additionally, she pointed out that the Secretary of State's Deputy Attorney General, not representatives of the Nevada District Attorney's Association, communicated the concerns.

Senator Settlemeyer reported that the district attorneys in his district were concerned because they were in the awkward position of being required to collect debts for the Secretary of State. Additionally because of current budget constraints, the district attorneys believed that the regulation passed an unfunded mandate on to them. Senator Settlemeyer pointed

out that the Secretary of State should have the ability to **request** rather than to **instruct** a district attorney with jurisdiction to proceed to institute proceedings against a business for noncompliance. The district attorneys, he said, had indicated that the collection of fines, in some respects, interfered with their prosecutorial discretion. It was Senator Settlemeyer's opinion that the 2013 Legislature should consider revising the language in Nevada Revised Statutes (NRS) 78.047.

Ms. Lamboley advised that in 2009 the Legislature passed Senate Bill (S.B. 350). That law, she said, changed the Secretary of State's previous practice concerning complaints about corporations that were not properly registered conducting business in Nevada. Prior to 2009, representatives of the Office of the Secretary of State, upon receipt of a complaint concerning a noncompliant business, would notify the Governor's Office whose representatives notified the Office of the Attorney General to take action. The language, she said, changed in 2009 to allow the Office of the Secretary of State to go directly to the Attorney General or to provide the local county district attorney with jurisdiction the opportunity to take the case. Additionally, Ms. Lamboley pointed out that the law provided cost recovery for the district attorneys if they were to pursue the case. In summary, Ms. Lamboley advised that the normal course of action was to work through the Secretary of State's Deputy Attorney General and pursue compliance through the Attorney General's Office but to also give the county district attorney with jurisdiction the opportunity to take the case, if they so desired, and to recover the costs.

Ms. Lamboley pointed out that the language in the regulation was consistent with law in that the Secretary of State, as soon as practicable, *may instruct the district attorney of the county in . . .* Ms. Lamboley said, however, that the terminology *instruct* was confusing and was a question for the Legislative Counsel.

Assemblyman Conklin advised Senator Settlemeyer that if he so desired Legislative Counsel would provide clarification.

Senator Settlemeyer indicated the district attorneys he had spoken with were uncomfortable with the language in the regulation. He discussed delaying adoption of the regulation until the Secretary of State could personally contact the President of the Nevada District Attorneys Association to try to resolve some of their concerns.

Assemblyman Conklin pointed out that the Secretary of State had an obligation to promulgate regulations under authority granted in NRS. It appeared, he said, that revising the language in statute was an action for consideration by the 2013 Legislature.

In response, Senator Settlemeyer advised that as a representative of Capital Senatorial District and the district attorneys in his district who opposed adoption of the regulation, he also opposed adoption of the regulation

In response to Assemblyman Conklin who asked whether any of the district attorneys in the Capital Senatorial District were in the audience, Senator Settlemeyer advised that although

they were encouraged to attend, the attorneys could not change their courtroom schedules to appear.

Assemblywoman Kirkpatrick commented that she could not recall representatives of the Nevada District Attorneys Association testifying during the legislative process nor did they testify during the public hearings on the regulation, and they were not present to testify before the Legislative Commission. Additionally, Assemblywoman Kirkpatrick commented that she had not heard from the Clark County District Attorney's office about the regulation. Assemblywoman Kirkpatrick said that representatives of the District Attorneys Association should have made it a point to attend the meeting to request delaying action on the regulation.

In response to Assemblyman Conklin's question about the district attorneys concerns, Ms. Lamboley reiterated that there were no district attorneys or representatives of the Nevada District Attorneys Association present during the regulation hearings. Additionally, Ms. Lamboley provided clarification that the regulation did not change current statute. The regulation, she said, defined the terms for the business community to understand how the Secretary of State's office would proceed on compliance matters before turning the matter over to the Office of the Attorney General or the district attorney with jurisdiction for consideration of prosecution of a violation of the statute.

Senator Settlemeyer advised that Neil Rombardo, District Attorney for Carson City had texted that he was on his way to the meeting.

Assemblyman Conklin advised that he would suspend discussion on Regulation 070-11 pending the arrival of Mr. Rombardo.

Chair Horsford subsequently returned to the discussion on Regulation 070-11 and called on Senator Settlemeyer who explained that Mr. Rombardo, the District Attorney for Carson City had quickly met with the Chief Deputy Secretary of State outside of the meeting room before leaving to attend a meeting with Mayor Crowell. The outcome of the discussion, he said, was that representatives of the District Attorneys Association would support and help draft a revision to the language in NRS 78.047 regarding the definition of instruct. Senator Settlemeyer indicated that one of the district attorneys with whom he had spoken indicated that he had enough work to do with rapists and murderers to be worried about being a debt collector. Senator Settlemeyer advised that there was agreement that the regulation would go forth in its present form but that the district attorneys would work to change the definition of instruct during the 2013 Legislative Session.

Chair Horsford indicated that if Senator Settlemeyer was in agreement with the discussion with the Carson City District Attorney, he would entertain a motion to approve the regulation.

SENATOR SETTELMEYER MOVED APPROVAL OF
REGULATION 070-11.

SENATOR DENIS SECONDED THE MOTION.

Assemblywoman Smith expressed support for the motion and for Senator Settlemeyer's concerns. She pointed out, however, that it was the job of Nevada's district attorneys to represent the state in criminal matters and to enforce the law for many different levels of crime.

Chair Horsford called for a vote on approval of the regulation previously moved by Senator Settlemeyer and seconded by Senator Denis.

THE MOTION CARRIED UNANIMOUSLY.

Chair Horsford resumed his duties as Chair and advised that the Commission would next consider R114-11 requested by Assemblywoman Smith for additional discussion.

Regulation 114-11

A REGULATION relating to educational personnel; revising the fee for the renewal of a license to include the fees for the reports on the criminal history of the applicant; providing for a delay in the expiration of a license pending receipt of the reports on the criminal history; and providing other matters properly relating thereto

Assemblywoman Smith asked for information regarding the implementation of Assembly Bill (A.B.) No 393 (2011) and Regulation 114-11 regarding licensing of educational personnel. On behalf of constituents' questions, Assemblywoman Smith asked whether licensed educators were required, upon renewal of their license, to undergo fingerprinting again or whether they could resubmit their initial set of fingerprints.

Jerry Barbee, Director, Teacher Licensing, Department of Education, responded that beginning in January 2012, educators who renewed their license were required to resubmit fingerprints. Mr. Barbee advised that the Department of Education submitted fingerprint cards to the Central Repository for Nevada Records of Criminal History and to the Federal Bureau of Investigation (FBI) for processing. He explained that while the Central Repository and the FBI returned reports of the criminal history of the licensee to the Department, they did not return fingerprint cards. Additionally after gathering the needed data, the Department was required to destroy the criminal history reports.

In response to Assemblywoman Smith who noted that the process for obtaining sheriff work cards permitted holding fingerprint cards, Mr. Barbee explained that the Department based its process on the 2008 Department of Public Safety and FBI audit that required the Department to destroy the reports after gathering needed data. He advised that the Central Repository and the FBI returned the criminal history reports after approximately four weeks, and that several years ago the process could take as long as four months.

In response to Assemblywoman Smith who asked about the issuance of a temporary license pending the return of a criminal history report, Mr. Barbee advised that the Department could issue a temporary license pending receipt of the reports of criminal history.

Assemblywoman Smith commented on the recent arrest of an educator in Clark County. The arrest, she said, revealed a previous arrest record on more serious charges. Assemblywoman Smith asked whether the current system would have identified the two previous arrests for the individual who was about five years into his teaching career.

Mr. Barbee explained that when the process of applying for an initial license began many years ago, the Department was only required to seek a background investigation at the time of the initial licensing application. Mr. Barbee advised that the new process that involved fingerprinting and background investigations for each license renewal provided the Department of Education an opportunity to revisit a licensee's records to learn of the occurrence of any criminal activity since the last renewal.

Assemblywoman Smith commented that while there had been some confusion about the legislation, prior to enactment the possibility existed that individuals convicted of a crime were teaching in the classroom. In the recent case, she said the individual, as previously indicated, had two prior arrests made public after the latest arrest. Assemblywoman Smith advised that she wanted to clarify, on the record, that without the current process, a licensee could have an arrest and conviction record that might go unnoticed in the system.

In response to Assemblywoman Smith who asked about implementation, Mr. Barbee advised that the new process outlined under the provisions of A.B. 393 was implemented on January 1, 2012. Mr. Barbee explained that the fingerprinting costs were included in the renewal fee and although additional staff time was required to process the renewals, validating licensees in the K-12 system who met all requirements was helpful.

Assemblywoman Smith asked that the Department provide a report prior to the 2013 Legislative Session on the findings of the legislation.

ASSEMBLYWOMAN SMITH MOVED APPROVAL TO ADOPT
REGULATION 114-11.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Horsford announced that the Commission would next consider R131-11 requested by Assemblyman Stewart for additional discussion.

Regulation 131-11

A REGULATION relating to educational personnel; revising the qualifications for an endorsement to serve as a school counselor; revising the qualifications for a person

who has not received an endorsement as a school counselor to serve as a school counselor; and providing other matters properly relating thereto

Assemblyman Stewart asked for information concerning the increase in the number of hours required for internship for school counselors from 280 to 600 hours.

Jerry Barbee, Director, Teacher Licensing, Department of Education, advised that during a meeting of the Commission on Professional Standards in Education, a representative of the Nevada Counseling Association requested to align the hours of internship in school counseling with the national requirement level.

Mr. Barbee advised that the Commission on Professional Standards in Education held public hearings and workshops, which elicited strong support from school counselors to increase the rigor and the validity of the counseling license in Nevada's K-12 System.

ASSEMBLYMAN STEWART MOVED APPROVAL FOR THE
ADOPTION OF REGULATION 131-11

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Hansen voted no.)

Chair Horsford announced the Commission would next consider R008-12 and asked whether a representative of the Division of Human Resource Management [Personnel], Department of Administration, was available to respond to the concerns about the permanency of the regulation raised earlier in the meeting by Ron Cuzze, President of the Nevada State Law Enforcement Officers' Association (NSLEDA).

Regulation 008-12

A REGULATION relating to state personnel; providing an expiration date for the revision of provisions governing the payment of a differential rate of pay for certain shifts; and providing other matters properly relating thereto

Shelly Blotter, Deputy Administrator, Division of Human Resource Management, advised that Sec. 2 of Regulation 008-12 provided information that the regulation would sunset, as requested by Mr. Cuzze.

In response to Chair Horsford who asked when the regulation would sunset, Ms. Blotter advised that the regulation would expire on July 7, 2013, which would take it through the pay period.

ASSEMBLYWOMAN SMITH MOVED APPROVAL FOR THE
ADOPTION OF REGULATION 008-12.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED.

- B. Approval for the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency (TRPA) and the Marlette Lake Water System (MLWS) (NRS 218E.555) to Meet Later than August 31, 2012 and an Extension of the September 1, 2012 Deadline for Requesting Bill Draft Requests – Senator John J. Lee, Chair, TRPA/MLWS Oversight Committee

Senator John Lee, representing Clark County Senatorial District No. 1, appeared before the Commission in his capacity as Chair of the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System, (Tahoe Oversight Committee) to request an extension of deadlines for committee meetings and submitting bill draft requests. At Senator Lee's request, Jennifer Ruedy, Senior Research Analyst, Research Division, Legislative Counsel Bureau, appeared at the witness table in Carson City.

Senator Lee reported that Senate Bill (S.B.) No. 271 of the 76th Session (2011) required a three-member delegation appointed from among the members of the Tahoe Oversight Committee to discuss possible changes to the Lake Tahoe Planning Compact with a delegation from the California Legislature. Nevada's three-member delegation included Senator Settlemeyer, Assemblywoman Kirkpatrick, and Assemblyman Kelly Kite.

Senator Lee explained that the delegation must submit a report of its findings to the Tahoe Oversight Committee no later than the date of the Tahoe Oversight Committee's final meeting. Although the California Legislative Leadership accommodated the request to appoint a delegation to meet with Nevada's three-member delegation, the final three members of the California delegation were not appointed until March.

Senator Lee advised that the California Legislature would be in session through August 31, 2012, and that it would be less challenging to find a date for the two delegations to meet after that time. Under the provisions of Nevada Revised Statutes (NRS) 218E.560, August 31, 2012, was also the last date that the Tahoe Oversight Committee could meet its interim requirements. Although he expressed optimism that Ms. Ruedy and her counterparts at the California Legislature would be successful in coordinating a date for the meeting, Senator Lee indicated he also wanted to provide some flexibility in scheduling the meeting after the California Legislature's final recess.

Continuing, Senator Lee advised that the establishment of deadlines for interim committees ensured the timely submission of bill draft requests to Legislative Counsel. He further advised that the Tahoe Oversight Committee had only one bill draft request for each of the past two interims and both were authorized by the issuance of General Obligation Bonds. Additionally, he said that to date during the 2011-12 interim, the Tahoe Oversight Committee held four meetings and had received no bill draft requests. Senator Lee requested an extension of the deadlines for meeting and submitting bill draft requests to October 15, 2012.

The request, he said, was discussed with both legal counsels for the Tahoe Oversight Committee.

Senator Lee also advised that the Tahoe Oversight Committee had received policy reports from Leo Drozdoff, Director, State Department of Conservation and Natural Resources. Mr. Drozdoff, he said, had been in continual communication with John Laird, Secretary of the California Natural Resources Agency (CNRA) relevant to Nevada and California working together for the Lake Tahoe Basin.

In closing, Senator Lee reiterated that the California delegation could not meet the established deadlines for the Tahoe Oversight Committee, and the Committee did not yet have a bill draft request to submit. He asked for the Commission's favorable support to extend the established deadlines to October 15, 2012.

Assemblyman Conklin expressed support for the request to allow the members of the Nevada and California delegations an opportunity to discuss possible changes to the Tahoe Regional Planning Compact.

ASSEMBLYMAN CONKLIN MOVED APPROVAL FOR THE
TAHOE OVERSIGHT COMMITTEE TO EXTEND THE
DEADLINES FOR THE COMMITTEE TO MEET AND FOR
SUBMITTING BILL DRAFT REQUESTS TO OCTOBER 15, 2012.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman McArthur was not
present for the vote.)

- C. Approval for the Legislative Commission's Subcommittee to Study the Allocation of Money Distributed from the Local Government Tax Distribution Account (A.B. 71) to Meet Later than June 30, 2012 – Michael Nakamoto, Deputy Fiscal Analyst, Legislative Counsel Bureau

Michael Nakamoto, Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, a staff member who served on the Legislative Commission's Subcommittee to Study the Allocation of Money Distributed from the Local Government Tax Distribution (CTX), identified himself for the record. Mr. Nakamoto appeared before the Commission on behalf of Assemblywoman Kirkpatrick, Chair of the CTX Subcommittee, to ask the Commission to extend the deadline for the subcommittee to meet to August 31, 2012.

Mr. Nakamoto reported that the CTX Subcommittee met on February 1, 2012, March 15, 2012, and April 30, 2012. During those meetings, he said the subcommittee received information on the history of the formula and its current mechanism and heard testimony from persons involved in the creation of the original CTX formula. Additionally, he said, the

subcommittee received written and oral testimony from local government entities, which received a portion of the CTX revenue, regarding the formula and proposed changes.

Mr. Nakamoto said that testimony from representatives of several local governments indicated that they had formed an informal working group to discuss potential changes to the CTX distribution formula for consideration by the subcommittee. Additionally, Mr. Nakamoto said that Chair Kirkpatrick wanted all 17 counties to be involved in the working group and to bring their findings to the next meeting of the subcommittee scheduled for June 18, 2012. Mr. Nakamoto said that during the June meeting, the subcommittee would consider holding additional meetings in July or August to discuss and possibly approve the working groups' recommendations.

Assemblywoman Kirkpatrick commented that the subcommittee, during their meetings, provided an in-depth history of consolidated tax distribution and worked to provide information to local governments on the distribution formula. Additionally, Assemblywoman Kirkpatrick expressed her enthusiasm for the working groups from all 17 counties to continue their discussions and to reach a consensus solution for consideration by the subcommittee.

Assemblywoman Kirkpatrick asked for the Commission's favorable consideration to extend the deadline for the subcommittee to meet to August 31, 2012.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL TO
EXTEND THE DEADLINE FOR THE CTX COMMITTEE TO MEET
TO AUGUST 31, 2012.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY

- D. Approval of Transfer of Appropriated Sums Among the Legislative Commission and Various Divisions of the Legislative Counsel Bureau – Tammy Grace, Acting Director, Legislative Counsel Bureau

Tammy Grace, Acting Director, Legislative Counsel Bureau, referenced a memorandum addressed to the members of the Commission, contained within the packet material. The memorandum outlined the request to transfer funds from year-to-year among the divisions within the Legislative Counsel Bureau authorized under the provisions of the General Appropriations Act. Ms. Grace requested the Commission's approval to transfer the funds, if necessary, at the end of the fiscal year.

Additionally, Ms. Grace requested to carry forward the unspent amount of the appropriation for the support of interim studies the Legislative Commission had authorized to meet past June 30, which included:

- Structure and Operations of the Nevada Legislature

- The New Method for Funding Public Schools
- Legislative Committee for the Review and Oversight of the Tahoe Region Planning Agency and the Marlette Lake Water System
- Allocation of Money Distributed from the Local Government Tax Distribution Account [CTX]

Ms. Grace advised that the CTX Subcommittee, as previously discussed, would possibly conduct up to three additional meetings, and approximately \$4,200 from the Legislative Commission appropriation would be transferred to support the additional meetings.

Continuing, Ms. Grace advised that:

- The Administrative Division requested approval to carry forward approximately \$213,000 to support Information Technology Services (ITS) projects, as well as fire alarm system upgrades, surveillance equipment installation, and tenant improvements in the Las Vegas office that the Division could not complete by June 30, 2012.
- The Audit Division requested approval to carry forward \$28,308.10 in the Audit Contingency Account to pay Kafoury Armstrong for ongoing Single Audit costs.
- The Research Division requested approval to carry forward \$9,000 to cover publications and subscriptions, in-state travel, and support costs for the Alzheimer's Task Force.

ASSEMBLYMAN CONKLIN MOVED APPROVAL TO TRANSFER APPROPRIATED SUMS AMONG THE VARIOUS DIVISIONS OF THE LEGISLATIVE COUNSEL BUREAU.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

- E. Approval of Request for the Committee to Study the Funding of Higher Education, Senate Bill (S. B.) 374 (2011) for an Extension of the September 1, 2012, Deadline for Requesting Bill Draft Requests – Alex Haartz, Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau

Alex Haartz, Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, and a staff member of the Committee to Study the Funding of Higher Education, appeared before the Commission on behalf of the Chair and the Committee, to request approval to extend the September 1, 2012, deadline for requesting bill draft requests.

Mr. Haartz advised that the Committee had been conducting its work and would hold its final meeting on August 29, 2012. He asked for an extension of the deadline for submission of bill draft requests for no later than 30 days until September 30, 2012.

Chair Horsford advised that staff based the request on the conclusion of the work of the consultant to allow the Committee additional time, if necessary, to submit bill draft requests for the 2013 Legislative Session.

SENATOR SCHNEIDER MOVED APPROVAL TO EXTEND THE DEADLINE FOR REQUESTING BILL DRAFT REQUESTS TO SEPTEMBER 30, 2012.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

- F. Approval to Request a Bill Draft Concerning the Legislature and the Legislative Counsel Bureau – Brenda J. Erdoes, Legislative Counsel, Legislative Counsel Bureau

Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau, advised that beginning several sessions ago, rather than requesting a number of bill drafts related to changes the Legislature and the Legislative Counsel Bureau needed, the Legislative Commission began requesting a single bill draft request (BDR) in which all of those matters could be placed.

Ms. Erdoes advised that the practice appeared to serve the Commission well. She advised that, if approved, work would begin on the generic bill draft, and the suggested changes concerning the Legislature and the Legislative Counsel Bureau would be included.

ASSEMBLYMAN CONKLIN MOVED APPROVAL TO REQUEST A SINGLE BILL DRAFT TO INCLUDE MATTERS CONCERNING THE LEGISLATURE AND THE LEGISLATIVE COUNSEL BUREAU.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

G. Approval of Recommendations for Elimination of Obsolete or Antiquated Statutes – Donald O. Williams, Research Director, Legislative Counsel Bureau

Don Williams, Research Director, Legislative Counsel Bureau, referenced a memorandum and supplemental material (Exhibit L) provided to the members concerning obsolete or antiquated statutes. Mr. Williams advised that the provisions of *Nevada Revised Statutes* (NRS) 220.085 required that the Legislative Counsel and the Research Director work together to develop recommendations for the elimination of obsolete or antiquated provisions. The statute also required for the presentation of the recommendations to the Legislative Commission before July 1 of each even-numbered year. Additionally, Mr. Williams advised that the statute provided for the Commission, as it deemed appropriate, to request a bill draft to facilitate the recommendations.

Mr. Williams reported that with the assistance of policy analysts and librarians, obsolete or antiquated statutes were identified that related to: (1) Nevada's Columbia Basin Interstate Compact Commission; (2) employment actions taken against Communist Party members; (3) certain development corporations and corporations for economic revitalization and diversification; and (4) qualifications and requirements for certain railroad train staff.

Mr. Williams advised that while both he and the Legislative Counsel recommended that the Commission consider recommending legislation to repeal all of the statutes, the Commission could choose to recommend repealing only selected statutes or none of the statutes. Additionally, Mr. Williams suggested that because NRS 220.085 provided for only one bill draft request, the Commission might want to select one of the statutes to be included in the BDR and request that the appropriate standing committee of jurisdiction request any others from the committee's BDR allotment or the individual legislator allotment provided to each of the committee chairs.

Scott Young, Managing Principal Policy Analyst, Research Division, Legislative Counsel Bureau, commented that the nonpartisan staff of the Legislative Counsel Bureau did not advocate for any particular provision but rather were responding to the requirements of NRS 220.085. Mr. Young provided the following overview of the obsolete or antiquated statutory provisions recommended for elimination:

Columbia Basin Interstate Compact Commission of the State of Nevada (NRS 538.420 through 538.570)

Mr. Young reported that the Columbia Basin Interstate Compact Commission of the State of Nevada, created in 1951, gave Nevada representation on a compact involving Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. Nevada was included in the compact process because the Owyhee River, a tributary of the Snake River, flowed through Nevada. Mr. Young said, however, the compact never functioned. He explained that

Washington and Oregon did not enact their provisions and with no function, there no longer appeared to be a reason to retain the provisions.

Actions Permitted Against Member of the Communist Party (NRS 613.360)

Mr. Young reported that NRS 613.360, approved in the 1950s, was a relic of the Cold War and related to the activities of the Communist Party and undermining freedoms in the West. The statute, he said, was dependent in part on a federal statute that created the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950. Mr. Young reported that over time, the U.S. Supreme Court or Congress had repealed all of the provisions and thus NRS 613.60 had no further force and effect.

Development Corporations (NRS Chapter 670) and Corporations for Economic Revitalization and Diversification (NRS Chapter 670A)

Mr. Young reported that Chapter 670 of NRS, enacted in 1975, and Chapter 670A, enacted in 1983, were both designed to provide certain financing and assistance to businesses to create economic prosperity and advance the economic interests of the state. Over the years, he said, those types of business models were abandoned, and the Department of Business and Industry advised of no active licenses under either chapter. The last active license, he said, closed in 2005 and it had been more than eleven years since there had been an application for license.

Mr. Young said that currently the majority of development corporations were handled either by subsidiaries of larger banks or by a new form of nonprofit community development corporation. Since Chapters 670 and 670A were no longer useful, Mr. Young advised that staff recommended they be repealed.

Railroad Train Staffing (NRS 705.240, 705.390, and 705.420)

Mr. Young reported that NRS 705.240, 705.390, and 705.420, regarding educational qualifications for train engineers, were adopted in 1911 and 1913. Mr. Young advised that representatives of the Public Utilities Commission (PUC) and the Union Pacific Railroad agreed that the statutes were no longer relevant. He explained that several provisions in NRS 705.390 related to the types of positions needed for trains. The majority of those positions, he said, were no longer needed because of the current technology.

Mr. Young commented that, as Mr. Williams had previously mentioned, if the Commission took action to repeal the statutes, the following standing committees would have jurisdiction:

- The Senate Committee on Natural Resources and the Assembly Committee on Government Affairs would have jurisdiction for the Columbia Basin Interstate Compact Commission provision
- The Senate and Assembly Committees on Commerce and Labor would have jurisdiction over the Actions Permitted Against Member of the Communist Party provision and over Development Corporations (NRS Chapter 670) and Corporations for Economic Revitalization and Diversification (NRS Chapter 670A)

- The Senate and Assembly Committees on Transportation would have jurisdiction over the Railroad Train Staffing (NRS 705.240, 705.390, and 705.420) provision

In closing, Mr. Young said he could provide suggestions about the committee assignments, if the Commission so desired, as opposed to using a BDR from the Legislative Commission.

Chair Horsford thanked Mr. Young for his presentation and indicated he would defer to Assemblyman Conklin on the possible action.

ASSEMBLYMAN CONKLIN MOVED APPROVAL TO INSTRUCT THE LEGAL DIVISION TO MAKE THE REQUEST FOR BILL DRAFTS FOR REPEAL OF THE PROVISIONS BY THE LEGISLATIVE COMMISSION FOR THE 2013 SESSION.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

H. Approval of Early-Session Hires for the 2013 Legislative Session – Tammy Grace, Acting Director

Tammy Grace, Acting Director, Legislative Counsel Bureau, reviewed a memorandum (Exhibit M) included in the packet of materials. The memorandum outlined the request for proposed early session hires for the 2013 Legislative Session. Ms. Grace advised that the Legislative Commission historically added staff in various divisions for each legislative session. The session staff, she said, served in a temporary capacity to help prepare for session and to work through and after the session to complete session-related work.

Ms. Grace advised that the Director requested approval for most session positions at the Commission's fall meeting. She said, however, some early session hires requested prior to the fall meeting, if approved, would begin work between June and November 2012 to assist in preparing for the 2013 Legislative Session.

Chair Horsford expressed his appreciation for the work involved in gaining a "jumpstart" on the process for the 2013 Session and indicated he would entertain a motion for approval.

ASSEMBLYMAN CONKLIN MOVED APPROVAL FOR THE REQUEST FOR EARLY SESSION HIRES.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

VII. INFORMATIONAL ITEMS:

Chair Horsford asked whether Commission members wanted discussion on any of the informational items.

Assemblywoman Smith asked for discussion on Item C.3, the Star Bonds report that resulted from Assembly Bill (A.B.) 376 (2011).

- A. Legislative Committee Reports
- B. Summary of Quarterly Reports on Disciplinary Action from the Licensing Boards and State Agencies
- C. Miscellaneous Reports or Correspondence from State Agencies and Others:
 - 1. Department of Business and Industry, Division of Insurance – Pursuant to NRS 686B.177 – National Council on Compensation Insurance, Inc. Revisions to Uniform Plan for Rating Experience, the Uniform Statistical Plan or the Uniform System of Classification
 - 2. Reports Required to be Submitted by District Attorneys and Public Defenders (NRS 218E.305) – Report Submitted by White Pine District Attorney – Kelly C. Brown
 - 3. Department of Taxation – Pursuant to A.B. 376 of the 76th Session (2011) NRS 271A.105 – Report on Star Bond Sales Tax Revenues and Percent of Sales to Nonresidents for the Period 7/1/11 to 12/31/11

William Chisel, Executive Director, Department of Taxation, reported that as a result of Assembly Bill (A.B.) 376 (2011), retailers and STAR [Sales Tax Anticipating Revenue] bond districts were required to provide to the Department of Taxation semi-annual reports on taxable sales, out-of-state sales, fair wages, and the numbers of full-time and part-time employees. Mr. Chisel referenced a schedule (Exhibit N) that reflected the information for the period of July 2011 through December 2011.

Assemblywoman Smith noted that on Table 1 entitled Department of Taxation's Tourism Improvement District Report, the second line entitled Number of Businesses Reporting reflected 44 to 49 businesses reported sales tax revenue. She pointed out that the businesses reporting were all within three STAR bond districts in Washoe County, two in Reno and one in Sparks. Assemblywoman Smith noted, however, that the fourth line in the table entitled Number of Businesses Reporting the Percentage of Sales to Nonresidents reflected that only 19 businesses had reported, which indicated that the majority of the businesses did not report as required in statute. Additionally, Assemblywoman Smith pointed out that the third line from the bottom of the chart that reflected the Maximum Percentage of Sales to Nonresidents was the same percentage from July through December, which she said appeared odd.

Assemblywoman Smith expressed a sense of frustration concerning the lack of responsiveness from the businesses required to report. She reminded those who had not been involved in STAR bond discussions concerning sales to nonresidents that the businesses within the STAR bond districts were required to document a preponderance of 50 percent of sales to out-of-state visitors. Assemblyman Smith advised that there was no clawback provision because the bonds had already been sold, but she said the report was a tool to learn about whether funding arrangements, such as STAR bonds were workable and whether changes were needed going forward.

Assemblywoman Smith asked Legislative Counsel to comment on whether a mechanism existed that could enforce reporting requirements.

Brenda Erdoes, Legislative Counsel, Legal Division, Legislative Counsel Bureau, identified herself for the record and advised of a provision in Chapter 193 of *Nevada Revised Statutes* (NRS) that failure to comply with a statute was a misdemeanor. Ms. Erdoes said, however, failure to report sales tax revenue under the provisions of NRS 271A.105 might not be enforceable based on the way the reporting requirements were established.

Ms. Erdoes advised that the Department of Taxation might have the authority to enforce the reporting requirements under the mechanisms currently available to them or they could address reporting requirements through the regulatory process. She said, however, there was no penalty, such as imposing fines or revoking a business license currently within statute.

Mr. Chisel advised that the representatives of the Department would increase communications with the businesses required to report and that perhaps those businesses would be more responsive in the future. Additionally, Mr. Chisel suggested that since the report, before the Commission, was the first one, more compliance might be achieved in the future

Assemblywoman Smith indicated that the Department of Taxation's report could be beneficial to others and wanted to correct any problems in the system before the economy improved in the event southern Nevada wanted to use STAR bonds as a funding mechanism for future development projects. The report, she said, was instructive in that it provided information concerning the amount of revenue, payroll, full-time and part-time employees and that the districts were not even close to the preponderance that 50 percent of purchasers were nonresidents.

Additionally, Assemblywoman Smith reported that a restriction in the legislation inadvertently stated that a business could not move from outside the STAR bond district to inside the district for **future projects**, language she indicated she wanted to change during the 2013 Session. She pointed out that one of the projects closed a large store, one of the last remaining in a redevelopment district, and moved it into a STAR bond district. Assemblywoman Smith advised that all of the sales tax would be lost from the closed

business, and the state would only receive 25 percent of sales tax after the store reopened in the STAR bond district. She indicated she would continue to review the reports and was open to suggestions of methods to improve the reporting in the future so that it would be of benefit to her colleagues in southern Nevada who might want to approve STAR bond developments.

Assemblywoman Kirkpatrick indicated she hoped that southern Nevada could avoid STAR bond developments since the area was still recouping from green buildings [projects that included environmentally sustainable elements]. She agreed on using an enforcement mechanism for reporting sales tax revenue statistics in STAR bond districts. Additionally, Assemblywoman Kirkpatrick indicated that if the businesses in the districts were doing well, they would want to share the information and suggested that perhaps the 2013 Session should consider deleting the STAR bond system from statute.

VIII. 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.)

Hearing no additional comments and no response to the request for public comment, Chair Horsford thanked the staff and the Commission members for their work and adjourned the meeting at 11:48 a.m.

Respectfully submitted,

Connie Davis, Secretary
Legislative Commission

Senator Steven Horsford, Chair
Legislative Commission

EXHIBITS**Nevada Legislative Commission****Date – May 30, 2012 – Time 9:12 a.m.**

Exhibit	Witness/Agency	Description
A		Agenda
B		Guest List
C	Barry Lovgren, Private Citizen	Letter to Nevada Statewide Maternal and Child Health Coalition
D	Barry Lovgren, Private Citizen	Letter to Richard Whitley, Acting Administrator, Division of Mental Health and Developmental Services
E	Barry Lovgren, Private Citizen	Letter to Mike Willden, Director, Department of Health and Human Services
F	Barry Lovgren, Private Citizen	Letter to Attorney General, Washoe County Sheriff, Reno Chief of Police, Bristlecone Family Resources, WestCare Nevada Community Triage Center
G	Senator David Parks	Letter to the Legislative Commission
H	Paul V. Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau	Schedule 1 – Audits in Progress
I	Paul V. Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau	Schedule 2 – Proposed Audits
J	Tammy Grace, Acting Director, Legislative Counsel Bureau	May 15, 2012 Memo regarding the Appointment of the Director of the Legislative Counsel Bureau
K	Tammy Grace, Acting Director, Legislative Counsel Bureau	Memo regarding appointment of Member to Host Committee for 2013 Annual Meeting of the Council of State Governments-West
L	Don Williams, Research Director, Legislative Counsel Bureau	Memo and supplemental material concerning obsolete or antiquated statutes

M	Tammy Grace, Acting Director, Legislative Counsel Bureau	Memo concerning early session hires
N	William Chisel, Executive Director, Department of Taxation	Report on Sales Tax Revenue Statistics for STAR Bond Districts