

## MINUTES

**DATE AND TIME:** June 14, 2018 1:00 PM

**LOCATION:** Old Assembly Chambers of the Capitol Building 101 N. Carson Street, Carson City, Nevada 89701

**VIDEO CONFERENCE LOCATION:** Grant Sawyer State Office Building 555 E. Washington Avenue, Ste. 5100 Las Vegas, Nevada 89101

### MEMBERS PRESENT:

Governor Brian Sandoval, Chairperson  
Lieutenant Governor Mark Hutchison  
Secretary of State Barbara Cegavske  
Controller Ron Knecht  
Attorney General Adam Paul Laxalt  
Trudy L. Cross, CPA, Public Member

### **1. CALL MEETING TO ORDER, ROLL CALL, REMARKS**

Governor Sandoval called the meeting to order.

**2. PUBLIC COMMENT** (No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. The committee may place reasonable restrictions on the time, place, and manner of public comments but may not restrict comments based upon viewpoint.)

Margi Grein, Executive Officer for the Nevada State Contractors Board, had some comments concerning Item 4A, Occupational and Professional Licensing Boards and Commissions, Report No. 18-05 on the Agenda. Ms. Grein gave a brief overview of the Contractors Board's history, duties, and obligations as a preface to her remarks about the Executive Branch Audit Committee's report. Unlike previous audits where individual boards were evaluated, this audit's review and recommendations were based on collective operations of all 33 occupational boards in the state. In May, the boards were provided with a draft report and as directed by NRS 353A.085, they were to keep the document confidential. Ms. Grein expressed concern that she was able to submit only an unofficial response in a preliminary manner in her capacity as Executive Officer without having the ability to consult with her board members. Because of this, Ms. Grein requested that any action from the EBAC relating to the audit report be postponed until after

the Board can take proper action pursuant to NRS 353.0851 and NRS Chapter 241. Governor Sandoval thanked Ms. Grein for her comments.

**3. FOR POSSIBLE ACTION – APPROVAL OF THE JANUARY 16, 2018 EXECUTIVE BRANCH AUDIT COMMITTEE MEETING MINUTES**

There were no changes.

Ms. Cross abstained from the vote as she was not present on January 16, 2018.

**Motion:** Move for approval of the minutes of January 16, 2018.  
**By:** Attorney General Laxalt  
**Second:** Controller Ron Knecht  
**Vote:** Motion passed unanimously

**4. INFORMATION ITEM – PRESENTATION OF THE DIVISION’S AUDIT REPORTS PURSUANT TO NRS 353A.085**

- A. Occupational and Professional Licensing Boards and Commissions, Report No. 18-05 - Mark Richards, Executive Branch Auditor; Warren Lowman, Executive Branch Audit Manager.

Mark Richards introduced himself and the representative from the Department of Administration, Director Patrick Cates. Also in attendance were representatives from 14 boards who supplied unofficial responses for the report and were available to answer questions or offer comments. Mr. Richards stated that any official responses they receive will be included in their six-month follow-up report.

Mr. Richards went on to explain that at the request of the Committee, the Division of Internal Audit (DIA) performed an audit of Nevada’s Boards and Commissions. The scope of the audit was limited to the 34 independent licensing boards that are exempt from the provisions of both the state’s budget and personnel acts under Title 54. The audit’s objective was to improve state oversight and focused primarily on compensation, legal support, and financial and administrative practices.

Mr. Richards presented four recommendations to improve oversight:

**The first recommendation is that Boards comply with statute and guidelines for salaries.**

Mr. Richards explained the auditors used two existing criteria to evaluate Board salaries. The first was NRS 281.123 which limits the salary of a person employed by the state, or any agency of the state, to 95 percent of the salary of the Office of the Governor. Four of the Boards reported executive director salaries that exceeded the statutory limit for fiscal year 2017. Mr. Richards said some Boards believe that NRS 281.123 does not apply because their practice acts authorize them to employ and compensate such personnel as they may require to perform

their duties. The auditors agreed that the Boards have that authority, but do not agree that they are not constrained by NRS 281.123.

The second of the two criteria was a guideline, issued by the Office of the Governor in 2010, that required Board salaries to be equivalent to similar positions within the state system. Twenty-two of the Boards reported that their compensation practices did not compare Board salaries to similar state positions. For executive directors, the unclassified state positions provide the most direct comparison. The auditors selected similar unclassified positions to develop a proposed range for the top executive director salary. They selected the positions from within agencies with commissions or boards having regulatory authority and that are funded primarily by fees. The proposed top salary ranged from about \$101 to \$132 thousand dollars, with the high end being the maximum salary allowable for any state agency director not requiring special certification. Mr. Richards noted the Division of Human Resource management has the expertise in evaluating similar positions and should be involved in the selection process to ensure state oversight occurs.

Mr. Richards went on to say that three of the smaller Boards reported a unique arrangement where one person served as a part-time executive director under an employment agreement for one board, and as a part-time independent contractor for the other two. The combined part-time duties approximates one full-time position. The executive director represented that there was no difference in the duties performed or level of control exercised between the three boards which may indicate that, in substance, the executive director has an employee-employer relationship with all three boards. If that were the case, then the arrangement would not be in compliance with NRS 622.220 as amended by Assembly Bill 328 which prohibits a person from being employed by more than one board as an executive director.

**The second recommendation is that Boards utilize the Office of the Attorney General, OAG, for a baseline level of legal support.**

Mr. Richards that not all Boards utilize the OAG for legal support or if utilized may not provide the OAG with continuing awareness of the Boards' adherence to transparency and due process protections. This may leave the Boards, and by extension the state, vulnerable to liability. The OAG supports Boards using a baseline level of legal support. This baseline would include attending public meetings and statutory reviews.

**The third recommendation is that Boards evaluate the cost benefit of using in-house salaried attorneys in combination with the OAG for all legal support.**

Mr. Richards informed Members that on a per hour basis, the cost of providing legal support was most cost effective when provided by in-house salaried attorneys as opposed to outside counsel provided there was sufficient demand for in-house attorney services.

**The fourth recommendation is that the Department of Administration establish standards for the financial and administrative operation of the Boards.**

Mr. Richards said Assembly Bill 328 amended NRS 622 to require the Department of Administration to adopt regulations establishing standards for the financial operation and administration of regulatory bodies. This was intended to be enabling legislation for establishing a basic set of standards for the Boards. The audit disclosed deficiencies in four areas; compensation, operating reserves, contract approval and financial reporting where the auditors suggest the Department of Administration could improve state oversight by establishing standards.

Mr. Richards went on to say some Boards exceeded statutory limits for salaries and/or did not follow guidelines for setting salaries. Twenty-eight of the Boards reported they had no formal policies for determining the adequacy of their operating reserves for fiscal year 2017 and not having a formal policy for the calculation and evaluation of operating reserves may impact the financial stability of the Boards.

Furthermore, Mr. Richards stated about 76 percent of the Boards that reported professional contracts executed between fiscal years 2014 and 2017 did not receive appropriate Board of Examiner approval. Additionally, NRS 218G.400 specifies that the Boards' audited financial statements be prepared in accordance with the principles of accounting for special revenue funds. About 30% of the Boards that filed audited financial statements between fiscal years 2014 and 2017, did not comply with statute with regard to financial statement presentation.

Mr. Richards expressed sincere appreciation to the staff of the Boards for their help and cooperation during the audit, and also the Offices of the Governor and Attorney General, Budget Division, Department of Administration and its divisions of Purchasing and Human Resource Management, Department of Business & Industry, Public Utilities Commission, Legislative Counsel Bureau, Governmental Accounting Standards Board, and the Boards' external auditors for their assistance.

Mr. Richards concluded his presentation and stated he would be pleased to answer any questions from the Committee.

Governor Sandoval thanked Mr. Richards and reminded everyone at the meeting that this is an informational item only and the Board would not be taking any action at this time.

Governor Sandoval asked, "What has been the majority objection to the audit findings from the boards and commissions?"

Mr. Lowman replied, "In general, the objections are that the statutes cited do not apply and that some Boards believe they are already in compliance."

Governor Sandoval asked, "With regard to the legal side, when they say the law doesn't apply for some of those boards, what is the authority upon which the boards or commissions rely to have that opinion?"

Mr. Lowman responded by saying, "In general, they always cite their own enabling legislation."

In response, Governor Sandoval said, "At some point, we're going to have to have a definitive answer to this, and either that comes through a legal opinion from the Attorney General's Office or some type of legislative clarification. So, would those be two avenues upon which to resolve this dispute?"

Mr. Lowman concurred.

Governor Sandoval continued by saying it all comes down to compensation and his salary is being used as the benchmark. The Governor said one of his recommendations would be to seek clarification from the Attorney General's Office and get an opinion on this once and for all. The Governor said In terms of the guideline that was issued in 2010, he would be curious as to the enforceability of that as well, and that be included as part of any request to seek an Attorney General's opinion on this matter.

Governor Sandoval went on to say, "With regard to the interaction between my office and the boards and commissions, in some instances, it's exhausting, and I think that it needs to be resolved, particularly on the issues that have been outlined in this audit, because I do feel that some of the boards and commissions feel like they're autonomous and that they don't answer to anyone. I think there needs to be some clarity going forward. We're all here for the same reason, which is to serve the people of the state of Nevada and make sure that they're getting the services that they need and that they deserve within the constituencies that you all regulate."

Governor Sandoval reiterated his frustration about having to "bang heads" with the boards and commissions, particularly when it's the Governor that makes those appointments, and added that although it would not be resolved immediately, it's an issue that needs some clarity.

Regarding the use of the OAG for a baseline level of support, the Governor reminded the audience that there's been a long history of going back and forth between the boards and commissions. Many boards have their own in-house counsel despite the ability to utilize the OAG, and the Governor supports the boards' use of the OAG services whenever possible. He stated that is also something that needs to be explored. He also supports the third recommendation

to evaluate the cost benefit of using in-house attorneys in combination with the OAG for all legal support.

The Governor continued, "It's frustrating, and all I want is for the boards and commissions to run smoothly, again, for the benefit of the people that we all serve. And when there's that dysfunction between, particularly, executive branch entities and the executive branch, it's just not good government. So, moving forward -- I really encourage you all to have more of a better spirit of cooperation, because it's not me or the office out to get anybody. It's us out to try to improve the operation of these boards and commissions, because nobody's perfect. There have been issues where I've had to step in to fix them and correct them, and it's not a place that I like to be, but when I don't get cooperation, I have to do that, because as I said, it's the constituents that I'm thinking about, not some type of power struggle of me trying to take power away from a board or commission and feeling that I'm trying to -- or the Governor's Office is trying to dilute that in any way. It's just to make sure that the people that we all serve are getting the best service possible."

Mr. Loman thanked the Governor, and added his staff is planning another boards audit. He stated that the primary issue is what is an appropriate governance structure for Nevada's independent boards. His staff will take what they have, look at what's happening in other states, look at past initiatives within Nevada, and come up with some recommendations that the next Governor may want to pursue.

Governor Sandoval indicated the only other issue he would like Mr. Lowman to address is something that Ms. Grein brought up with regard to the timing of the audit and her ability to convey the information or the conversations that she'd had with your office with her board, which is the Contractors Board.

Mr. Lowman responded that his staff did ask the boards to keep the audit results confidential based on Nevada statute and that the audit results would remain confidential until presented to the Audit Committee. All of the official and unofficial responses will be presented in the six-month follow-up report.

Governor Sandoval thanked Mr. Lowman and said if it made anyone feel any better, he, too, received the audit report only a few days ago, so the timing wasn't designed to pick on any of the boards. The executive auditors were just following the law. The Governor asked the Board Members if there were any further questions or comments.

Mr. Laxalt thanked the Governor and then stated, "I just want to make clear for Mr. Weinberger, because, you know, I think everyone probably knows that we don't just do legal opinions out of thin air. There has to be a statutory agency that will now ask us a particular set of things that they would like us to answer. So, not sure what that's going to look like, but I just want to make clear for the record that we don't now just go do a legal opinion. Someone has to ask us and be specific about what those questions are."

Governor Sandoval said, "And I'll ask. So if you (Mr. Weinberger) want to, prepare a letter for my signature. I just think it's a legal question that needs to be explored and researched and answered and to have an opinion on that moving forward. I agree with the Attorney General that somebody has to ask, and, you know, if it needs to be me, I'll do that.

Mr. Knecht thanked the Governor and had the following comments: "First, on the compensation issue, the Lieutenant Governor and I had the pleasure of being on a business roundtable last week down in Las Vegas at which I voiced the opinion from our research that state employees as a whole basically make market level compensation compared to the private sector, and they make a median level compensation compared to other states; however, within that overall characterization, the other thing I noted is that the lower level pay grades do better than the private market, and the higher level, the senior professional and executive and manager grades, don't do as well. I sympathize with all the boards and commissions to the extent that they face this problem of trying to recruit managerial, senior professional executive type people against the grade in the private market. That said, there are two really important points. The first point is the most basic of all, rule of law. If we don't follow the law, we're just wrong, period, no matter what the circumstances. The second thing is if we don't have full transparency and full observance of the law, then we're not being accountable, those are two of the most important things. So, we do have to get this reined in despite the fact that it seems to be a bit of a hardship on everybody.

Now, when it comes to legal representation and legal advice and the role of the Attorney General, let me give a testament to the operation of the AG's Office. We have relied in the Controller's Office 100% on the Attorney General's Office, and I regularly communicate with at least two Senior Deputy Attorney Generals on the full range of matters that we do, and they've done an outstanding job. The AG's Office has done a great job for everybody I know of. So, I would recommend that everybody take a look at how much you can use the Attorney General's Office and err on the side of that instead of the outside counsel alternative. And I know from my work in regulation a lot of good outside counsel. This is no knock on them, but our duty to the taxpayers and the voters and the public interest suggests we should be following the recommendation of the auditors and really embracing the use of the AG's Office.

My final point is a different and broader one since we're talking about what we're going to do going forward, and I will leave this out here, I guess, mainly for Mr. Weinberger. As you know, economists, and me in particular, are not always great fans of the current practice of state and local boards and regulatory practice. And the question is not just are you observing the law or are you going to the AG, are you looking at the pay statutes, et cetera. The larger question is, is the scope of activity and practice, to the extent, especially, that it's not ministerial, but is, in fact, discretionary, is it at the public interest level or is it too micromanaging? Is it too

detailed, too overreaching, et cetera? My question would be are we ever going to get an audit that addresses critically the scope and nature of the practice, the extent of the regulation and the necessity for some of the boards and commissions?"

Mr. Weinberger responded to the Controller saying, "That's a possibility. I think you'll see a lot more detail in our second audit. We're going to look at the governance set up with other states. What we're really looking for, we're looking for efficiencies, number one. There's a lot of small boards out there that could probably use a central fiscal staff. We're looking for increased oversight to address some of the issues the Governor had mentioned. That's step number two, but obviously, there's other things we can look at in the future."

Mr. Knecht replied, "And that's good for the nuts and bolts aspect, and I'm glad to hear that answer, and I strongly support you. I'll just say as someone who spent, literally, 40 years both in public employment in regulation and outside as a consultant and small businessman participating in regulation, the real problem that we never really take by the horns is the fact that so many boards and commissions, so many regulatory agencies basically exist to promote the interests of the industry that they oversee and that they don't do as good a job. I say "exist," that's in fact, what they end up doing, and they don't do as good a job with regulation in the public interest. It's called "capture theory", and I think that's the next step that we need to address at some point. Are they using public interest standards or are they too protective of the industry that they're overseeing? "

Governor Sandoval thanked Mr. Knecht and asked the Lieutenant Governor if he had any comments.

Lieutenant Governor Hutchinson did have the following comments: "Just following up on the Controller's suggestion about an audit on what commissions or boards are necessary or how efficient they are, I know that the legislature has taken a look at this and has actually created sunset committees. So, Mr. Lowman and Mr. Richards, you may want to consider coordinating with the legislature since the legislature actually created many of these entities. Let me just jump into a couple of questions I have. Just as an initial matter, I was really taken back when I first got involved in the executive branch in terms of just how many boards and commissions there are and how many appointments there are to those boards and commissions. Does anybody have that information in terms of just how many appointments there are to these boards and positions? I understand it's in the thousands."

Governor Sandoval agreed and said his office could get that information. He also agreed that there is a sunset committee that is systematically reviewing all the boards and commissions and making recommendations, and that's probably the proper venue for that.

Lieutenant Governor Hutchinson responded by saying, "Thank you, Governor. I know you spent a lot of time making those appointments, and it just underscores the importance of the boards and commissions. A lot of government gets done through these boards and commissions. And I'm a little surprised to learn about the pushback in terms of who's the boss and who gets to decide what these boards and commissions ought to be doing or not doing. So, let me just follow up on a couple of points there. I heard your comments about what the response was to NRS 281.123 of some of the boards and commissions, that our enabling legislation trumps NRS 281.123. I understand that legal question. My question is has there been any reaction or response or pushback to the executive memorandum in terms of whether that applies or doesn't apply to these boards and commissions?"

Mr. Lowman said, "The response to the question about the 2010 memorandum was in large part that most of the boards were not aware of the memorandum, and of those that were aware, there wasn't a great deal of enthusiasm to the details within it, although all of the boards indicated they were trying to keep salaries commensurate with state positions, trying to do their due diligence, that sort of thing."

Lieutenant Governor Hutchinson responded to Mr. Lowman by saying, "As the Governor said, these are legal questions. I would be a little surprised if the executive branch issues a memorandum to the boards and commissions appointed by the executive branch that somehow doesn't apply to the executive branch agencies or commissions, but I guess we'll wait for the Attorney General's opinion on that and see what we get back in that regard. Your report, the audit, mentions that there really was not a difference in duties among three boards that you gave an example of, one executive director serving as an employee and then as an independent contractor with the other ones. And your query was, well, that may make that executive director actually an employee and not an independent contractor. And as you probably know, there's a full, you know, body of law that evaluates whether individuals are employees versus independent contractors. Was that within the scope of your audit to make a determination on that question?"

Mr. Lowman answered, "We did not, within the audit, review the full -- particularly, the federal guidelines. We did look at the state guidelines. We did look at the state contract and the contracting rules and the indication of by the contractor of whether or not they met the requirements that would, in effect, make them a contractor versus an employee."

Lieutenant Governor Hutchison then asked, "Did you reach a conclusion after applying those factors or analyzing that question?"

Mr. Lowman responded, "We concluded, based on our assessment of the documentation that we saw, the contracts themselves, the scope of work for the particular boards, et cetera, that in fact, the executive director was performing the

same function for all three boards, which is why we noted in the audit this may be a violation of the statute.”

Lieutenant Governor Hutchison thanked Mr. Lowman and then had some comments about the legal support framework part of the audit: “I remember when I served on the Nevada Commission on Ethics and when I chaired that Commission, that the Commission itself was charged to its budget an allocation for the Attorney General legal services that were provided, or Deputy Attorney General, who by the way was excellent. And it's been my experience that the Attorney General's Office provides excellent legal counsel and representation, but I'm wondering if that is part of your audit. Is that still the fact that commissions and boards are charged and allocated a percentage of their Deputy Attorney General's time? And it wasn't based on the number of hours or the counsel that was provided to the board or commission. It was just based on the fact that a Deputy Attorney General was assigned to that particular board or commission. And so even if you didn't regularly, consult or ever consult with the Attorney General's Office, you still were charged as a commission or a board for a percentage of the Attorney General's -- the Deputy Attorney General's salary. Is that still in effect, do you know?”

Mr. Lowman answered, “The data that we used was from what the boards reported to us on their actual expenditures for legal support. It wasn't in the SWCAP or cost allocation or anything like that. These were numbers that they reported to us that they had actually spent to use the various legal support mechanisms there.”

Lieutenant Governor Hutchison clarified, “Okay, so, the audit was not based on the allocation within their budget for a Deputy Attorney General. It was actually based on their reports in terms of number of hours that they actually consulted with or used the services of the Deputy Attorney General.”

Mr. Lowman affirmed that was correct.

Lieutenant Governor Hutchison thanked Mr. Lowman and went on to say, “I'll just note -- follow-up to what others have said and what I just said in terms of hiring outside counsel. As we all know, that can be very expensive, and it just seems to me that the best practice is, and I know that we're trying to do this, but the best practice is that unless there is some, you know, specialty out there or some real need for expertise that is not present in the Attorney General's Office, I don't know why commissions or boards wouldn't be using those Deputy Attorney -- those Deputy Attorney Generals for those legal services. And finally, let me just ask you this question in terms of establishing the standards for financial administrative operations. You've listed four different areas of concern and where perhaps there could be some improvement with standards for the fiscal operations and administration of regulatory bodies. Among those four areas, which are most concerning to you in terms of the greatest impact on the state of Nevada?”

Mr. Lowman responded, "They're all very important. Are they following the statute, that's extremely important, but from our review, what's equally important is looking at operating reserves and looking at the total number of fees that these boards are collecting, because there may be an opportunity to really look at fee structures, and in many cases, perhaps lower fees to Nevadans who are paying them to these boards."

Lieutenant Governor Hutchison thanked Mr. Lowman for the thorough report and audit, and indicated that his questions and comments were completed. Governor Sandoval asked if there were any more questions/comments and Ms. Cross had some.

Ms. Cross said, "I'm looking at Exhibit 12 on page 26 of the report, just had a couple quick questions. Where you list the executive directors' salaries and rates, are these directors PERS compensable?"

Mr. Richards replied that some of the boards are under PERS, but some are not. He described the complexities of the process: "What we were faced with when we first asked for compensation levels, we got the actual dollars that were paid or the reported salaries for all the boards, and we found that because some were PERS, some weren't, some were PERS with an employer-employee rate, some were PERS with an employer rate, we had to come to a common table level to evaluate all the boards. And on top of that, some of the executive directors are part-time. So, what we did is we converted everybody's salary based on reported hours worked to a PERS employer-employee hourly rate and then applied that hourly rate to a 2088-hour work year to come up with the salaries."

Ms. Cross responded, "Maybe that's an issue for your second part of your audit, the consistency, because I would think if you're under PERS, that would tend to support the argument that you're under state law for compensation and not being exempt from statute, but that's just my thought. Under number of licenses on that same schedule, can you tell me, are those all active licenses or are some of those inactive, because I know there's several boards that have inactive members which require no work at all. "

Mr. Richards said, "I know some of the boards have included inactive licenses in their license numbers on here, and what we used was the licenses that were reported to the LCB under their statutory requirement that they have to report quarterly, and we do not know exactly on all the boards whether or not those include only active licenses or active and inactive licenses."

Ms. Cross said, "I think some boards might use that to bolster their reasoning for their duties and compensation, but if in fact they're inactive, that's really not a fair comparison for an active license. Lastly, on pay for board members, is that consistent throughout all the boards and commissions or do boards set their own pay for their board members?"

Mr. Richards responded, "All the boards set their own pay scales for all their staff, and they do that according to their individual practice acts. They are not subject to the Personnel Act as far as complying with the unclassified or classified positions, and I believe the rationale for that is because they're funded by fees. They have no opportunity to draw state funds, and they have no opportunity to borrow. It will give them the flexibility to manage their payroll in times of downturns where they aren't stuck with having to maintain the classifications of an employee, but our understanding is all the boards have the ability under their practice acts to compensate higher personnel as they see fit."

Mr. Richards stated that board member's statutes are set in statute.

Ms. Cross thanked Mr. Richards and said she appreciated his thorough answers and indicated her questions were concluded.

Governor Sandoval asked if there were further questions/comments and Attorney General Laxalt indicated he did.

Attorney General Laxalt said, "I just wanted to follow-up on your comment regarding an opportunity for lower fees. Part of your second review, will you explain whether that will be part of the analysis of whether the differences in the boards would be resulting in, you know, why discrepancies in fee, both collection and then the output?"

Mr. Weinberger responded, "Probably indirectly. I think what we want to do is actually set up some type of governance where that type of information can be analyzed for that reason, to see, based on reserves, whether or not that warrants any modification to the fees. But as far as us going into a specific board or commission and saying, I think you can lower your fees, I don't anticipate that with our next audit."

Attorney General Laxalt replied, "I guess I mean whether the differences in the structures or organizational rules are causing a discrepancy difference in fees. Is that something that is more specific and more doable?"

Mr. Lowman responded, "Yes. What we want to look at in the second audit, other than the governance structure, is to look at sort of the enforcement aspect, and again, the fees are to generate revenues to allow the regulation of these industries. So, what are the -- what are the factors that are causing the amount of regulation that's taking place, the amount of enforcement? How does one enforcement strategy compare to another, and are there some anomalies out there that we could then look at deeper? But in a broader sense, that would be included."

Attorney General Laxalt thanked Mr. Weinberger and Mr. Richards and indicated he had no more questions.

Governor Sandoval asked if there were further questions/comments and Secretary of State Cegavske indicated she did.

Secretary of State Cegavske thanked the Governor for his diligent work dealing with “troublesome issues” surrounding boards and commissions. She commended and thanked the audit team for their professionalism and effort. She went on to say, “What I'm looking at this is that this would be very beneficial to have the opinions so that we will be able to make sure that everybody is following the law and that they're bringing this out and that they're all going to be able to participate in a much better fashion knowing what the NRS states and what it doesn't. And I have to echo with what the Controller said about the AG's Office. We've talked to them on a regular basis. I don't know what we'd do without, you know, the members of his staff that we talk to on a daily basis with issues, you know, different issues. So, I can't imagine how much it's costing them if they have outside counsel. That's interesting. My question to you would be with boards, are they paying a certain amount -- are all of them paying a certain amount to a private individual that is like what it would cost us as individuals if we went out and hired an attorney with an hourly rate, whatever the hourly rate would be? Are you seeing that, that these attorneys are charging what they would charge somebody else or are they given any compensation for the fact that they're a government entity, that type of thing? How they are justifying the payment and then how that payment is made?”

Mr. Lowman replied, “ In the audit itself, we have an Exhibit 6 that breaks out, perhaps in some very difficult to read detail, the hourly rates and what folks are paying for in-house counsel, in-house contractors, if you will, the Office of the Attorney General. And then for outside counsel, we've made some comparisons about the expense in relation to each other.”

Secretary of State Cegavske thanked Mr. Lowman and said she appreciated everybody's due diligence and the comments that had been stated.

Governor Sandoval asked if there were further questions/comments and Controller Knecht indicated he did.

Controller Knecht asked the following, “You discuss operating reserves, and you say 28 of the boards reported they had no formal policies in place for determining the adequacy of their operating reserves. Did you review statute to see if there is any such requirement section that you can cite in the statute or did you review things like GASB and other professional standards? And to the extent that there's not yet enough of a legal requirement, where and how should we address that? Should we go to the legislature with a bill draft request or what?”

Mr. Richards responded, “We did look at whatever published data that we could find about the establishment monitoring and evaluation of operating reserves. As far as Governmental Accounting Standards Board, there isn't a lot out there. Mostly, it was found in the not-for-profit sector. There was a white paper issued.

There was a handbook on how to do it. There was quite a bit of literature about that. As far as statute or anything like that, we found nothing, and one of our suggestions is with the enabling legislation of AB 328, that could be then codified on how that is to take place, the same with the compensation and other things that the boards had some inconsistencies in.”

Controller Knecht asked, “Mr. Richards, would you have an opinion off the top of your head what venue should be used for providing standards and oversight of the operating reserves? Any state agency that you can think of that would be a good place to do that?”

Mr. Weinberger responded, “We don't want to say anything like that off the top of our heads. We're going to do a lot of research, and we're hoping this will be codified in the regulations that were part of an assembly bill, but we're definitely willing to work closely with Director Cates and do whatever research it takes and hopefully come up with a solution. The problem is there's so many variables when it comes to reserves. A lot of it depends on when you receive your money. Some people receive annual fees. Some places receive a monthly. I believe even one or two were biannually; is that correct? So, there's a lot to it, so we're going to have to do some serious research.”

Controller Knecht responded that his office has expertise in that area of knowledge and specialization, so if needed in the future, the Controller's Office would be available for advice and/or consultation.

Governor Sandoval asked if there were further questions/comments and there were none. The Governor then shared his thoughts about everyone working together for the people of Nevada and he said, “...these auditors are good people. They are just like all of you. They are public servants. They haven't been charged with attacking the boards and commissions. Their jobs are to find operational and financial efficiencies within state government, and so they're doing their jobs. I mean, they're not picking on anybody, and in fact, if you're going to be mad, be mad at the Board -- or this Committee. Don't be mad at them. As I said, you know, I've had the benefit of working with them for seven-and-a-half years now and a few years before that, and I really admire and respect the jobs that they do. This should not be an adversarial forum, and as I read through the letters that I have in front of me, the tone that I get is that it is an adversarial relationship. And then I -- as I go through here and I see words; “we reject”; “we disagree”; “it's not legal”, some pretty strong language. And, you know, I also wonder -- the identical disclaimer is used in four different letters that are authored by four different people? It just creates, you know, again, a little bit of question in my mind in terms of -- it creates an atmosphere, I think, of boards and commission circling the wagons, and as I said, creating an adversarial relationship when it should not be that. And so when you work with these auditors -- and I said there's a note of defiance in some of these letters.

There's a note of a hint that they gave you the information at the last minute so that you couldn't present it to your boards and commissions. You know, that's why I asked that question, because it was done, you know, on their schedule and not in a way to keep it from your boards and commissions and the members that are on there. I get that there's going to be respectful disagreement, and that's part of the nature of government, but at the same time, as I said, having spent the time with each one of these letters, it just is disappointing. I'm not trying to act like your dad, but we're here to work together, and, you know, it just reinforces what I said before, is that some of the boards and commissions feel like they're autonomous and they don't have to respond. And at the end of the day, that is not a good thing.

I'm not questioning today the amount of the salaries and things that we earned. I think that's purely a legal question, and the issues associated with using outside counsel, I think that's something that's been done for decades with some boards and commissions, and a balance between the two works well. I'm not bringing up the question, because I do feel that that's more of a legislative issue associated with sunset commission, and all of you have probably been through that process, because I know that the legislature has systematically gone through that, and you've been before them for that, but I'm just asking you respectfully, as we move forward, because this isn't going to go away today. There's going to be another bite at the apple for all of you.

But the point being is this, is I've been privileged to be in public service a long time, and I know and respect a lot of people in this room who I see and have worked with over the years. And if there's any lesson I've learned, the outcome is not a good one when we're not working together, and the public deserves and expects better. And so, as I said, there's a legal question here on the compensation piece. Frankly, I could -- I'm going to be a little gentler. I mean, I don't have a problem as long as it's legal. You know what, people should get paid what they're worth, but there's a question here whether you're within your statutory authority. It's not questioning whether you're worth it. It's questioning whether you can actually do it. So, those are the issues. So, as I said, as you move forward, let's work together and not have this adversarial tone, and when Mr. Weinberger or Mr. Richards or Mr. Lowman calls you, call them back or work with them and talk to them. And maybe that's happening. I don't want to assume anything, but as I said, as I see the tone in these letters, but as I said, I see a disclaimer that's identical to the ones that are being used across a few boards and commissions, it really makes me wonder. So, in any event, that's all I have. Mr. Controller, I just want to move on."

Mr. Knecht asked if he could add one last thing. He echoed the Governor's words about the virtues of the audit staff and their helpfulness and professionalism. He told the audience that it was in their best interest to "embrace it, not resist it."

Governor Sandoval asked if there were further questions/comments and there were none. Agenda Item 4B was up next.

- B. Department of Corrections, Report No. 18-06 – Inmate Off-site Medical Expenses, Ashwini Prasad, Executive Branch Auditor; Warren Lowman, Executive Branch Audit Manager.

Ms. Prasad introduced himself and the representatives of the Department of Corrections. Representing the Department at the meeting was Director James Dzurenda, Deputy Director John Borrowman, and Medical Administrator Robin Hager. Ms. Prasad explained that the audit objective was to evaluate if NDOC could improve management of inmate off-site medical care. Ms. Prasad detailed three recommendations that could help lower inmate medical costs and benefit the state by reduced Medicaid contributions.

**The first recommendation is that NDOC review and reconcile billings and payments for off-site medical services for inmates.**

Ms. Prasad stated that NDOC's third party administrator, or TPA, processes and pays medical billings, but does not review or reconcile billings to what was authorized by NDOC's utilization review, UR Committee, or review for appropriate services rendered. NDOC does not review billing information because they rely on the TPA to ensure billings are correct; however, NDOC's UR Committee should review and reconcile billings to ensure medical services paid for match medical services rendered and were appropriate for what they authorized for treatment.

**The second recommendation is that NDOC perform targeted case management for inmate's off-site medical care.**

Ms. Prasad shared that neither NDOC nor its TPA perform targeted case management for inmates in hospitals to ensure appropriate care is at the lowest cost option. Targeted case management includes establishing advanced treatment protocols, proactive treatment consultations, post admittance care, and discharge planning. Currently, NDOC's Director of Nursing Services receives daily clinical reports and calls hospitals for updates on inmates in the hospital to coordinate the inmate's discharge. NDOC does not have established protocols with hospitals for managing inmate care to ensure they use the least cost options for treatments or that observation status for inmates are appropriately managed.

Ms. Prasad went on to say that Oregon's Department of Corrections implemented targeted case management for inmate medical care and was able to save 20% on in-patient hospital costs over a two year period by reducing observation days, length of stay, and increased consultation on treatment options and other medical decisions for inmates in hospitals to ensure lowest cost options were being used. She said NDOC's current structure to accomplish targeted case management is largely in place. Proactive targeted case management similar to Oregon may require an additional senior nurse at the cost of approximately \$150,000 a year; however, NDOC could offset this cost by performing targeted case management which would reduce the state's Medicaid contribution, total Medicaid payments,

and NDOC's in-patient hospital costs annually. NDOC would have to achieve marginal savings for its outpatient costs to cover the cost of an additional senior nurse.

The additional senior nurse would be able to manage the UR Committee review and reconciliation process and provide visibility and continuity for managing inmate care through the entire process as inmates receive authorization for off-site care, receive off-site treatment, and return to NDOC facilities for post admittance care and recovery. The senior nurse would also free time for NDOC's Director of Nursing Services and other staff who currently work inmate hospital issues part-time to focus on normal job priorities elsewhere.

**The third recommendation is that NDOC ensure in-network providers are used for off-site medical services to the fullest extent possible to benefit from negotiated provider rates and to define medical service requirements expected from a network provider.**

Ms. Prasad stated that NDOC's current preferred provider organizations, or PPOs, do not meet all medical treatment requirements. Some off-site medical services are provided by out-of-network doctors because in-network doctors are not available, not part of the provider agreement, or not willing to treat inmates.

One example in the South is NDOC consistently uses one out-of-network urologist who is willing to service inmates on-site at rural correctional facilities, but when inmates require off-site urology treatment, NDOC chooses to use this out-of-network provider. NDOC paid approximately the same rate for the out of network urologist in the South as the in-network urologist in the North, although in general, rates in the South are a third of rates in the North. Urology services are available in the South, but NDOC has not ensured in-network providers are used for off-site urology services and is missing a potential opportunity to lower costs for urology services for inmates in the South.

Another example is an air ambulance provider who provided a majority of air ambulance services in 2017. A letter of agreement with this provider included a discounted rate, but was not paid timely for a flight that occurred in 2014, and consequently, the provider did not honor the discounted rate for two flights in 2017. The vendor was paid at full price, costing NDOC an additional \$26,000. The PPO recently entered into a new air ambulance contract with this provider servicing the Ely and Lovelock facilities, but the remaining NDOC facilities are not covered by a PPO-contracted air ambulance service. Ms. Prasad closed her presentation saying she and her staff appreciate the Department of Corrections' assistance throughout the audit and she thanked them for their time and consideration.

Governor Sandoval asked Ms. Prasad if she felt good about the audit and the Department's reaction and response and Ms. Prasad confirmed she did.

Governor Sandoval thanked Ms. Prasad and asked if Mr. Borrowman or Director Dzurenda had any comments. Director Dzurenda did.

Director Dzurenda thanked the auditors for their thorough and professional job both internally with corrections as well as external stakeholders, the hospitals and caretakers. Director Dzurenda went on to say, "This has been a concern of mine since I've gotten here. We have noticed that there's been a trend over the years of an increasing of medical costs in hospital overnight stays, and not sure where that's coming from.

We first looked at the aging population, which is not happening. Our aging population still is consistent from now from before. We are looking at are we getting a sicker population, which was a concern, is that happening with us with getting the offenders in with improper treatment from the counties or can we do something better? Was it our medical pay? Was it who we're providing? All this was great opportunity for us to learn. It was great education for me. I enjoyed actually listening to their talks when we met, just to learn about what's happening out in the community with Medicaid and services that we can be looking at, and it was a great opportunity, and I think we got what we were looking for. And the recommendations they made, I'm in concurrence with them, and I'm looking forward to how we start the process to comply with those recommendations."

Governor Sandoval thanked Director Dzurenda and asked if there were any questions or comments from the Commission Members. Lieutenant Governor Hutchison did.

Lieutenant Governor Hutchison had some follow-up questions. He said, "On the third point of ensuring in-network providers are used for off-site medical services. I noted and heard not only in your report, but also as stated in the audit, that there is some challenge with using in-network providers for a variety of reasons, including the lack of availability or what services we were asking these providers to perform. We're not part of the provider agreement, or in some cases, these providers were unwilling to perform treatment for inmates. My question is, is there a mechanism for ensuring that when we contract with these in-provider -- these in-network providers, that these challenges are remedied? I mean, for example, the easy one is that they're willing to treat inmates when we're at the contracting stage with these providers."

Mr. Borrowman, Deputy Director of Support Services for the Department of Corrections, responded, "I appreciate the question. I would point out that the network that we use is not established exclusively for the Department of Corrections. This is a network system that is available for the public to use, contract either through other insurance providers, including even PEBC, the Public Employees Benefit Program. So, multiple insurance organizations use these networks, and therefore, the providers that belong to these networks can provide services to those members.

Our population is different than PEBP, which is different than the society in general, and therefore, even though they are belonging to a network intending to provide services to a certain population, there is no statutory requirement that they would be forced to provide services to everyone that subscribes to their network. We have no leverage, whether statutory or otherwise, to force a provider to see an inmate. What we do intend on doing is when we release the next RFP, is to try and emphasize that not only is having a large number of providers in the network important, but also focus on, and oh, by the way, your providers, how many of those are willing to see our population, because having a large number of providers that won't provide us service does us no good, and so we'll make sure that that's clarified in the next RFP release."

Lieutenant Governor Hutchison responded, "The RFP process may be the way to get at this, and we'll leave for a larger discussion how the State of Nevada, which has tremendous opportunities to influence negotiations through providers contracting with the state, and with the large population that we represent as the State of Nevada as a whole, maybe not the individual agencies, like the Department of Corrections, but certainly as a whole could maybe better leverage our overall position as a state. It makes a lot of sense to do it in that manner. We ought to have, as a very basic requirement that these folks be willing to provide services for the inmates who need them so we don't have to keep going outside of the network provider system."

Lieutenant Governor Hutchison had one more question, "And then my last question just has to do with the notation that we have contracted for ambulance services, which looks like it's getting close to a million dollars, for fiscal year 2017. There's been a new contract that serves Ely and Lovelock, but the other NDOC facilities aren't covered by the PPO contractor with the air ambulance service. Why is that? Why can't we get coverage for all the facilities?"

Ms. Hager, Medical Administrator with the Department of Corrections, responded to the Lieutenant Governor, "That currently is the only contracted vendor with any of the networks. Historically and typically, air ambulance providers do not contract with networks, because in reality, they don't have to. So, when you call 911, they're going to come whether they're through a network or not."

Lieutenant Governor Hutchison responded, "So, this is unusual, then, to actually even have a contract, then, within the PPO for any facilities. So, we're lucky to get these facilities is what you're saying?"

Mr. Hager confirmed that that indeed that was the case.

Lieutenant Governor Hutchison thanked Mr. Hager and indicated he had no more questions.

Governor Sandoval asked if there were further questions/comments and there were none. Agenda Item 4C was up next.

C. Department of Taxation, Report No. 18-07 – County Distributions, Catherine Brekken; Warren Lowman, Executive Branch Audit Manager.

Catherine Brekken introduced herself and the representatives from the Department of Taxation. Representatives were Director Bill Anderson, Deputy Director Sumiko Maser, and Chief Deputy Executive Director Shellie Hughes.

Ms. Brekken gave the following overview: “At the request of the committee, we performed an audit on the Department of Taxation. Our audit focused on one objective, to determine -- to ensure the Department distributes local school support tax, LSST, and basic city county relief tax, BCCRT, in accordance with state laws. We made one recommendation for the department to collaborate with the Attorney General’s Office to interpret LSST and BCCRT statutes to ensure distributions are in accordance with state laws.

Statutes require the Department to determine the amount of LSST and BCCRT collected in each county for distribution every month. The wording, ‘collected in the county’ is interpreted in multiple ways. For LSST, it is interpreted to mean the county where the business is located. For BCCRT, it is interpreted to mean where the sale is made or where the taxpayer takes delivery. Additionally, statute states LSST should be parallel in all respects to sales and use taxes, and BCCRT should be substantially identical to LSST.

The current distribution of LSST does not parallel other sales and use taxes which get distributed to the county where the taxpayer takes delivery. The current distribution of BCCRT parallels other sales and use taxes, but is not identical to LSST. Our sample revealed a change in interpretation would affect the amount of distributions; however, the sample may not be representative of the overall impact due to a change in interpretation. We'd like to thank the Department for their time and input throughout the audit.” She then asked if there were any questions.

Governor Sandoval thanked Ms. Brekken and asked this question, “With regard to the conclusion and how that's stated. It says collaborating with the AG, Attorney General, to interpret LSST and BCCRT statutes will ensure proper distributions to school districts and counties. Does that imply that what's being done now is improper?”

Ms. Brekken answered that it was unclear based on the documentation reviewed in the statutes.

Governor Sandoval then said, “And that's my point, because at least for me, that would suggest that it's not being done correctly now, which would open up a

massive can of worms. That's not a legal term, but any event, I don't know if that's the proper way to state the conclusion, because the Department has been doing it, at least for my review, this consistently for the past 20 years. And as is said in the report, if it were being done improperly, that would mean some counties have gotten too much and some counties have not gotten enough, and as I said, could lead to litigation and all those types of things.

So, I don't know if "we'll ensure proper", if "proper" is the right way to describe that. So, you know, I don't want to wordsmith this as we sit here, but if there is a different way to phrase that, I don't want to create potential litigation moving forward on this, because there's been an extensive amount of litigation with the Department of Taxation on other issues and distributions."

Mr. Lowman responded to the Governor, "We accept that recommendation to us, and we'll adjust the language to make sure it clearly states what our intent was."

Director Anderson, Executive Director of the Department of Taxation, thanked his auditor colleagues and went on to say, "The Department is confident that the manner in which we have been distributing both LSST and BCCRT over the course of the past decades is consistent with intent, but with that said, we understand that a reading of the statutes is subject to interpretation. So, we look forward to satisfying the one recommendation in the audit that we collaborate through the appropriate channels with the Attorney General's Office and take a look at this."

Governor Sandoval thanked Director Anderson and asked if there were further questions or comments. Ms. Cross had some.

Ms. Cross said, "I just want to compliment you for doing this audit, because long ago when I worked at the city of Reno, we really had no idea whether this was being done correctly or not, and I was asked to go do an audit at the Department of Taxation, and I didn't know how that would happen. So, I'm glad somebody has looked at this, because these were questions that were off and on our minds at the city when I was there. So, thank you for doing that."

Governor Sandoval thanked Ms. Cross and asked if there were any other comments or questions. There were none. On to Agenda Item 4D.

D. Department of Administration Report No.18-08 – Division of Enterprise Information Technology Services, Lori Hoover, Executive Branch Auditor; Warren Lowman, Executive Branch Audit Manager.

Ms. Hoover introduced herself and her colleagues, State CIO Michael Dietrich, and Director Patrick Cates from the Department of Administration. She then gave this brief overview: "At the request of the Committee, we performed our second audit

of Enterprise IT Services, known as EITS, to focus on IT governance. We have six recommendations to improve IT governance within the state.”

**The first recommendation is that EITS collaborates with agencies to complete a five-year cost benefit analysis to consolidate data centers into the Switch data center facilities to ascertain potential consolidation efficiencies and effectiveness.**

Ms. Hoover indicated that this will ensure agencies, including EITS, are determining the best use and least cost options to the state. She went on to give specifics, “Consolidating only the EITS data center could result in a net savings to the state of up to \$27 million over a five-year period. Consolidating data centers for efficiencies including cost avoidance, increased reliability, redundancy, and connectivity for data access. For example, consolidating data centers into Switch will help the state avoid the cost of replacing a 40-year-old Carson City data center at an estimate of \$19.5 million. Increasing redundancy and connectivity may help eliminate single points of failure, such as power, network connectivity, and fire detection. Planning, implementation, and execution of disaster recovery solutions may be easier and quicker because the necessary networking equipment is in one place, easing replication and failover initiation. Cyber security may also be improved through consolidation. With fewer data centers, servers, and storage to manage, physical security becomes easier, less costly, and requires fewer resources.”

**The second recommendation is requiring all agency IT teams to use the same networking software as EITS.**

Ms. Hoover stated that implementing this recommendation would enhance inter-agency operations and allow EITS and agencies' IT teams to assist each other more quickly and effectively when network issues arise. Buying power could be leveraged and training time could be reduced if EITS and the agencies used the same networking software.

**The third recommendation is establishing state policies and standards for IT procurement.**

Ms. Hoover pointed out this would help ensure agencies' purchases comply with security requirements, leveraged buying power, and reduced software and hardware training for employees. She said, “Policies would define the high-level goals and objectives. Standards would define specifications for items, such as desktops and laptops to ensure they are capable of running the standard state software, including computer operating systems, productivity suites, and anti-virus applications. EITS is not notified of agencies' IT projects costing less than \$50,000. Due to this threshold, EITS might not be aware of all software and hardware purchases made by the agencies. In addition, agencies might not be aware of IT security requirements when purchasing or upgrading software and hardware.”

**The fourth recommendation is creating a statewide IT project management certification program to assist agencies implementing IT projects.**

Ms. Hoover stated, providing a program for agencies could help control costs and improve project results. Project management helps ensure risks are defined and issues mitigated before they occur. In addition, improved communication and managed expectations from customers, team members, and stakeholders increase with project management. Agencies lack experienced project management staff to provide oversight for IT projects. Professional training would offer agencies beneficial project management knowledge. In-state training would be more cost effective and has the added benefit of customizing topics for project requirements specific to the state.

**The fifth recommendation is that EITS develop guidelines to assist agencies in building strategic IT plans and to comply with statute.**

Ms. Hoover spelled out that Statute requires EITS to develop guidelines for the state's agencies' short and long-term IT plans. This will help ensure EITS is aware of agencies' IT plans and plans are consistent with the direction of state technology.

**The sixth recommendation is that the Information Technology Advisory Board, or ITAB, meets every three months.**

Ms. Hoover stated that Statute requires ITAB to meet every three months to provide high-level oversight for EITS. ITAB helps ensure the state's strategic IT plan is consistent with evolving technology, the Governor's goals and strategies, and available resources.

Ms. Hoover concluded her presentation and thanked Enterprise IT Services for their time and input through the audit. She said she and her colleagues would be happy to answer any questions from the Committee.

Controller Knecht asked, "Did you consider these six recommendations in the context of the Smart21 project that finance and administration in the Controller's Office are leading, working with all other agencies to unify and replace the whole state enterprise resource management IT system?"

Ms. Hoover responded, "Yes, we did. That's a start in the direction that we see the state should be going and that Enterprise IT Services could continue that with other areas that -- other software that other agencies are using."

Mr. Cates, Director of Administration, said, "I want to thank the audit team. They were great to work with. I know this was maybe one of the more challenging audits they had to work on. You know, as regards to Switch, when we started this process, I tried to steer them away from doing a cost analysis to show that it would save money, because I wasn't sure that it would. Our interest in going to Switch was more about having a state-of-the-art facility that the state could never afford to buy themselves, and I was very pleased with the analysis that they did and the thought they put into it. And it surprised me, the results of the cost benefit of

making that move. We wholeheartedly agree with the recommendations, welcome them. We think they will all further the state's information technology.”

Lieutenant Governor Hutchison had this question, “On page 32 of 33, there are just some to-be-determined timeframes for these recommendations exceeding six months. Is there a reason for that, that there's not a specific timeframe?”

Mr. Cates answered the question, “Yes, the reason that we weren't specific on timeframes is we really had to think about how long the process would take. For instance, to complete a five-year plan of cost benefit analysis to consolidate their data centers, we're currently talking to other agencies about doing an engagement with a vendor to help us with that process. We're also proposing some recommendations for the next biennial budget to do part of that process. So, we think that's going to take a while. Just another example, networking software, we need to spend some time to do a wholesale analysis of the types of software that agencies are using, and depending on where they're at in their cycle with that software, they may have contractual agreements, maintenance agreements, and we need to kind of figure out the cycle of that so that we're not wasting money as we drive people to single software.”

Lieutenant Governor Hutchison replied, “Okay, so, we know it's going to take longer than six months, but just really aren't able to put a timeframe beyond that.”

Mr. Cates indicated that that was correct and the auditor's intent was to come back in six months with firmer timeframes for those items.

Governor Sandoval asked if there were further questions/comments and there were none. Agenda Item 4E was next.

E. Department of Transportation, Report No. C18-02 – Administrative Contracts, Jaynalynn Seley, Executive Branch Auditor; Vita Ozoude, Executive Branch Audit Manager.

Ms. Seley introduced herself and the representatives from the Department of Transportation. Representatives were Director Rudy Malfabon, Director of Administration Robert Nellis, and Deputy Attorney General Dennis Gallagher.

Ms. Seley provided the following overview: “At the request of the Governor's Finance Office, we performed an audit of the Nevada Department of Transportation, or NDOT. Our audit focused on one objective, how to improve oversight of NDOT's contract management. As a result, we've made the following six recommendations.

**The first recommendation is that NDOT submit administrative contracts and amendments of \$50,000 and above to the Transportation Board, otherwise known as the Board, for approval.**

Ms. Seley said, "Currently, the Board approves administrative contracts of \$300,000 and above, while those less than \$300,000 are approved by NDOT's director and subsequently submitted to the Board for review as informational items. Submitting administrative contracts and amendments of \$50,000 and above to the Board for approval will ensure consistency with approval levels as required by the state administrative manual."

**The second recommendation is that NDOT submit sole-source contracts to the purchasing division administrator for approval.**

Ms. Seley stated, "During the audit, we noted three sole-source contracts which were approved by the NDOT director instead of the purchasing division administrator as required by Nevada Administrative Code, or NAC. Submitting sole-source contracts to the purchasing division administrator for review and approval will ensure compliance with the NAC and ensure statewide consistency when approving sole-source contracts."

**The third recommendation is renewing the director's contract approval limit when a new Governor is elected.**

Ms. Seley said since the Governor serves as the Chair of the Transportation Board, renewing the director's contract approval limit will ensure consistency with the Governor's vision of state administration.

**The fourth recommendation is that all relevant contract information be provided to the Board for informational items.**

Ms. Seley provided these particulars: The Board receives a basic listing for informational items submitted for review, whereas the Board of Examiners receives budget division's detailed contract summary form for each informational item submitted for review. She went on to say, "NDOT should either use budget division's detailed contract summary form or modify its existing agreement summary sheet to contain all relevant contract information. Providing the Board with the detailed contract summary form or modified agreement summary sheet will ensure all relevant contract information is provided for informational items submitted for review."

**The fifth recommendation is that NDOT comply with state and federal guidelines.**

Ms. Seley stated, "During testing of administrative contracts, we noted four contract files missing documentation, including certificates of liability insurance and/or worker's compensation insurance affidavits, contract evaluation criteria, and the federal form related to the disclosure of lobbying activities. Complying with state and federal guidelines regarding contracts will protect the state and ensure uniformity and completeness of contract documentation."

**The sixth recommendation is that NDOT report informational items to the Board.**

Ms. Seley said, "During testing, we noted three contracts that were not reported to the Board as informational items in accordance with NDOT's reporting requirements. Complying with NDOT's reporting requirements will ensure consistency and transparency. For their time and input throughout the audit, we would like to thank the management and personnel of NDOT."

Ms. Seley said that concluded her report and said she and her colleagues were ready for comments or questions.

Lieutenant Governor Hutchison gave thanks for the audit and report update and then asked the following question, "My question is about the recommendation on the Board approving the first recommendation that the Board approves matters between -- exceeding \$50,000. Currently, we do that for \$300,000 and above. Now the recommendation is for -- and then we get information only for \$300,000 or less. I'm just wondering in terms of what triggered that recommendation. Did you see any issues that were surfacing or that were bubbling up the audit for those contracts between \$50,000 and \$300,000 or was it really more to align the Board's guidelines with the BOE's requirements?"

Mr. Ozoude answered the Lieutenant Governor and said, "We didn't actually see any problems with less than the \$300,000; however, we want NDOT to be similar to what is going to the BOE, because other directors of other departments only approve up to \$2,000. So, NDOT director will actually be approving more than the other directors and state agency, and we want -- we were looking for similarities between all the agencies."

Lieutenant Governor Hutchison thanked Mr. Ozoude and asked another question, "So, there really wasn't anything that surfaced as a concern? This recommendation, I think maybe a couple others, are really more in terms of consistency across state government?"

Mr. Ozoude confirmed that this was correct.

Lieutenant Governor Hutchison then asked, "Is there a reason do you think or is there justification for actually the NDOT Board being given information at different dollar value thresholds than the BOE? Is there any rationale or justification for that?"

Mr. Weinberger responded by saying this question would be better explained by the agency representatives.

Governor Sandoval said, "Thank you, Mr. Lieutenant Governor, and I was going to save my remarks until after we heard from Director Malfabon, and as you said, you and I and the Controller all sit on the Board of Transportation, and, you know, I

appreciate the auditor's remarks, because I don't want there to be any suggestion that there's any less scrutiny by the Transportation Board merely because some of these are informational items or not, and essentially, what this recommendation will accomplish is moving a piece of our agenda from one place to another, because we do see all the contracts, \$50,000 and above, as you know, and there are extensive questions, as Mr. Nellis and Director Malfabon and Mr. Gallagher can appreciate, yet it's submitted as an informational item. What I anticipate in the future that will be easily accomplished is that we will just move that many more contracts from \$50,000 to \$300,000 to the action item portion of the Agenda that we receive. So, that's what I anticipate. And just for your benefit, Mr. Lieutenant Governor and the Controller, back in 2011 when I first came on, we used to not see any contracts, and so it was a seismic shift when we even set the level to \$300,000. And so it used to be -- and sorry, Director Malfabon, that there was a lot more, you know, contracts that were approved at the director level that the Board didn't see, frankly, and we changed that agenda very early on. And yes, it did mean a lot longer meetings, but I think it provided for more accountability and oversight between the Board and the Department, and as you recall, we had a long-time member of the Department who had retired last meeting who said that it's made the Department better, and frankly, I think it's made the state better, and so I think that it has worked well. But I have no issue moving the threshold from \$300,000 to \$50,000, because again, we do review all of those contracts anyway. It'll just turn it into an action item. So, Director Malfabon, do you have any questions or comments with regard to the audit?"

Director Malfabon responded by thanking the Governor and Committee Members. He then shared the following information, "As the current Director of NDOT, I can testify that the oversight and accountability of the Department of Transportation has greatly improved under your leadership, Governor Sandoval, as Chairman of the Board of Directors for the Nevada Department of Transportation. In July of 2011, as you mentioned, the Transportation Board deliberated what an appropriate threshold was for construction and non-construction contracts and established the current limits for delegation of authority to the Director of \$300,000 for non-construction contracts. These non-construction contracts are primarily agreements with service providers such as consultant engineering firms or services such as janitorial or minor repair services for NDOT maintenance facilities and other transportation infrastructure. In order to not delay award of contracts, the Transportation Board agreed to meet on a monthly basis, and they were longer meetings, as you mentioned, Governor, and rightfully so. We intend to present this audit finding to the Transportation Board in August 2018 so they can reconsider the delegation of authority to the Director of the Department of Transportation, and while the audit recommends a level of authority of \$50,000, I felt that the current level of authority delegated to the Director for non-construction contracts was appropriate; however, we'll defer this decision to the Transportation Board for reconsideration in August of 2018. I'd like to thank the auditors for their professionalism in conducting this audit, and we accept the audit findings as stated

in our response, and we'll work to enact these changes, and I'm available to respond to any questions from the Executive Branch Audit Committee Members.”

Lieutenant Governor Hutchison had some laudatory remarks, “Governor, thank you, and Mr. Nellis, I'm sorry. For some reason, I didn't hear that you were there. I didn't mean to neglect you in my complimentary remarks at the beginning. You do outstanding work, as we all know who are on that Board, and again, I think it's been just emphasized and stated that that Transportation Board and the NDOT employees are an extraordinary group, hardworking individuals who provide a lot of information to the Board, and if you've ever attended those meetings, you know that it's in-depth and thorough, and they will go for an extended period of time, because there's just a lot of important things to discuss concerning a lot of money. And so I'm happy with these recommendations. I'm happy to hear that really they are mostly being recommended because we're just simply trying to be consistent across state government. Thank you very much, Governor.”

Governor Sandoval replied, “And thank you, Mr. Lieutenant Governor, and I -- you know, if I recall, those Board meetings used to be quarterly, and they would only last an hour or less, and all the NDOT people are nodding their heads. But in any event, you know, they are. We now meet monthly. Some of the meetings will take four or five hours, and as I said, there is a lot of scrutiny and debate and discussion. You know, I agree with the Lieutenant Governor. I think the Department does an extraordinary job. They have an incredibly important responsibility, and they're probably busier now than they have ever been in their history with the number of projects that are occurring, billions of dollars of projects happening statewide. So, Ms. Seley, I think your recommendations are good ones, and I appreciate the willingness of the Department to accept them and its cooperation.”

Governor Sandoval asked if there were any other questions or comments, and there were none. Up next was Agenda Item 5A.

## **5. INFORMATION ITEM – PRESENTATION OF THE DIVISION’S SIX-MONTH FOLLOW – UP STATUS REPORTS PURSUANT TO NRS 353A.090**

- A. Department of Corrections, Report No. 18-01 – Correctional Officer Overtime Management, Warren Lowman, Executive Branch Audit Manager.

Mr. Lowman introduced representatives from the Department of Corrections, Director James Dzurenda and Deputy Director John Borrowman. He then reported, “The Department has fully implemented our recommendations to schedule overtime based on hours worked, not hours paid, and to implement part-time critical needs correctional officer positions, particularly for hospital coverage and other needs. The Department reports it expects to fully implement our recommendation to establish a strategy to encourage increased number of

overtime volunteers, including conducting a Division of Human Resource Management climate survey by November 2018. The Department reports it expects to fully implement our recommendation to reassess staffing to determine appropriate correctional officer needs at each facility through the 2020-2021 budget process and amended post charts in the agency request budget. We thank the Director and the Deputy Director and their staff for working with us on the six-month follow-up. This concludes my overview.”

Director Dzurenda said, “I really didn't have anything to follow-up on. I just wanted to say that we are implementing as much as we can as fast as we can. We do concur with the recommendations, and we're doing the best we could with it and have seen already some great success with the implementation.”

Governor Sandoval thanked Director Dzurenda and went on to say, “I want to compliment the Department. We have come a long way and have dramatically changed the way that you approach things, which again, is something that had to be done, but there's been what I feel is a tremendous amount of cooperation and working together with audit, with our office, with the legislature, with the Department of Finance and Director Wells and everyone else involved. You know, I will say this. We can't take our eye off the ball. This is an ongoing issue that we have to pay very close attention to. There is still going to be an overage over what was budgeted, but to say that it's substantially lower than what it could have been is an understatement. So, again, I know that this has been, you know, a lot of hard work on behalf of the Department, but I do want to say for the record that there has been some indication or suggestion that either inmate or correctional officer safety has been compromised, and that's simply not true. And you know that my admonition, from the very beginning, has been that although that we have to reduce cost, at no point should there be any correctional officer or inmate who's put at risk with regard to issues of staffing. So, Director Dzurenda, do you have any comments on that issue?”

Director Dzurenda did have these comments, “That is absolutely true. We monitor that daily. I've met with AFSCME members, the Corrections Association members, and I've proven that it does not have any increase in any of the safety. There are areas that we needed concentration on, but it has nothing to do with staffing levels or the implementation of any of the changes that we made. We've actually, since Memorial Day, actually increased safety for the correction officers by adding two security safety teams, both north and south, that will target gang leaders, gang members, cells that particularly had history of contraband. All those things have been implemented that are above and beyond the stuff that we've been doing for the last couple years, which actually shows that we've been increasing safety and security for the staff, not decreasing.”

Governor Sandoval thanked the Director and asked if there were further questions or comments. There were none. Up next, Agenda Item 5B.

B. Department of Health and Human Services, Report No. 18-02 – Division of Health Care Financing and Policy, Warren Lowman, Executive Branch Audit Manager.

Mr. Lowman introduced himself and a representative from the Division of Health Care Financing and Policy, Marta Jensen.

Mr. Lowman gave this follow-up: “The Division has partially implemented our four recommendations. The Division expects to fully implement our recommendations to increase provider trainings and offer documentation templates by August 2018. The Division expects to fully implement our recommendations to hold providers accountable for not following the Medicaid Service Manual and to perform more in-depth interviews of client files by October 2019 following the upcoming Legislative session. We thank Administrator Jensen and her staff for their help preparing the six-month follow-up report. This concludes my overview.”

Ms. Jensen gave her update: “With me today I've brought Shannon Sprout. She's one of our Deputy Administrators that is intimately involved with the behavioral health program. One of the things that I did want to report is we've diverted some of our attention in the surveillance and utilization review section as well as the provider enrollment to focus more on the behavioral health population and those providers, and to date, since January, we have identified \$1.4 million in overpayments. We have another 5.4 that are potential overpayments. We've sent out 259 educational letters basically telling them, you're not billing correctly. This is how you should do it going forward, and then we've also implemented -- we've sent out over 30 credible allegations of fraud suspensions. So, what we've done is whenever we sent those out, we take the payment that was expected to go out that week. So, we've held back -- I don't know the total, but it's significant, and they do have the opportunity to appeal that decision, but we're not seeing a lot of appeals come forward as of yet. From a provider enrollment perspective, what we've done is we've started scrutinizing the applications more carefully and doing some additional checks, and we've terminated 45 of those behavioral health providers that were not -- they were for cause terminations that were not -- some of them were falsifying their applications, some of them we had discovered criminal background felony or misdemeanors. So, we're actively looking at ways that we can improve the program right now. We will be requesting additional positions in the upcoming session, and we'll also be asking for some additional contract funding for those clinical staff. They're hard to come by for state employees, so we'll look for some contract funding to supplement that.”

Governor Sandoval remarked, “Thank you, Ms. Jensen, and thank you for your vigilance. I mean, it's remarkable, the results that you've received in a short amount of time, so good work.”

Ms. Jensen replied she had an “incredible” team and that Ms. Sprout would give an update on the templates in training regarding the behavioral health.

Ms. Sprout reported, “We've implemented monthly training series that go through a WebX, so it's an interactive training. Those trainings include the policy staff, the surveillance utilization review team, and the vendor that does the clinical review. We post those and pre-register providers that would like to participate from the provider, the behavior health provider outpatient services. As to date, we've done treatment, planning, and documentation trainings, documentation training and progress note. So, we've gone a step further based off of provider's request to say we still don't quite understand. So, we dug down a little bit further in the next training, overall outpatient mental health services and review of the policies and then the intensive outpatient program and therapeutic treatment milieu. So, it's a combination of the items identified through the audit and also provider requests or suggestions for training for items that they feel that they still need more clarification on. We have a -- will continue those series of trainings throughout -- every month from here forward. In addition to the fact that we did complete a template for the - - the treatment plan, and with that template, there is a treatment fact sheet. So, it shows you what that template should look like and walks the providers through that. We want to test that and then take provider feedback and modify as we go. So, it is a work in progress, and we'll continue to evolve the document as we find what works for providers.”

Governor Sandoval commented on the excellent work and asked if there were any questions from any of the Members. Lieutenant Governor Hutchison did.

Lieutenant Governor Hutchison said, “Just a quick comment and follow-up to what I think is already happening. Just looking at page four of seven on the audit, and it's already been eluded to and captured also in the Division's letter to the auditors, but we are evaluating and analyzing how many additional management analysts and clinical staff will be needed to really enhance the utilization review, but we're waiting for the legislature to fund that and then the hiring process would begin in October 2019. Just for the record, what's going to happen within the Division between now and October 2019 when that hiring can actually occur? I know you've already said you've taken actions affirmatively. You've terminated, I think, 45 behavioral health care providers, as you had mentioned previously, but for the record, if you could just describe in more detail what we're going to see out of the Division between now and October 2019.”

Ms. Jensen responded, “Currently, I do have my existing staff that we've diverted their attention more focused into the behavioral health area. So, those efforts will continue. In addition, we're waiting until after the 1st of the state fiscal year, and then we'll look at possibly hiring contract staff with that clinical background that can assist us for the clinical review. The management analysts do a great job, but sometimes I need that higher-level knowledge to drill down into the medical record itself.”

Lieutenant Governor Hutchison thanked Ms. Jensen.

Governor Sandoval asked if there were any other questions or comments, and there were none. Agenda Item 5C was up next.

C. Department of Health and Human Services, Report No.18-03  
Division of Welfare and Supportive Services and Division of Public  
and Behavioral Health, Trust Fund Accounts, Vita Ozoude,  
Executive Branch Audit Manager.

Mr. Ozoude introduced himself and representatives from the Division of Welfare and Supportive Services Debt Collections and Disbursements Unit (SCADU), Nova Murray, Deputy Administrator, and Brenda Barry, Administrative Services Officer. And representing the Division of Public and Behavioral Health, Northern Nevada Mental Health Services (NNAMHS), was Julie Kotchevar, Administrator, and Debbie Reynolds, Deputy Administrator.

Mr. Ozoude reported, "We made three recommendations for NNAMHS and one recommendation for SCADU. NNAMHS fully implemented the recommendation to strengthen controls over funds received and the recommendation to evaluate using Advantage. NNAMHS strengthened controls over funds received by scanning and electronically depositing funds received, depositing funds within the next business day using Wells Fargo, their stop deposit system, and reviewing signing and verifying the checks recorded on the desktop deposit report match checks recorded on the deposit check log. NNAMHS also evaluated using Advantage Accounting System instead of QuickBooks and determined using Advantage will not be beneficial for their clients, as such a change will restrict client access to funds. NNAMHS specially implemented the recommendation to strengthen controls over disbursements. NNAMHS represent checks stocks are now being stored in a locked cabinet, and checks are controlled using a log. In addition, NNAMHS reports that the patient accounts supervisor or manager no longer has access to create, print, or modify a check. NNAMHS is in the process of upgrading their QuickBooks accounting software to provide protection similar to those used for Advantage and anticipates full implementation of this recommendation by June 30th, 2018. Our recommendation to strengthen controls over funds received at SCADU is partially implemented. SCADU took the following actions to implement this recommendation. They reorganized the mailroom to ensure more than one person is present at all times. Employees are prohibited from removing mail from the mailroom. Deposits are recorded in Advantage timely, and they purchased a new OPEX mail-sorting machine to expedite check sorting and processing. As the OPEX machine was undergoing initial testing during this review, we were unable to obtain and review sufficient documentation to determine if deposits are made within the next business day in accordance with statutes. We would like to thank the two divisions for their cooperation and assistance during this review. This concludes my presentation."

Governor Sandoval asked if there were any further questions or comments, and there were none. Agenda Item 5D was up next.

D. Department of Veterans Services, Report No. 18-04 – Trust Fund Accounts, Vita Ozoude, Executive Branch Audit Manager.

Mr. Ozoude introduced Amy Garland, Executive Officer. He then gave this overview: “We made two recommendations. One is to segregate trust fund receipts and recording functions, and the other is to strengthen controls over the checkbook. The Department fully implemented these recommendations by revising their policies and procedures and removing the receptionist and the Management Analyst II's access to record trust fund transactions. We would like to thank the Department for their cooperation and assistance during this review. This concludes my presentation.”

Governor Sandoval asked if there were any comments, and the Executive Officer for Department of Veterans Services, Amy Garland, did.

Ms. Garland said, “I don't have any comments, but sincere appreciation for Vita in helping me through the audit process and implementation. It's well received from our department.”

Governor Sandoval thanked Ms. Garland and exclaimed it was “refreshing” that it was all fully implemented already. He then said it was time to move on to Agenda Item 5E.

E. Department of Motor Vehicles, Report No. C18-01 – System Modernization Project, Steve Weinberger, Administrator.

Mr. Weinberger introduced himself and a representative from the DMV, Director Terri Albertson. Mr. Weinberger gave this follow-up: “The DMV fully implemented our recommendation to improve the effectiveness of project management by implementing new deliverables protocol, ensuring use of issue resolution protocol, requiring contractor personnel to use the state resume form to ensure DMV has all the information necessary to determine if the personnel are qualified, implementing a new workflow process to escalate requests requiring approvals, and developing new project management tools to allow for better tracking of deliverables and milestones. DMV also contracted with Gartner to perform an assessment of the system modernization project. We believe that all of these actions by the Department will help them improve project management, and I would like to thank Director Albertson and Deputy Director McKinney for their cooperation not only during the audit, but during this follow-up, too. I'm willing to take any questions.”

Lieutenant Governor Hutchison queried, “With the Gartner Health Check Report, what was the conclusion of that report?”

Mr. Albertson answered, “There were a number of indicators that they looked at in that. There were 22 elements, if you will, and I believe 17 of the 22 were determined to be at a high-risk status. So, that information that was contained within the Health Assessment Report was, again, part of our decision to land us where we are today.”

Lieutenant Governor Hutchison asked, “Is there any plan to follow-up, then, with Gartner in the future or are auditors here in terms of implementing those recommendations?”

Mr. Albertson replied, “We are currently working with Gartner, so we have extended our consulting contract with them and are working on a 90-day plan on our path forward. So, yes, we’d be more than happy to continue to work with the auditing team once we make our decision for going forward with our modernization effort.”

Lieutenant Governor Hutchison thanked Mr. Albertson.

Governor Sandoval said, “And I will say, I mean, everything is fully implemented, and that was as of February 21, 2018. So, I just wanted the record to reflect that this happened quite some time ago.” The Governor went on to share his experience getting a new driver’s license and stated “it was very well run, and I really want to compliment you on that.” Agenda Item 6 was up next.

## **6. COMMITTEE MEMBER’S COMMENTS.**

There were no comments.

## **7. PUBLIC COMMENTS** (No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. The committee may place reasonable restrictions on the time, place, and manner of public comments but may not restrict comments based upon viewpoint.)

There were no comments.

## **8. FOR POSSIBLE ACTION - ADJOURNMENT**

We are pleased to make reasonable accommodations for members of the public who have disabilities and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify Dale Ann Luzzi at (775) 684-0223 as soon as possible and at least two days in advance of the meeting. If you wish, you may e-mail her at [daluzzi@finance.nv.gov](mailto:daluzzi@finance.nv.gov). Supporting materials for this meeting are available at: 209 E. Musser Street, Suite 200, Carson City, NV 89701 or by contacting Dale Ann Luzzi at (775) 684-0223 or by email at [daluzzi@finance.nv.gov](mailto:daluzzi@finance.nv.gov).

**Motion:** Adjourn the meeting.  
**By:** Ms. Cross  
**Second:** Attorney General Laxalt  
**Vote:** Motion passed unanimously

Governor Sandoval adjourned the meeting.