

# **MINUTES**

## **MEETING OF THE BOARD OF EXAMINERS**

April 26, 2010

The Board of Examiners met on April 13, 2010, in the Annex on the second floor of the Capitol Building, 101 N. Carson St., Carson City, Nevada, at 10:00 a.m. Present were:

### **Members:**

Governor Jim Gibbons  
Attorney General Catherine Cortez Masto  
Clerk Andrew K. Clinger

### **Others Present:**

Sandra Kelley, Department of Employment Training and Rehabilitation, Disability Adjudication  
Deborah Braun, Department of Employment Training and Rehabilitation  
Ardell Galbreth, Department of Employment Training and Rehabilitation  
Kelly Karch, Department of Employment Training and Rehabilitation  
Leo Drozdoff, Department of Conservation and Natural Resources, Environmental Protection  
Allen Biaggi, Department of Conservation and Natural Resources  
Scott Sisco, Department of Conservation and Natural Resources, Forestry  
Rich Harvey, Department of Conservation and Natural Resources, Forestry  
Tony Lesperance, Department of Agriculture  
Miles Celio, Office of the Military  
Jim Spencer, Office of the Attorney General  
Adriana Fralick, Office of the Governor  
Stacey Woodbury, Office of the Governor  
Janet Murphy, Department of Administration, Budget and Planning  
Julie Strandberg, Department of Administration, Budget and Planning  
Mike Chapman, Legislative Council Bureau  
Greg Weyland, Department of Personnel

### **Press:**

Sean Whaley, Nevada News Bureau  
Sandra Chereb, Associated Press  
Geoff Dornan, Nevada Appeal  
Ed Vogel, Las Vegas Review Journal

**\*1. FURLOUGH EXCEPTIONS**

Pursuant to Senate Bill 433, Section 5.2 (a) of the 2009 Legislative Session, the State Board of Examiners has previously determined positions within the Executive Branch of State Government that cannot be subject to furlough leave. Effective July 1, 2010 all prior Board of Examiners approved furlough exceptions will be terminated.

- A. Office of the Military  
Department of Conservation and Natural Resources  
Department of Employment, Training and Rehabilitation**

**Clerk’s Recommendation: I recommend approval.**

<b>Motion By:</b>	<b>Seconded By:</b>	<b>Vote:</b>
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**Comments:**

**Governor:** Good morning everyone. The Board of Examiners’ set for today April 26, 2010 at 9:00 a.m. will come to order. Mr. Clerk note for the record the presence of the Secretary of State and the Governor. The Attorney General is also scheduled to be with us in Las Vegas, but doesn’t seem to be there at this point. We will proceed because we have a very limited agenda this morning and it is my understanding that some of the items on the agenda are going to be withdrawn and/or placed on the next or subsequent agenda for the Board of Examiners’. We will begin with agenda item number 1 which is the furlough exceptions. Mr. Clerk there was an indication that you thought they would be deferred for consideration.

**Clerk:** Yes, thank you Governor. Item 1A I would like to defer until the May Board of Examiners’ meeting. We didn’t get more time to work with the agencies on this issue.

**Governor:** Okay. Is there any detriment to us putting it over until the May meeting?

**Clerk:** I don’t believe so the effective date on it was July 1.

**Governor:** Alright, any objection from members of the Board to remove agenda item number 1?

**Secretary of State:** No.

**\*2. REQUEST FOR ALLOCATION FROM THE INTERIM FINANCE COMMITTEE (IFC) CONTINGENCY FUND**

- A. Department of Agriculture – Veterinary Medical Services – \$131,661.00**

Pursuant to NRS 353.268, the Department of Agriculture is requesting an allocation from the Interim Finance Contingency Fund to establish a new Veterinary Medical Services Administrator pursuant to NRS 561.205.

**Clerk’s Recommendation: I recommend approval.**

**Comments:**

**Governor:** Move on to agenda item number 2, which is a request for allocation from the Interim Finance Committee. There are two requests. 2A is the Department of Agriculture, Veterinary Medical Services for \$131,661.00. We have present with us the Director of the Department of Agriculture, Tony Lesperance, welcome Director.

**Tony Lesperance:** Thank you Governor. This is a kind of convoluted situation. Perhaps Andrew could walk me through parts of it, because I don't totally understand it. Obviously the Department of Agriculture has undergone a tremendous amount of reduction. Prior to the special session since the onset of the recession we are down about 30% and because the Governor requested 10% to take 10 obviously we did that. I had some concerns that it might be greater than 10, so I submitted two budgets with a list of things that we could afford to give up. Our situation is that we have no backup left in our regular divisions so any further reduction in any of those areas would result in termination of programs so we would be in serious trouble if we lost any further employees with the exception of the Veterinary Medical Services where we have four veterinarians on staff all paid by general funds. I already expressed many times in front of the Legislature at the last session the importance of those and I firmly believe that this is necessary for the health and welfare for the livestock in the State of Nevada because there are so many diseases now. Unfortunately somehow the position of administrator of Veterinary Services was also an open position. State Veterinary position was declared to be open and the last minutes of the special session that position was eliminated even though it is currently held by the division.

**Clerk:** Governor, just to add to what Mr. Lesperance stated for the Board, just so the Board understands and for the record. This was a process through the 26<sup>th</sup> special session and what we had done during the 26<sup>th</sup> special session we had several lists to help us manage these cuts. We had the 10% cut list, we had vacant positions cut list, and we had other dropping the training lists, so we had all of these lists where we were eliminating positions and other things. Inadvertently, the State Veterinarian, ended up on our vacant position list, even though the position was not vacant. What that did was, because those positions were all assumed to be vacant on that list, there was never any discussion either privately, with leadership, or publicly on eliminating any of those positions so the state vet position was eliminated as if it was vacant even though it was a filled position at the time. This was a mistake that was made in our office, it just ended up on the wrong list and NRS 561.205 that is required the Department of Agriculture to have the Veterinary Medical Services Administrator position so we are here today to ask for the funding to reinstate this position. This position actually has not been vacated because it was not scheduled for elimination until July 1, so it starts fiscal year 11. If the Board of Examiners' and the Interim Finance Committee allocates these funds, this position will continue without interruption.

**Governor:** The \$131,661 is the amount for the fiscal year 11?

**Clerk:** That is correct.

**Secretary of State:** This Board along with the Interim Finance Committee has the legal authority to restore this position?

**Clerk:** Part of the reason why it's viewed as a new position, because there is some concern with changing something that the Legislature did, so we have approached this from the standpoint of we are asking for a new position for the Department of Agriculture.

**Secretary of State:** A new position can be created with the approval of the Board of Examiners' and the Interim Finance Committee?

**Clerk:** That is correct.

**Governor:** And the statutory requirement with NRS 561.205 does require the establishment of the position?

**Clerk:** NRS 561.205 states that the Department of Agriculture will have a Veterinary Services Administrator.

**Governor:** Any other questions? General?

**Attorney General:** No not at this time.

**Governor:** There is a motion for approval of the request for the Department of Agriculture in the amount of \$131,661.00. Is there a second?

**Attorney General:** I will second the motion.

**Governor:** It has been moved and seconded. Any comments or questions with regard to the motion? Mr. Lesperance.

**Tony Lesperance:** Yes sir, I want to make it absolutely clear.

**Governor:** I think we understand. Any questions on the motion before us? Hearing none, all those in favor signify by saying aye. Let the record reflect that agenda item number 2A has passed. Just to bring the Attorney General up to speed, agenda item 1 has been deferred to the May Board of Examiners'.

**Attorney General:** Thank you Governor.

## **B. OFFICE OF THE GOVERNOR - \$40,000.00**

In accordance with NRS 353.268, the Office of the Governor requests an allocation from the Interim Finance Committee Contingency Fund in the amount of \$40,000 to fund a contract to complete the Federal Education Race to the Top application.

**Clerk's Recommendation: I recommend approval.**

**Motion By: Secretary of State**

**Seconded By: Attorney General**

**Vote: 3-0**

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**Comments:**

**Governor:** Agenda item 2B, which is the Office of the Governor, \$40,000.00, Stacy.

**Stacy Woodbury:** Thank you Governor. This request for \$40,000.00 from the IFC Contingency Fund, is for the Race to the Top Assessment Program which provides funding to consortia of States to develop assessments that are valid, support and inform instruction, provide accurate information about what students know and can do, and measure student achievement against standards designed to ensure that all students gain the knowledge and skills needed to succeed in college and the workplace. These assessments are intended to play a critical role in educational systems; provide administrators, educators, parents, and students with the data and information needed to continuously improve teaching and learning; and help meet the President's goal of restoring, by 2020, the nation's position as the world leader in college graduates.

**Attorney General:** Governor I just have a comment. Knowing that this is going for IFC and I recognize the importance of getting the application together, the only thing I would just comment on, it is unusual to come before the Board of Examiners' with a funding request without any application or contract before us. I am assuming that has occurred because we are moving very quickly and we haven't entered into a contract yet is that correct Ms. Welling?

**Stacy Woodbury:** Yes, Attorney General Masto, basically we are getting that contract together right now and then we will bring it back to you.

**Attorney General:** Okay, and that is what I needed clarification on, you are intending to bring that contracts back before us, correct?

**Stacy Woodbury:** Absolutely.

**Attorney General:** Okay that's all I needed thank you.

**Governor:** It has been moved by the Secretary of State to approve the request to IFC for \$40,000.00. Is there a second?

**Attorney General:** I second the motion.

**Governor:** Seconded. Any comments or questions with regard to the motion? Hearing none, all those in favor signify by saying aye. Let the record reflect that the motion was approved.

**\*3. TORT CLAIM**

Approval of tort claim pursuant to NRS 41.037

**A. American Civil Liberties Union  
Amount of Claim – \$325,000.00**

**Discussion:** The following report of investigation and subsequent recommendation from Nancy Bowman, Claims Manager for the Attorney General, has been approved by Keith Munro, Assistant Attorney General. Ms. Bowman’s report dated April 20, 2010 states:

This is a class action case brought by the ACLU on behalf of all inmates at Ely State Prison against the Governor, the Attorney General, the Secretary of State, and other government officials associated with the operation of the Department of Corrections. The lawsuit alleges a systematic failure in the delivery of medical care at Ely State Prison (ESP) and seeks injunctive relief from the federal court plus attorneys’ fees and costs. The State has brought the systematic delivery of medical care at ESP within the national standards and the ACLU has offered to settle the case. The Attorney General’s team of deputies who provided the defense strongly recommends payment in settlement of \$325,000 for class counsel’s fees.

**Recommendation:** The report recommended that the claim be paid in the amount of \$325,000.00.

**Motion By:** \_\_\_\_\_ **Seconded By:** \_\_\_\_\_ **Vote:** \_\_\_\_\_  
**Comments:**

**Governor:** Move now to agenda item number 3, Mr. Clerk.

**Clerk:** Thank you Governor, item 3A we are requesting that this item be withdrawn at this time.

**Governor:** Any comments or questions with the regard to the request to defer agenda item number 3 to either May or subsequent Board of Examiners’ meeting? We move now to agenda item 4 which are Board member comments. Any member of the Board wishing to make a comment before the Board of Examiners’? We move to public comment, any member of the public wishing to address the Board of Examiners’? Hearing none, we will move on to agenda item number 5 which is adjournment. It has been moved for adjournment is there a second?

**Attorney General:** I will second the motion.

**Governor:** Seconded, all those in favor signify by saying aye. Let the record reflect that the Board of Examiners’ has been adjourned. Thank you everyone.

**4. BOARD MEMBERS’ COMMENTS/PUBLIC COMMENT**

**\*5. ADJOURNMENT**

**Motion By:** Secretary of State **Seconded By:** Attorney General **Vote:** 3-0  
**Comments:**

**Respectfully submitted,**

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ANDREW K. CLINGER, CLERK

**APPROVED:**

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GOVERNOR JIM GIBBONS, CHAIRMAN

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ATTORNEY GENERAL CATHERINE CORTEZ MASTO

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SECRETARY OF STATE ROSS MILLER