

MINUTES

MEETING OF THE BOARD OF EXAMINERS

September 9, 2010

The Board of Examiners met on September 9, 2010, in the Annex on the second floor of the Capitol Building, 101 N. Carson St., Carson City, Nevada, at 9:00 a.m. Present were:

Members:

Governor Jim Gibbons
Attorney General Catherine Cortez Masto
Secretary of State Ross Miller
Clerk Andrew K. Clinger

Others Present:

Lori Myer, Department of Business and Industry, Industrial Relations
Jason Holm, Department of Health and Human Services, Welfare and Supportive Services
Tammy Trio, Department of Public Safety, Highway Patrol
Nancy Bowman, Office of the Attorney General
Bill Bainter, Department of Public Safety, Highway Patrol
Peter Reinschmidt, Department of Public Safety, Emergency Management
Bill Anderson, Department of Employment Training and Rehabilitation
Dawn Rosenberg, Department of Corrections
Robert, Office of the Attorney General
Tony Almaraz, Department of Public Safety, Highway Patrol
Gerald Lent, Wildlife Commissioner
Joyce Garrett, Department of Public Safety, Emergency Management
Shelley Blotter, Department of Personnel
Mike Fischer, Department of Cultural Affairs
Kathy Yonkers, Department of Employment Training and Rehabilitation
Tammy Moffitt, Department of Employment Training and Rehabilitation
Keith Rheault, Department of Education
Greg Weyland, Department of Education
Dorrie Kingsley, Department of Health and Human Services, Health Care Financing and Policy
Leah Lamborn, Department of Health and Human Services, Health Care Financing and Policy
Kimberlee Tarter, Department of Administration, Purchasing
Tamara Nash, Department of Employment Training and Rehabilitation
Brenda Ford, Department of Employment Training and Rehabilitation
Evan Dale, Department of Administration
Katie Armstrong, Office of the Attorney General
Jim Spencer, Office of the Attorney General

Press:

Sean Whaley, Nevada News Bureau
Cy Ryan, Las Vegas Sun
Geoff Dornan, Nevada Appeal
Sandra Chereb, Associated Press

***1. APPROVAL OF THE JULY 30, 2010 SPECIAL BOARD OF EXAMINERS' MEETING MINUTES**

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Good morning everyone. The Board of Examiners meeting scheduled for today, September 9, 2010 at 9:00 a.m. will come to order. Mr. Clerk for the record note the presence of the Attorney General by phone and the Secretary of State of State in Las Vegas, so all members are present. We have a very brief agenda this morning; we will begin with agenda item number 1 which is approval of the July 30, 2010 special Board of Examiners' meeting minutes. Mr. Clerk; any corrections or comments for the record?

Clerk: No Governor.

Governor: Any comments or questions from any member of the Board?

Attorney General: Move for approval.

Secretary of State: Second.

Governor: The Attorney General moved for approval, seconded by the Secretary of State. Any comments or questions with regard to motion? Hearing none, all those in favor signify by saying aye. Let the record reflect that agenda item number 1 has passed the Board.

***2. APPROVAL OF THE AUGUST 11, 2010 BOARD OF EXAMINERS' MEETING MINUTES**

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Agenda item number 2 is the approval of the August 11, 2010 Board of Examiners' meeting minutes.

Attorney General: Move for approval.

Secretary of State: Second.

Governor: It has been moved for approval by the Attorney General, seconded by the Secretary of State. Any comments or questions with regard to the motion? Hearing none, those in favor signify by saying aye. Let the record reflect agenda item number 2 has passed the Board.

***3. REQUEST FOR GENERAL FUND ALLOCATION FROM THE INTERIM FINANCE COMMITTEE (IFC) CONTINGENCY FUND**

Pursuant to NRS 353.268, an agency or officer shall submit a request to the State Board of Examiners for an allocation by the Interim Finance Committee from the Contingency Fund.

A. Department of Administration – Budget and Planning Division - \$50,000.00

The Department is requesting an allocation from the Interim Finance Committee Contingency Fund in the amount of \$50,000 to allow for transitional costs for newly elected officials.

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: We move to agenda item number 3 which are requests for general fund allocation from the Interim Finance Committee. Mr. Clerk we have four requests, we can take them in block or we can take them individually, what would you suggest? I do request that you go over them individually, unless the Board members want to itemize for separate votes, we will continue.

Clerk: Okay. I will go over them individually for the Board. Item 3A is a request from the Department of Administration, Budget and Planning Division in the amount of \$50,000 to allow for transitional costs for newly elected officials. The transitional funds request of \$50,000 will be split, \$30,000 for the Governor's Office, \$4,000 for the Lieutenant Governor, \$4,000 for the Secretary of State, \$4,000 for the Treasurer, \$4,000 for the Controller, and \$4,000 for the Attorney General. Those funds are placed in a budget account within the Budget Division; it will only be used in case of a turnover and constitutional cause.

Governor: One question, is that the normal distribution of the transitional costs? Historically?

Clerk: Yes Governor. These are the same amounts that were approved during the last Legislative session.

Governor: Alright. Any other questions on 3A? Hearing none, we will move to 3B.

Clerk: Governor 3B is a request from the ARRA Director's Office in the amount of \$40,730. This is to cover operative costs for fiscal year 2010. The office is funded partly with state funds, partly with assessments against the ARRA grants. The assessments against the ARRA grants came in lower than anticipated so we are asking the State to cover \$40,730 to finish out fiscal year 10'.

Governor: Is this mostly personnel costs?

Clerk: Yes, it is mostly personnel costs.

Governor: Any other questions not answered in regard to agenda item 3B? Hearing none, we will move to agenda item 3C, Department of Education.

Clerk: Thank you Governor. Agenda item 3C is a request by the Department of Education in the amount of \$610,294 to address a shortfall in funding for the Full-Day Kindergarten program for fiscal year 10'. The shortfall is due to a shortfall in interest earnings. The Department was notified in June of this year that the Remediation Trust Fund would not be receiving any future interest payments during this biennium based on the amortization methodology being used to recover the estimated investment loss caused by the Lehman Brothers bankruptcy.

Governor: Questions? Comments? Hearing none, we move on to agenda item 3D.

Clerk: Thank you Governor. Agenda item 3D is a request by the Secretary of State's Office. The Office is requesting an allocation of \$25,569 from the Interim Finance Committee Contingency Fund to provide a 5% match for Nevada's federal allocation in Title II HAVA funds.

Governor: I have one question; maybe the Secretary of State can chime in an answer. I know that in the past and often times we have used the soft match as another word to your resources found in your personnel side of things to match versus just the hard cash. Is that a possibility? Can that be utilized in this match of \$25,569?

Secretary of State: We explored that with this match but we really maximized the amount of money we are able to allocate towards a soft match. Many of our personnel are already based entirely off of the HAVA grants and for this request we were unable to do it through a soft match, which is why we are requesting it through the Contingency Fund.

Governor: But it is still a possibility that it can be done if there is a fine reason, availability you say, hourly rate worked?

Secretary of State: Yes and that's how, in fact, we fund some of the positions and utilize those matches. We have positions that are specifically funded through HAVA and a portion that were funded accordingly.

Governor: Any other questions with regard to 3D? Hearing none, is there a motion for approval of agenda items 3A, B, C, and D?

Secretary of State: So moved.

Governor: Moved by the Secretary of State. Is there a second?

Attorney General: I will second.

Governor: Seconded by the Attorney General. Any comments or questions with regard to the motion? Hearing none, those in favor signify by saying aye. Let the record reflect agenda items 3A, B, C, and D have passed the Board.

**B. Office of the Governor – American Recovery and Reinvestment Act (ARRA)
Director’s Office - \$40,730.00**

The Director’s Office is requesting an allocation from the Interim Finance Committee Contingency Fund in the amount of \$40,730 to cover a shortfall in the ARRA Assessments for fiscal year 2010.

Clerk’s Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

C. Department of Education – School Remediation Trust Fund - \$610,294.00

The department is requesting an allocation from the Interim Finance Committee Contingency Fund in the amount of \$610,294 for fiscal year 2010 to address a shortfall in the funding for Full-Day Kindergarten.

Clerk’s Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

D. Secretary of State’s Office - \$25,569.00

The agency is requesting an allocation of \$25,569 from the Interim Finance Committee Contingency Fund to provide the 5% match for Nevada’s federal allocation in fiscal year 2010 Title II Help America Vote Act funds.

Clerk’s Recommendation: I recommend approval.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

***4. VICTIMS OF CRIME 2010 4TH QUARTER REPORT AND 2011 1ST
QUARTER RECOMMENDATION**

NRS 217.260 requires the Board of Examiners to estimate available revenue and anticipated claim costs each quarter. If revenues are insufficient to pay anticipated claims, the statute directs that claim payments must be reduced proportionately. The Victims of Crime Program Coordinator recommends paying the Priority 1 & 2 claims at 100% and Priority 3 claims at 80% of the approved amount for the 1st quarter of FY 2011.

Clerk’s Recommendation: I recommend approval.

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

Comments:

Governor: We move on now to agenda item number 4, Victims of Crime 2010 4th quarter report and 2011 1st quarter recommendation, Mr. Clerk.

Clerk: Thank you Governor. NRS 217.260 requires the Board of Examiners to estimate the available revenue and anticipated claim costs each quarter. If revenues are insufficient to pay anticipated claims, the statute directs that claim payments must be reduced proportionately. There are projected 1st quarter priority 1 and 2 payments totaling \$1,289,800 and projected priority 3 payments totaling \$614,380 for a total expense of \$1.9 million. After reserving \$820,553.59 for 30 days operating expenses, the VOCP budget shows Revenues available for 1st quarter is a little over 2 million. Since fiscal year 2010 revenues were short by \$1.2 million we are recommending priority 3 payments to be paid at 80% of their approved amount, for a total of just under \$1.8 million to be paid on victim's claims in the quarter. Based on current projections, to ensure that recommended reserves stay at 30 day operating expenses, the Victims of Crime Program recommends paying Priority 1 and 2 bills at 100% and Priority 3 bills at 80% of the approved amount for the 1st quarter of fiscal year 2011.

Governor: So this 80% recommendation is only for the 1st quarter?

Clerk: That is correct. Before we start making payments on the 2nd quarter we will bring another item back to the Board.

Governor: Any questions or comments from any member of the Board?

Attorney General: I move for approval.

Governor: Attorney General has moved for approval, is there a second?

Secretary of State: Second.

Governor: Seconded by the Secretary of State. Any comments or questions with regard to the motion? Hearing none, those in favor signify by saying aye. Let the record reflect agenda item 4 passed the Board's approval.

***5. TORT CLAIM**

Approval of tort claim pursuant to NRS 41.037

**A. Hugh Lantz, Bret Lantz, Janice Lantz – TC15506
Amount of Claim – \$580,000.00**

Discussion: The following report of investigation and subsequent recommendation from Nancy Bowman, Claims Manager for the Attorney General, has been approved by James Spencer, Chief of Staff. Ms. Bowman's report dated August 11, 2010 states:

The Nevada Private Investigator's Licensing Board (PILB) received a citizen complaint that Able Services was performing "tenant screening" without a private investigator's license. The citation has been dismissed, however the claimant is stating that revenue was lost during a two-month period while the case was being contested. The claimant believes the defendant ruined their business.

Recommendation: The report recommended that the claim be paid in the amount of \$580,000.00.

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

Comments:

Governor: We will move to agenda item number 5, tort claim approvals, Mr. Clerk.

Clerk: Thank you Governor. The first item under 5A involves the Private Investigator's Licensing Board. This is a case involving a citation that was originally issued has been dismissed. The claim is for lost revenue during a two month period. The recommendation is to settle this in the amount of \$580,000. Item 5B is a claim involving a training program that was being held at UNLV's Sam Fulton Building where there was some equipment that the vendor tripped and injured himself on. The recommended amount of settlement on this is \$75,000.

Governor: Any comments or questions?

Secretary of State: Move for approval.

Governor: Moved by the Secretary of State for approval.

Attorney General: Second.

Governor: Seconded by the Attorney General. Any comments or questions with regard to the motion? Hearing none, those in favor signify by saying aye. Let the record reflect agenda item number 5 has passed the Board's approval.

**B. David Kennedy – TC15511
 Amount of Claim - \$75,000.00**

Discussion: The following report of investigation and subsequent recommendation from Nancy Bowman, Claims Manager for the Attorney General, has been approved by James Spencer, Chief of Staff. Ms. Bowman's report dated August 23, 2010 states:

Mr. Kennedy, while working for MGM Mirage, Inc., was setting up for a training program that was being held at UNLV's Sam Fulton Building. As he was moving between tables to distribute written materials for the program he tripped over an electrical cord that was leading to a self-powered loudspeaker. The loudspeaker was supported by a 5-6 foot tall tripod. When he tripped, the tripod tipped and the loudspeaker fell, hitting him on the temple. He was transported to Desert Springs Hospital.

Due to the head injury he received, Mr. Kennedy now suffers from medically documented significant and permanent cognitive and mobility deficits and a profound stutter. Medical expenses to date exceed \$33,000.

The UNLV staff member who set up the loudspeaker was aware that all the electrical cords should be taped down but he refrained from doing so when he set it up. He was waiting to see if the presenter agreed with the set up before taping down the cords.

The UNLV employee breached his duty of care by not taping down the electrical cords of which Mr. Kennedy tripped over. The State of NV bears liability for Mr. Kennedy's injuries.

Recommendation: The report recommended that the claim be paid in the amount of \$75,000.00.

Motion By: _____ **Seconded By:** _____ **Vote:** _____

Comments:

***6. LEASES**

Eleven statewide leases were submitted to the Board for review and approval.

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: We will move on to agenda item number 6 which are leases. Mr. Clerk, I noticed that many of these leases and many of the changes in here are a lot of additions to leases. Wherein, the actual whole number didn't change but the length of the lease did, so we either added a reduction in the amount of payment and an extension in the term, which is still a savings.

Clerk: That is correct Governor. There are eleven leases under agenda item 6 on the agenda. And Governor, as you pointed out, many of these are leases where the rent has been depreciated in exchange for reduced rates we have extended the term of some of these leases. This is pursuant to a memo sent out, Governor, on February 11, by you asking state agencies to seek to reduce not only leases but contracts as well.

Governor: Any questions or comments on the leases?

Attorney General: Move for approval.

Secretary of State: Second.

Governor: Moved by the Attorney General, seconded by the Secretary of State. Any comments or questions with regard to the motion? Hearing none, those in favor signify by saying aye. Let the record reflect agenda item 6, leases have passed the Board's approval.

***7. CONTRACTS**

Seventy-six independent contracts were submitted to the Board for review and approval.

Clerk's Recommendation: I recommend approval.

Comments:

Governor: We move on now to agenda item number 7 which are contracts, Mr. Clerk.

Clerk: Thank you Governor. There are seventy-six independent contracts submitted for the Board's review and approval. I have no changes to any of the contracts on the agenda.

Governor: Comments or questions in regard to any of the items listed under agenda item number 7 contracts?

Attorney General: I move for approval of agenda item number 7.

Governor: The Attorney General has moved for approval of agenda item number 7 is there a second?

Secretary of State: I will second it. Could I jump in and just make a comment about a couple of the contracts though Governor?

Governor: Absolutely.

Secretary of State: With respect to a few of the contracts, the agenda indicates that these are in the process of securing a Nevada Business License and coming into compliance with all of our requirements in the Secretary of State's Office, that was put in place a few months ago as you remember, and when we put it in place we had quite a backlog in our processing times. That backlog no longer exists and today we are running only a couple of days to process Nevada Business License. We tried to investigate whether or not many of these entities do in fact have a business license, it looks like a couple of them have not even applied, or are not even in our queue. So I don't have any problem approving these contracts if in fact it is still contingent after our approval, upon them in fact coming into good standing and obtaining a business license. If that assumption is correct then I will go ahead and second the motion, but what I would request moving forward and particularly in this instance is that for the contracts that have been designated as not having met those requirements, that we get a report next month that they did in fact come into compliance and for those that haven't that it be properly placed on the agenda so we can take appropriate action.

Governor: Okay. Is that just a comment for the record Mr. Secretary?

Secretary of State: Yes it is a comment, but I did have a question in there as to whether or not that assumption is correct if maybe the Clerk or the Attorney General's Office could answer, is whether or not if we approve these contracts, would we still have the legal authority to reconsider them or negate the contract if they did not in fact meet the conditional requirement coming into good standing.

Katie Armstrong: I think you can put a contingent upon satisfying those requirements.

Secretary of State: Okay, if that is the case then I will go ahead and second the motion to approve all the contracts.

Governor: Okay, are there any comments or questions with regard to the motion? Hearing none, those in favor signify by saying aye. Let the record reflect agenda item number 7 passes the Board's approval and some of the contracts are contingent upon individuals obtaining a state business license.

***8. MASTER SERVICE AGREEMENT**

One master service agreements were submitted to the Board for review and approval.

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Move on now to agenda item number 8 master service agreements. Mr. Clerk, we have one master service agreement.

Clerk: That is correct Governor, we have one master service agreement and I have no changes to that.

Governor: Are there any comments or questions with regard to the master service agreement?

Attorney General: Move for approval

Secretary of State: Second.

Governor: Moved for approval by the Attorney General, seconded by the Secretary of State. Any comments or questions with regard to the motion? Hearing none, those in favor signify by saying aye. Let the record reflect agenda item number 8 passed the Board's approval.

9. BOARD MEMBERS' COMMENTS/PUBLIC COMMENT

Governor: We move on now to agenda item number 9 which is Board member comments. Any member of the Board wishing to make a comment at this time? Hearing none, we will move to public comment. Any member of the public wishing to testify before the Board at this time?

***10. ADJOURNMENT**

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

Comments:

Governor: Seeing and hearing none, we will move on to agenda item number 10 which is adjournment. Is there a motion to adjourn?

Attorney General: Move to adjourn.

Secretary of State: Second.

Governor: Attorney General has moved for adjournment, seconded by the Secretary of State.
All those in favor signify by saying aye.

Respectfully submitted,

ANDREW K. CLINGER, CLERK

APPROVED:

GOVERNOR JIM GIBBONS, CHAIRMAN

ATTORNEY GENERAL CATHERINE CORTEZ MASTO

SECRETARY OF STATE ROSS MILLER