

MINUTES

MEETING OF THE BOARD OF EXAMINERS

October 11, 2011

The Board of Examiners met on Tuesday, October 11, 2011, 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 Brian Sandoval
Attorney General Catherine Cortez Masto
Secretary of State Ross Miller
Clerk Jeff Mohlenkamp

Others Present:

Dave Prather, Department of Health and Human Services, Mental Health and Developmental Services
Jason Holm, Department of Health and Human Services, Welfare and Supportive Services
Richard Nelson, Department of Transportation
Jeff Shapiro, Department of Transportation
Kendall Howard, Department of Health and Human Services, Mental Health and Developmental Services
Charles Duarte, Department of Health and Human Services, Health Care, Financing and Policy
Melaine Mason, Department of Employment, Training and Rehabilitation
Katherine Yonkers, Department of Employment, Training and Rehabilitation
Peter Barton, Department of Cultural Affairs, Museums and History
Mark Costa, Department of Cultural Affairs, Museums and History
Daniel Barraza, Office of the Military
Mike Colburn, Department of Administration, Internal Audits
Steve Weinberger, Department of Administration, Internal Audits
Keith Wells, Department of Administration, Motor Pool
Jim DeProse, Department of Business and Industry, Housing
Jeff Menicucci, Office of the Attorney General
Judith Lyman, Department Health and Human Services, Mental Health and Developmental Services
Rachel Richards, Department Health and Human Services, Mental Health and Developmental Services
Bill Kirby, SAPTA
Laxmi Bokka, Department Health and Human Services, Mental Health and Developmental Services
Darrell Faircloth, Department of Health and Human Services, Health Care, Financing and Policy
Katie Armstrong, Office of the Attorney General
Jon Hager, Public Employees Benefits Program
Donna Lopez, Public Employees Benefits Program
Phil Weyrick, Department of Health and Human Services, Health
Tom MacDiarmid, Department of Education
Dave Olsen, Department of Transportation

Felicia Denney, Department of Transportation
Clark Leslie, Office of the Attorney General
Jaime Tuddao, Department of Transportation
Carol Sala, Department of Health and Human Services, Aging and Disability Services

1. PUBLIC COMMENTS

Comments:

Attorney General: Good morning.

Governor: Good morning, Madam Attorney General, are you ready to proceed?

Attorney General: I am ready.

Governor: I call the Board of Examiners meeting to order. First item on the Agenda is Public Comments. Is there any member of the public in Carson City that would like to provide public comment to the board? Is there anyone present in Las Vegas who would like to provide public comment?

Attorney General: No, Governor.

*2. FOR POSSIBLE ACTION – APPROVAL OF THE AUGUST 15, 2011 BOARD OF EXAMINERS’ MEETING MINUTES

Clerk’s Recommendation: I recommend approval.

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

Comments:

Governor: Thank you. We will move onto Agenda Items 2 and 3, Approval of the August 15, 2011 Meeting Minutes, as well as approval of the September 13, 2011 Board of Examiner's Meeting Minutes. Have all the members of the Board had an opportunity to review the Minutes?

Secretary of State: Yes, Governor.

Governor: Are there any deletions, changes to the Minutes? The Chair will accept a motion for approval.

Secretary of State: I'll move for approval.

Attorney General: I'll second the motion.

Governor: There's a motion by the Secretary of State for approval of Agenda Items 2 and 3 of the Meeting Minutes for August 15, 2011 and September 13, 2011, second by the Attorney General. Are there any questions or discussion on the motion? Hearing none, all in favor of the motion please say aye. Motion passes unanimously.

*3. FOR POSSIBLE ACTION – APPROVAL OF THE SEPTEMBER 13, 2011 BOARD OF EXAMINERS’ MEETING MINUTES

Clerk's Recommendation: I recommend approval.

Motion By:

Seconded By:

Vote:

Comments:

***4. FOR POSSIBLE ACTION – APPROVAL TO PAY A CASH SETTLEMENT**

Pursuant to NRS 41.037, the State Board of Examiners may approve, settle or deny any claim or action against the State, any of its agencies or any of its present or former officers, employees, immune contractors or State Legislators.

A. Department of Transportation – Administration - \$715,470.78

The Nevada Department of Transportation (NDOT) is requesting approval of a settlement and release agreement between NDOT and Road and Highway Builders (RHB). This settlement entails \$715,470.78 in compensation for extra work due to alleged contract plan deficiencies at the transition areas associated with a 22 mile long segment of State Route 160. Both parties desire to avoid the cost and inconvenience of litigation and mutually settle any and all claims without admission of liability or fault.

Clerk's Recommendation: I recommend approval.

Motion By: Secretary of State

Seconded By: Attorney General

Vote: 3-0

Comments:

Governor: Agenda Item No. 4 - Approval to Pay a Cash Settlement. Mr. Mohlenkamp.

Clerk: Thank you, Governor. Item No. 4 is a request by the Department of Transportation for approval of a settlement and release agreement between the Department and Road and Highway Builders. This is a settlement for \$715,470.78. A bit of background on this, the contractor was hired to do some extra work on the project. It was supposed to take three days; in fact it took ten days. The contractor had requested approximately \$1.4 million in this settlement, before you is for a bit over \$715,000.

Governor: Thank you, Mr. Mohlenkamp. Director Martinovich, did you want to provide any testimony or is there a representative here who would like to provide any more detail with regard to this agenda item?

Richard Nelson: Thank you, good morning. For the record, my name is Richard Nelson. I'm the assistant director for operations for the Nevada Department of Transportation. Just to add a little bit of the background, there was some dispute or discussion or debate if you will about how the traffic control actually tied in on either end of the job, and so that's what propagated this settlement was resolving those issues with respect to how we wanted the maintenance of traffic to occur at each end of the job. I'd be happy to answer any particular questions that you might have.

Governor: There was a significant gap between what the demand was and what NDOT originally determined was due. That amount originally NDOT determined was in the amount of

\$23,487.22. The REA was \$1,422,000 and it appears that we just essentially agreed to split it down the middle. Is that what happened with regard to the settlement?

Richard Nelson: Well, the initial \$23,000 paid for some very minor amounts of work, some removal of some striping that occurred, to remove and reset some traffic control devices. The main crux of the request for equitable adjustment occurred in actually how to transition traffic from the two-lane section into the four-lane. Our specifications required maintaining two lanes of traffic in each direction, and of course that's impossible to do at those transition areas. Because it's a four-lane segment, the contractor, when they put their request for equitable adjustment together, included the work that they believed was necessary for both sides of the road, for the northbound direction and the southbound direction. And after we debated and negotiated with the contractor, it was determined that only that direction into Las Vegas, the northbound side or eastbound, however you choose to look at it, was really where the impact occurred. And so while it appears that there was a split, it was based on the costs associated with moving the equipment and resetting up and equipment rental and that sort of thing with just that one side of the road.

Governor: And my final question is the settlement and release agreement provides for complete closure of this project, so there's no other potential to claims associated with this location of this project?

Richard Nelson: That's correct, Governor. It's for all past claims, current claims, future claims, any other claim that they might think of at any time. It's a done deal.

Governor: All right. Thank you. I have no further questions. Board members, do you have any further questions for Mr. Nelson?

Secretary of State: No, Governor.

Attorney General: No, Governor.

Governor: The Chair will accept a motion for approval for the payment of a cash settlement in the amount of \$715,470.78.

Secretary of State: So moved.

Attorney General: Second.

Governor: There's a motion by the Secretary of State to approve Agenda Item No. 4 as recommended, second by the Attorney General. Are there any questions or is there any discussion on the motion? Hearing none, all in favor of the motion please say aye. Motion passes unanimously. Thank you, Mr. Nelson.

Richard Nelson: Thank you.

***5. FOR POSSIBLE ACTION – STATE VEHICLE PURCHASE**

Pursuant to NRS 334.010, no automobile may be purchased by any department, office, bureau, officer or employee of the State without prior written consent of the State Board of Examiners.

AGENCY NAME	# OF VEHICLES	NOT TO EXCEED:
Department of Administration – Motor Pool Division	36	\$745,950
Department of Administration – Public Works Division – Buildings and Grounds	1	\$3,500
Commission on Mineral Resources – Minerals	1	\$31,578
Total:		\$781,028

Clerk’s Recommendation: I recommend approval.

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

Comments:

Governor: Next item on the Agenda is Agenda Item No. 5, State Vehicle Purchase. Mr. Mohlenkamp.

Clerk: Thank you, Governor. Before you are three separate agencies requesting approval to purchase new vehicles. The Motor Pool Division of the Department of Administration for 36 vehicles; Public Works Division, Building and Grounds, one, and Commission on Mineral Resources, one vehicle. Total purchase price established is \$781,028. All of these vehicles are in their legislatively approved budgets. And I believe Mr. Wells is here if you have any discussions with regard to the Motor Pool purchase.

Governor: Mr. Wells.

Keith Wells: Thank you, Governor. Good morning, Governor, members of the Board. For the record, Keith Wells, Motor Pool Administrator.

Governor: Good morning. Thank you for being here today. This is just the normal course of business in terms of replacing vehicles that have a significant amount of mileage?

Keith Wells: That's correct.

Governor: And what do we do with the vehicles that are being replaced?

Keith Wells: They get sold at public auction.

Governor: Okay. And when will that occur?

Keith Wells: There's actually one this Saturday. There are five statewide. There are three in the south and there are two in the north. And they generally are in the spring, winter and fall in the south, and fall and spring and the winter up here in the north.

Governor: And then will you be purchasing a variety of vehicles, trucks, cars, vans?

Keith Wells: Absolutely. We'll be purchasing everything from minivans to sedans to SUVs, all different brands. We go through and we have a whole matrix on how we evaluate each vendor's products, and whichever one fits, you know, into our little niche market for that, because some rural areas might need something different and that's what we buy. But we have a very diverse fleet.

Governor: And then will this be your only major purchase of the year?

Keith Wells: Yes.

Governor: Any further questions from Board members? Thank you, Mr. Wells, by the way.

Keith Wells: Thank you.

Governor: The Chair will accept a motion with regard to Agenda Item No. 5, state vehicle purchase.

Secretary of State: I'll move for approval.

Attorney General: Second the motion.

Governor: There's a motion by the Secretary of State for approval of the state vehicle purchase as outlined in Agenda Item No. 5., a second by the Attorney General. Are there any questions or is there any discussion with regard to the motion? Hearing none, all in favor of the motion please say aye. Motion passes unanimously.

***6. FOR POSSIBLE ACTION – STATE ADMINISTRATIVE MANUAL**

The State Administrative Manual (SAM) is being submitted to the Board of Examiners' for approval of additions in the following Chapters: **0300 – Contracts. In addition approval is requested for supporting forms.**

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Agenda Item No. 6, State Administrative Manual. Mr. Mohlenkamp.

Clerk: Thank you, Governor. You have before you some changes to three separate chapters of SAM, all within the 0300 contracts. I'm going to take a few minutes and go through this and then Mike Colburn, who is the acting Administrator for the Division of Internal Audits, and Kimberly Tarter, who is Deputy Administrator for Purchasing Division, are here to answer any questions that you might have. First of all, the first changes, these are all related to two things, one, Assembly Bill 240, which was passed and signed into law, and an audit by the Legislative Counsel Bureau prompted the changes that have before you. First of all, I'm going to get into

some basic summary and then, like I said, if you need details, we can get into that further. Chapter 322, it is changed to provide that contracts with current employees or former employees require BOE approval regardless of dollar amount, and also provides that a contractor must be active and in good standing with the Secretary of State. So those are the primary changes to Chapter 322. Chapter 323 is a new chapter, and there are quite a few provisions in there. First of all, it defines what a current employee and a former employee is. It identifies a pre-approval requirement by the Board of Examiners. So actually the Board has to approve the relationship with the former or current employee, and then they would have to come back before the Board for approval of the actual contract. And that is provided for -- it's a bit redundant, but it's provided for pretty directly in the statute, and we didn't see any way around that. It establishes exemptions for which type of employment does not require approval, and that's strictly in compliance with AB240. It does provide the ability for agencies to come forward for blanket approval for certain types of employees. This would be such as interns who work a summer internship and then want to come back through a contractual relationship, seasonal workers, things of that nature, where the intent -- and this was discussed with the originator of the bill, and we believe that this follows the intent of that bill. So there's a provision for blanket approvals by the Board so they won't have to come back each time. It establishes clearly that any employment through a temp agency would be covered under this. And that being the case, if you had a current or former employee that was being through Kelly Services, Manpower or one of those temp agencies, that would be covered and they would be required disclosure that the person is either current or former employee. And just so everybody understands, for the purposes of former employees, somebody who has terminated state employment within two years, so 24 months. It provides for a contracting process and some separate forms that are part of the package for approval. Those forms provide for essentially acknowledgement of the relationship, its authorization to contract with the current or former employee and the secondary employment disclosures. So you have three separate forms, 13, 15, and 17 identified in your package that are part of this. Also, it requires specific timekeeping requirements, and this is specifically identified in the LCB audit. So if somebody is a current employee and is going to also work as a contractor, if that relationship were to be approved, there are specific requirements for them to track the time associated with each so that there could be no confusion as to what work they were doing for us as a direct employee versus as a contractor. Chapter 344 provides changes to the contract summary. And Ms. Tarter can explain those further. There's a number of changes in there. And then I wanted to let you know that providing that the Board approves these changes, an all agency memo will be distributed in the very near future and I'm planning by the end of the week to explain these changes. And it will provide that any of these relationships, whether they be originated initially after July 1 of 2011 or whether they're through an amendment to a contract after July 1, 2011, will be required to come back for approval of that relationship. Even if a contract exists, we're still gonna look for those contracts to come back for those individual relationships on the prescribed form to come back before the Board for approval. So that's the essentially if you want to call it retroactive portion of this, but that gets us in compliance with AB240.

Governor: Will you repeat that with regard to the retroactivity of this?

Clerk: The bill went into effect July 1, 2011, so we believe in order to comply fully with the law that the Board needs to provide that approval. So we would like -- it's our recommendation that we bring the contracts back -- the relationship, not the contract itself, but the approval of the

relationship back for any relationships what were created or that were amended and continued after July 1 of 2001.

Governor: What if we have a significant amount of existing contracts? Is there any provision for review by this Board of those relationships?

Clerk: Well, the law doesn't provide any retroactivity back before July 1. I believe it's somewhat silent with regard to whether it applies retroactively or not, so we're assuming it does not, and I would have to defer to counsel on that.

Governor: Does this Board have the authority to ask for at least a list of all the pre-existing relationships that would otherwise be captured after July 1, 2011?

Female: Yes, Governor. The Board could ask for a list of that nature.

Governor: Board members, do you have any other questions with regard to this agenda item?

Secretary of State: Yes, Governor, just a couple. First, the contract form that I assume has been reviewed and approved by the Attorney General's office, what mechanism will be in place to make sure that the state agencies are actually complying with this stock language and aren't modifying it on a case-by-case basis?

Kimberly Tarter: Good morning. For the record, Kimberly Tarter, Deputy Administrator with the Purchasing Division. The contract form was reviewed by the Deputy Attorney General who represents the Purchasing Division, and he went through his internal channels prior to this being submitted to the Board for their consideration today. Additionally, with respect to making this available to other state agencies, we have a contracts managers' training course that certifies contract managers for the State. It lets them know which forms they're to use. We make those forms available on the Purchasing Division's website. And as a part of the all agency memo that's going out, we'll be making all State employees aware of where the form is located, updating the training class. And then they're trained in the class as to what sections of the contract form are sections that are I wouldn't say negotiable, but sections that they can make modifications to and then sections that while they may be negotiable, those negotiations have to be done with the approval of their Deputy Attorney General. And the Deputy Attorney General sign these contracts before they come to the Board for their consideration.

Secretary of State: Okay. So then it would be incumbent upon the AG's office to ensure that they're actually adhering to the instructions that certain provisions are modifiable and some are not?

Kimberly Tarter: Yes. Pursuant to NRS 333.700, the Attorney General's office approves all contracts as to form.

Secretary of State: Okay. Great. Unrelated question. On Page 23, there's a provision that relates to secondary employment. I read that to be very broad and just want to make sure my interpretation is correct. So this would apply to anybody that picks up secondary employment, maybe at the Pottery Barn, to moonlight for the holiday season needs to fill out this form?

Kimberly Tarter: Yes, that is correct. That is the intent. Currently there is not a consistent form for use by all state agencies for secondary employment, and so this would create that form, that consistency and apply to all state employees that are looking to moonlight in a secondary position.

Secretary of State: What are the repercussions if they fail to fill out the form and obtain prior approval?

Kimberly Tarter: There are to my knowledge no repercussions specifically if they choose not to do this. There are, within statute, requirements for agencies to provide notice. Some state agencies do have repercussions. I believe Gaming Control Board is one of those because of the sensitive nature of those positions that if they did not comply they would have personnel repercussions, but it's not consistent in all state agencies.

Secretary of State: Okay. So any individual agency through their own personnel manual could come up with their own terms?

Kimberly Tarter: Yes, correct.

Secretary of State: Has there been any thought to try and create a uniform standard, or it's just too difficult to do that across the board?

Kimberly Tarter: Honestly, I don't know. That would need to be presented I would suspect to the director for the state personnel for their consideration.

Secretary of State: Okay. Thank you.

Governor: Do we already have a policy that requires notification and approval for secondary employment if you're a State employee?

Kimberly Tarter: There is a policy, but I do not know if each agency has adopted a specific policy. There is not one to my knowledge in the State Administrative Manual. Agencies have in fact adopted individual policy. We're trying to put one now in the State Administrative Manual that would, while not specific to each individual agency's needs, would create a broad overreach policy.

Governor: And then just to parrot what Mr. Mohlenkamp explained, is that this will be a two-step process. Initially it will come before this Board for approval of the notification and relationship, whatever that contract is going to be, or secondary employment, and then thereafter there will be an approval process; is that how it works?

Kimberly Tarter: Yes. It is going to create a two-step process. The Board has an obligation as created in AB240 to now approve the relationship of the current employee contracting with the State, of the former employee within a 24-month window contracting with the State. Additionally, there's a third class which is if you have a contractor that employs a current or former employee, that contract with the independent contractor has to come before the Board so they can be made aware of and approve the relationship with that current or former employee. So potentially there is three situations that the Board is now going to have to consider. And there

is specific criteria that also needs to be considered. And actually, excuse me, I misspoke because I didn't include the temporary employment agency. So you have current employees contracting with the State directly, former employees contracting with the State directly, contractors contracting with the State that have employed the current or former employee that meets the definitions, and then the fourth one is temporary employment agencies. And so the relationships with current and former employees that come to provide services to the State via the temporary employment agencies also have to perceive that pre-approval of the relationship.

Governor: And that pre-approval is a condition precedent to that contract going into effect, because even in this agenda that we have today, there were several after-the-fact approvals of contracts.

Kimberly Tarter: Yes, correct. That pre-approval as defined in AB240 must be applied prior to the contract being executed by the agency. So they cannot even move forward with that contract and execute it unless they've received a pre-approval of the Board.

Governor: And this may be a redundant question, I think the Secretary asked this question, but what is the jeopardy if this policy isn't followed?

Kimberly Tarter: That I would say, and I would look to counsel to confirm, however, with respect to a contract moving forward after July 1, with a current or former employee in one of those four contractual relationships, if an agency were to present a contract to the Board of Examiners for approval absent that pre-approval, then that contract should not be enforceable because it will have become codified under NRS 284 and they will have not met the legal requirements for that contractual relationship.

Governor: I would suppose the budget office would have a little bit of control on that, because if that process hasn't been followed, you wouldn't approve the payment of the amount due on the contract.

Clerk: Governor, once again, Jeff Mohlenkamp. The difficulty I think, and I would have to defer to legal counsel, is this retroactive aspect going back to July 1. If a contract already exists, I'm not clear as to what the -- the State always has ability to get out of contracts for a variety of reasons. Most contracts have a 30-day termination clause or things of that nature. It would have to be -- if the Board reviewed a contract after the fact in the way we're looking at doing and determined that they could not approve of the relationship, the question would be does that contractor terminate that relationship. I'm not sure what kind of legal exposure, if any, that provides us. I would defer to counsel. I wanted to make one other point of clarification. I don't believe the Board is going to be in a position of approving secondary employment. This is just a requirement -- correct me if I'm wrong, but this is just standardization of the disclosure form for secondary employment, but no Board approval on that.

Governor: And for these contracts that have been entered into between July 1 and now, what if this Board were to determine they didn't think that contract was appropriate?

Clerk: I don't know the legal ramifications, but I would suggest that the Board would indicate that they will not approve that relationship, that employee or former employee, and that the contractor would have a decision to make. If the contractor is the former employee, I would

believe we would terminate the contract. If that employee or former employee is employed by the contractor, then I think the question comes in as to how that contractor wants to handle it, but I would defer to legal counsel on that.

Kimberly Tarter: Thank you. And I agree with Jeff. I think it will all be looked at as a case-by-case basis and most likely be terminated based on the termination provisions of each contract, but it would be case-by-case as Jeff indicated.

Governor: And then finally, can we expect our first tranche of these relationships next month for the Board of Examiners' Agenda?

Clerk: Yes, Governor. If it's approved by the Board today, it becomes effective and we would adhere to the SAM provisions directly.

Governor: Board members, do you have any other questions?

Attorney General: Governor, I do have a comment because my only concern would be the timelines and slowing the contractor process down (inaudible) slow process. My only concern is this, and maybe I need to look at the statute, is it a requirement in the statute that the agencies cannot negotiate for the contract so they need pre-approval? Or is it possible that we could do pre-approval of the employee as well as the contract on the same agenda, so there's not two separate needs?

Kimberly Tarter: Good morning, Madam Attorney General. Kimberly Tarter with the Purchasing Division. We absolutely understand and have the same concern. The statute is specific in the pre-approval and the fact that an agency can't get the contract executed until they have the pre-approval. Potentially, with counsel's assistance, we might be able to put contracts together at the same Board of Examiners. However, the exception to that would be when a contract is awarded through the request for proposal process. If they got to the contract with the former employee through that process, the notification of award process itself is also very specific about when a contract is presented to the Board of Examiners, to the budget office and when the contract can be executed. So in those instances, I think the two processes could not be blended if they got to the contract through an informal solicitation process potentially.

Attorney General: Okay. And that makes sense to me. I'd only ask if there's the ability that we can (inaudible) to see if we can eliminate some of the long timelines in this process, then let's try to do so. That would be my request.

Clerk: Yes. Madam Attorney General, this is Jeff Mohlenkamp. I think we would be more than happy to try and streamline the process wherever possible, and so we will work to do that. I think that process can go forward despite, you know, even with an approval. That would be more of how we agendize these things going forward, so I don't think it would impact your ability to approve the SAM changes.

Attorney General: All right. Thank you.

Governor: I know there are a lot of agency representatives here. I wanted to give an opportunity because you all are the ones that are going to be affected by this. Is there anyone here that represents an agency that wanted to provide any comment?

Susan Martinovich: Thank you, Governor, Board. Susan Martinovich, Director of the Department of Transportation. I appreciate the Attorney General's comments because we would be one that would be seeking exceptions. Our selection of consultants for designs, also our selection of consultants to administer construction contracts is a quality-based selection, and many times we do have some past NDOT folks on those teams. They've retired. We feel that they do have the experience and it does help with the quality. We hire consultants because we do not have the manpower to do the designs, nor the inspections ourselves. So what we would intend to do with this is that we would go through the RFP process. We would select it, again, based on quality-based selection. We would go through all the negotiations, but we would not execute the contract. We would let the team know that we still come to the Board of Examiners. We would let you know that there is a past NDOT person, what they're going to be doing, and all the requirements of the form, but we would hope to get that approval and approval of the contract. Because many times, especially in the construction areas, we're waiting for a construction project to start based on getting the people to start overseeing it. So it is a timing issue of our contracts and the designs. So we'll be working with the Administrator Mohlenkamp on that, but we would welcome the opportunity to try to streamline it so we don't have extra months built in these contracts when we have time constraints and weather constraints and event constraints. Thank you.

Governor: One question, Director Martinovich. You're exempted from part of this. What amount of the contracts do you think are captured by the exemptions that you have within the proposed regulation?

Susan Martinovich: I haven't read the regulations, but I know the bill said projects that are 100 percent federal funded. No projects are 100 percent federal funded. They all require at least a five percent match. The only ones that were, were the (inaudible) projects and those were a unique animal, so every project would -- there's none exempted on our part.

Governor: Thank you very much. Anyone else interested in providing comment? I have no further questions. Board members, do you have any further questions with regard to this agenda item? Mr. Mohlenkamp?

Clerk: Governor, one quick question. I just want to make sure I understand. Is it the direction of the Board for us to try and streamline this process if possible to try and have contracts, the association of the relationship and the contract come forward on the same agenda?

Attorney General: Governor, I would ask (inaudible) have the ability to do so. I think we can easily on our agenda make a separate section for approval of the employees and then have the contract on the other agenda items to approve and get the approval (inaudible). I think it's easy enough to put it on the same agenda as long as it doesn't violate the new law or the (inaudible). And, again, I'd be happy to talk to my staff and look at the language of the new statute, but I can't imagine that that's something they had intended to slow the process down.

Governor: Agreed. And I would leave that to a responsible Deputy Attorney General to render an appropriate opinion that it would be appropriate to include both those items on the same agenda. So with the assumption that it is appropriate, then I have no problem with including those on the same agenda, but keeping them separate. I agree with the Attorney General that I would like to have a separate number for those agenda items to break them out.

Secretary of State: Governor, with your permission, you know, in 2009 a related issue came up after following that session, and I understand what the legislature is trying to get at here. It's been an area of concern for certain legislators for some time. And they passed some legislation in 2009 that created a real mess with this Board and significantly backlogged the process of approving contracts. And at that time, I recall that many agency heads came to the table to express their frustration with the current statute for having to disclose consultants, et cetera. In order to provide a little bit of a record as to why we were attempting to streamline this process, it might be helpful to have some of the other division heads, Department of Corrections, Public Safety and some of the other ones that I recall anticipated some problems with it, outline for us the potential downsides of having to delay it month to month and urging us to streamline it.

Governor: Is there anyone else here besides the Director of Transportation that may have some concerns with regard to a one-month delay in this contracting process?

Secretary of State: It doesn't have to be today, Governor. I was suggesting...

Governor: Well, here we are.

Secretary of State: ...for approval next time.

Governor: I don't want to put anyone on the spot, but, you know, perhaps we can provide an opportunity for the agency heads or representatives to provide some comment, but at this point we're going to be adopting these changes to the State Administrative Manual. And if there is anyone here that would like to provide any comment, that would be helpful.

Greg Whalen: Good morning. Greg Whalen, Deputy Superintendent of Education. One area where there's a lot of funds that are also transferred out is through the sub-grant process and for full disclosure that either the assurances they make also include the disclosure to the sub-grantees of employees that are possibly working for them, or former employees.

Governor: Would you explain that again for me, Mr. Whalen?

Greg Whalen: When the sub-grant process is opposed to the contracting process, there's numerous agencies that have lots of state funds in addition to federal funds that go in the sub-grant process, and those sub-grantees would also disclose those relationships with State employees or former State employees.

Governor: All right. Thank you.

Clerk: Governor, just to clarify, the State Administrative Manual modifications at this point do not apply to sub-grantees. So it's only to those with a contractual relationship.

Governor: I see no further comments and no questions from Board members. The chair will accept a motion to approve the request for changes to the State Administrative Manual as presented under Agenda Item No. 6.

Secretary of State: Move for approval.

Attorney General: I second the motion.

Governor: There's a Motion by the Secretary of State for approval, a second by the Attorney General. Is there any discussion, or are there any questions with regard to the motion? Then all in favor of the motion please say aye. Motion passes. Thank you. And, Mr. Mohlenkamp, I will ask, assuming that it's appropriate, to include that two-step process on one agenda. That's how I anticipate that the next agenda will be prepared.

Clerk: Thank you, Governor. We'll seek legal guidance on that and then we'll report back to you at the next agenda as to what we're able to resolve.

Governor: Thank you.

***7. FOR POSSIBLE ACTION – REQUEST FOR APPROVAL TO REFUND NURSING FACILITY FEES**

A. Department of Health and Human Services, Health Care Financing and Policy - \$907,888

Pursuant to NRS 353.110 (2), the Board of Examiners may authorize a refund the overpayment of a fee or tax made to a state agency. The Division of Health Care Financing and Policy has requested approval to make a refund to nursing homes in the amount of \$907,888 collected during FY 2010 in excess of that allowed by Federal regulation. This fee was collected by the Division pursuant to NRS 422.3375. An audit by a CPA firm concluded that the overpayment has occurred. The Division has received guidance from the Centers for Medicaid and Medicare Services that a refund is the appropriate course of action. If approved, the Division intends to make refund in the form of credits to fee collections during FY 2012.

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Agenda Item No. 7, Request for Approval to Refund Nursing Facility Fees. Mr. Mohlenkamp.

Clerk: Thank you, Governor. Before you is a request pursuant to NRS 353.110 of the Board of Examiners to approve a refund in the amount of \$907,888. This was a collection of fees in excess during Fiscal Year 2000 in excess of that which is allowed by federal regulation. An audit by a CPA firm was completed, and they concluded that this over collection had occurred. The Division of Healthcare Financing Policy has been in contact with the federal government. And it

is the appropriate prudent thing to do to enter into a refund. I believe Mr. Duarte from the Division is here to discuss how they intend to do this and answer any questions.

Charles Duarte: Good morning, Governor, Board members. For the record, my name is Charles Duarte. I'm the Administrator for the Division of Healthcare, Financing and Policy. And to add to what Director Mohlenkamp has stated and give you a little bit of background, this is a program that we've run since about 2003 where we are allowed to collect fees from freestanding nursing facilities based on their size or the number of beds that they have and the number of patients that they have. We take those revenues and redistribute them in another method of payment to match with federal funds and pay back to these facilities supplemental payments which help cover the cost of nursing care or people in long-term care institutions. We began to become concerned about our projection methodologies that we used with these revenues in 2010. And as a result, as Director Mohlenkamp said, we commissioned Clifton Gunderson, LLC, which is a healthcare audit firm, to look at whether or not we were meeting or exceeding the statutory cap in fiscal years 2007 to 2010. The intention is to try to get as close as possible to that statutory cap, which in that timeframe ran between 5.5 percent and 6 percent of net revenues for the facilities. Their total net revenues run in the area of about \$439 million a year. And so we had Clifton Gunderson do the review and, as Director Mohlenkamp said, found that there was an over collection of about .2 percent in 2010, and that is resulting in the need to credit these facilities back for the amount that they overpaid in taxes, and to do so in this next quarter. We're just basically gonna credit their invoices for the upcoming quarter. One of the things that we are also doing is we're changing the approach that we're using for estimating these fees. Rather than projecting them out and using a future projection methodology, we're actually using actuals. We're going back a quarter, looking at their actual revenues and using that to assess the fees and then reconciling at the end of the fiscal year, and so we avoid anything that has to do with over projecting and over collecting taxes in the future.

Governor: And we're now in compliance as a result of the audit, correct?

Charles Duarte: Yes, Governor.

Governor: And there's another piece to this, so we're gonna be crediting invoices. Is there anything else we're doing? It's very complex. And is there another piece to this?

Charles Duarte: There is. This is or has been brought into a part of a settlement negotiation with nursing facilities around a wholly separate matter which has to do with basically how much we paid them in these supplemental payments. We are in negotiations right now. It's still in a rather sensitive phase as their representatives, their attorneys are working hard to get 34 nursing facilities to sign off on that agreement. And so this has been brought in and become a part of that settlement, but, again, it's a wholly separate matter, and whether or not we arrive at a settlement agreement, it's something that we'll have to do. We'll have to refund these fees.

Governor: And with regard to this refund, will that cause a hole in our budget in any way?

Charles Duarte: As a result of the entire settlement agreement, there is a net benefit to the State. It's a situation where we believe the nursing facilities and the State will benefit. We believe that the State could see in this biennium about a \$700,000 net benefit overall as a result

of the settlement. And, again, the nursing facilities will also benefit from this agreement. So there is no net hole that's created as a result of the settlement or this refund.

Governor: And that's what I thought I read. It's, I guess, logically we're crediting back 907, but we're going to have a net benefit of over \$700,000?

Charles Duarte: Yes, Governor. And that has to do with numerous other aspects of the agreement and some of the methodologies and mechanisms that we use to collect and pay out these fees.

Governor: We need more of these settlement agreements.

Charles Duarte: We'll try and work on those.

Governor: All right. Thank you, Mr. Duarte. Questions from the Board members on this Agenda item?

Secretary of State: No, Governor.

Governor: Thank you, sir. The Chair will accept a motion to approve the refund as recommended in Agenda Item No. 7 in the amount of \$907,888.13.

Secretary of State: So moved.

Attorney General: Second the motion.

Governor: Okay. There's a motion by the Secretary of State, a second by the Attorney General. Are there any questions or is there any discussion on the motion? Hearing none, all in favor of the motion please say aye. Motion passes unanimously.

***8. FOR POSSIBLE ACTION – LEASES**

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

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Agenda Item No. 8, Leases. Mr. Mohlenkamp.

Clerk: Thank you, Governor. Before the Board are four separate leases for consideration. Would you like me to go into details on any of these leases?

Governor: I don't believe it's necessary. Board members, do you have any questions with regard to Agenda Item No. 8, leases one through four?

Secretary of State: No, Governor.

Governor: The Chair will accept a motion for approval.

Secretary of State: I move for approval of the four leases.

Attorney General: I second the motion.

Governor: There's a motion by the Secretary of State to approve Agenda Item 8, leases one through four, a second by the Attorney General. Are there any questions or is there any discussion with regard to the motion? Hearing none, all in favor of the motion please say aye. Motion passes unanimously.

***9. FOR POSSIBLE ACTION – CONTRACTS**

Sixty-one independent contracts 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: Mr. Mohlenkamp, Agenda Item No. 9, Contracts.

Clerk: Thank you, Governor. Before the Board are 61 contracts. I want to point out that Contracts number 1, number 15 and number 54 have been withdrawn by the agencies.

Governor: Thank you. I have questions on Contracts 6, 7, 28, 29, 35, 38, 46, 49 and 58. Do any of the other Board members have any contracts that you would like to hold out for questions?

Secretary of State: No, Governor.

Attorney General: No, Governor.

Governor: Is there somebody present with regard to Contract No. 6, which is Buildings and Grounds and Excel Maintenance Services? My question on that contract wasn't too substantive, Mr. Mohlenkamp. If you could follow up for me, it says it's for extra services, and I was just curious what those extra services were as needed and requested by Buildings and Grounds Section designee, and I wasn't sure what that meant.

Clerk: Thank you, Governor. I'll follow up and get you information.

Governor: Okay. The next question I have is for Contract No. 7, State Public Works, and this had to do with the Southern Desert Correctional Center for the replacement of doors, locks and control panels. And, again, Mr. Mohlenkamp, I would ask, and given your previous relationship with the Department of Corrections, I was just curious why we had to do all that. Was it worn out? Were those items worn out? Are they obsolete?

Clerk: Yes, Governor. Thank you. There were a number of projects. I believe this one, and I'll have to look at the details of it, but I believe this might have been -- was this a hold out from the prior? I believe this was a holdout from the prior biennium. It was actually approved I believe in '09 as a CIP project, but it was delayed as a result of the budgetary issues; is that correct?

Clark Leslie: Clark Leslie. Yes, Governor, that's correct. High Desert and Southern Desert Correctional Center were both undergoing major changes, and it included some custody control changes as well as reconstruction.

Governor: That's sufficient. Thank you very much. We'll move onto Contract 28, 29. Mr. Duarte. Good morning again, sir. My question essentially isn't -- well, as related to these contracts, how are negotiations going with the respective counties? Have we captured all the counties or are there some that we have left?

Charles Duarte: Thank you, Governor. For the record, Charles Duarte. I apologize, Director Wilden is not here today. He is actually at a healthcare conference in Las Vegas, so he asked me to give you an update if you'd asked about the status of some of these agreements. And what I've done is provided a spreadsheet here that explains the overall status of some of these. And I apologize that the Attorney General doesn't have access to this, but we'd be happy to send that to her. Governor, as you probably know, there are a number of assessments and fees that are going to be invoiced to the counties and for this fiscal year they total over \$16 million. And to summarize the results of the spreadsheet here, there are 74 contracts that the counties and the State have deemed appropriate to have signed by both parties and brought forward to BOE. Of those 74 contracts, 65 percent have been signed, so there is progress moving forward. However, we've only received payments on 35 of those 74 contracts and that's creating some concerns. Rather than go through each specific item that the counties are being assessed, I wanted to just point out some concerns, particularly with the line item that's called DCFS assessment for youth parole services and assessment for rural counties for State Child Protective Services. The issue there is that there is \$5.1 million in total assessments and general fund revenue for DCFS has been eliminated in that amount and replaced with county revenue. So they will have a serious cash flow issue if those contracts don't bear fruit and they start getting paid. So with respect to the assessments for youth parole services, the contracts actually have not been deemed necessary since it's a straight assessment, but only six counties have paid. And Nye County has written a letter to the director saying that for both items, they don't believe they should be invoiced, that there's some language in the statute that was passed, this would be SB 476 and SB 480 that would preclude them from being assessed. The director is in communication with Legislative Counsel Bureau. He believes it's the intent of the legislature to assess them that amount this year and will be responding in writing to Nye County. But that area is of significant concern. And then one more area I would point out are Mental Health and Developmental Services and assessing counties for developmental service costs. Only three counties have signed contracts and only one has paid their assessment so far. And so that's an area of concern, not so much my cash flow issue, but just a compliance point of view. So those are some of the highlights that we have relative to any updates on this and I'd be happy to provide more details if you have questions.

Governor: What is our deadline? I mean, when does this really start to have a collision in terms of, you know, we need to get paid, we need to have these contracts signed and are we starting to plan for that in the event that the counties don't pay or don't enter into these contracts?

Charles Duarte: There is a deadline and it's primarily affected in the area of Division of Child and Family Services as I mentioned. It's more of a cash flow issue for them. And it could become serious in the next quarter is what I've been told. I don't know if there's a specific deadline that we're targeting for these contracts. I know the director had wanted them already signed in this quarter. And in some instances we have a lot of signatures, a lot of compliance, and in others we don't. So I can certainly go back and talk with the director and pass that message on to the administrators to give you a more definite timeline for these contracts.

Governor: Questions from other Board members?

Secretary of State: No, Governor.

Governor: Thank you, Mr. Duarte.

Charles Duarte: Thank you.

Governor: Is there someone present with regard to Contract 35 between the Health Division and the Nevada Broadcasters Association?

Phil Weyrick: Governor, members of the Board, for the record, Phil Weyrick, Administrative Services Officer for the Health Division.

Governor: Good morning, Mr. Weyrick. My simple question is that the funding for this is described as various funding sources. Where does the money come from to pay for this additional cost?

Phil Weyrick: The Health Division, sir, is comprised of about 135 different funding sources, roughly \$185 million a year. About 75 of those funding sources are federal, and most of those federal grants require some sort of public awareness campaign or public service announcement to publicize, you know, for instance, immunization program, diabetes program, obesity and so forth. So we use mostly federal funds to do these public service announcements.

Governor: That's all I wanted to know. It was something, I mean, there is a category here for federal funds, so I was wondering if it was something different than federal funds.

Phil Weyrick: Yes, sir. We actually have about 25 different budget accounts and there are a number of special use categories throughout those budget accounts that contain federal funds. So it's hard to limit it to one budget account or one category. It covers the gamut of all the federal grants.

Governor: And the expansion of this contract is due to the fact that we have several new public services that we need to make the public aware?

Phil Weyrick: That, sir, we've gotten quite a few new grants as well as the (inaudible) grants, and we essentially used up the original contract much faster than we expected.

Governor: Thank you, sir. Contract No. 38.

Charlene Herst: Thank you. For the record, my name is Charlene Herst. I'm the Prevention Supervisor in the Substance Abuse Prevention and Treatment Agency.

Governor: Thank you, Ms. Herst. And my question isn't regarding the substance of the contract, it's fine. I just was curious about our substance abuse prevention strategic plan, and if you could spend three to four minutes, or less, or what have you, to describe for me what it is and what it does and how it's working.

Charlene Herst: Okay. The last strategic plan was done in 2007 and it was an agency strategic plan. What we do every year when we submit our federal substance abuse prevention and treatment block grant is we embed into that block grant strategies and -- priorities, strategies, objectives and indicators for the next two years, which we just submitted for the next two years, our block grant. So that's what we have used over the last several biennium actually, two, I guess, for our strategic plan, but we have a new grant that we just were awarded that will come in front of the Interim Finance Committee at the next meeting that ask for a separate prevention strategic plan. So a facilitator will be working with our former strategic plan, the one from 2007, updating that, working surveys with key leaders, strategic partners, and then going out to communities across the state with survey questions and interviews and that kind of thing, to put together a true statewide prevention strategic plan.

Governor: Where I'm going is I want to get off the top of these bad lists and I know that this is a category where we can have a lot of improvement. So this plan will go toward that goal?

Charlene Herst: Yes, it will.

Governor: Okay. Thank you very much.

Charlene Herst: You're very welcome.

Governor: Contract 46, Forestry Division and Nevada Division of Wildlife. And I can chat with you separately about that, Mr. Mohlenkamp, but I don't want to hold this contract up. Contract 49, Environmental Protection. Again, Mr. Mohlenkamp, what I'm looking for here is, this is the first contract that I have seen which is a result of the Tahoe Summit that we just had with the State of California, and given I signed that agreement with the State of California on clarity, I'm very interested in what this contract means and what it hopes to accomplish.

Clerk: Governor, I will get a summary for you so you will have the details on that.

Governor: And then the next is Contract 53, Department of Transportation and the Office of Traffic Safety. Good morning, sir. And if you'd just please state your name for the record.

Male: (Inaudible).

Governor: Okay. Sir, I guess my question here is there's a lot of technical terms in here, and for somebody that is not familiar with the statutes and the acronyms and such, could you just provide a simplified version of what will be accomplished by this contract?

Male: We are going to -- in fact, I have brought -- this is in line with -- this contract comes from flexible funding and these are consistent with the (inaudible) targeted to the (inaudible) pedestrian intersection and lane departure critical (inaudible) areas to significantly reduce the number and severity of crashes on our Nevada roadways.

Governor: So this helps us accomplish our goal of zero fatalities?

Male: Yes, sir. It is one of those.

Governor: Thank you very much, sir. And then Contract 54, Department of Motor Vehicles and QAS systems.

Clerk: Governor that was one that was withdrawn.

Governor: And finally Contract 58 between the Rehabilitation Division and Fleet & Industry Supply Center. Is there someone here for that? Good morning.

Melaine Mason: Good morning.

Katherine Yonkers: Good morning.

Governor: And if you'd just please state your name.

Katherine Yonkers: My name is Katherine Yonkers, and I'm Chief for the Business Enterprises of Nevada Program.

Melaine Mason: And I'm Melaine Mason, Deputy Administrator of the Rehabilitation Division.

Governor: When I was going through my packet, I was just curious, we have this relationship that I didn't know that we had with the Fallon Naval Air Station. So would you describe I guess for me what we do there? I didn't know about this.

Katherine Yonkers: We have the galley, the food operations services. The Business Enterprise Program has 30 locations statewide. This is a part of the Bureau of Services to the Blind and Visually Impaired. The operators of these eateries or vending facilities, cafeterias and galleys are blind, and so we have a contract with the Navy to provide food services there at their galley.

Governor: Thank you. That's all. I just had an opportunity to visit the Naval Air Station and, again, I didn't know that we had this relationship with them, so I appreciate the information. I have no further questions. Do Board members have any other questions with regard to Agenda Item No. 9, Contracts 2 through 14, and 16 through 53, and 55 through 61? Hearing none, the Chair will accept a motion for approval of Agenda Item No. 9, all of the contracts contained therein, with the exception of Contracts 1, 15 and 54.

Attorney General: I'll move for approval.

Secretary of State: Second it.

Governor: Motion by the Attorney General to approve the contracts contained within Agenda Item No. 9 with the exception of Contracts 1, 15, and 54, second by the Secretary of State. Are there any questions or discussion on the motion? Hearing none, all in favor of the motion please say aye. Motion passes.

***10. FOR POSSIBLE ACTION – MASTER SERVICE AGREEMENTS**

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

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Next Agenda Item, Agenda Item No. 10, master service agreements. Mr. Mohlenkamp.

Clerk: Thank you, Governor. There are two master service agreements for consideration by the Board. The first is with Fed Ex Corporate Services and the second is a translation services, (inaudible) Translations dba. We have no concerns in our office.

Governor: I have no questions. The Chair will accept a motion for approval of Agenda Item No. 10, master service agreements one and two.

Secretary of State: So moved.

Attorney General: Second.

Governor: There's a motion for approval by the Secretary of State, a second by the Attorney General. Are there any questions or is there any discussion on the motion? Hearing none, all in favor of the motion please say aye. Motion passes unanimously.

11. BOARD MEMBERS' COMMENTS/PUBLIC COMMENT

Governor: Agenda Item No. 11, is there any member of the public in Carson City or Las Vegas that would like to provide public comment to the Board?

Florence Jones: Excuse me, Governor.

Governor: Yes.

Florence Jones: I'm (inaudible) Las Vegas and I have no Agenda. I've asked for it and been told by the receptionist here that there's none available, so I have no way to follow what you're doing. Thank you.

Governor: All right. Ma'am, would you please state your name again.

Florence Jones: Florence Jones.

Governor: Ms. Jones. Okay. Ms. Jones, well, I'm sure we can ensure that you have a copy of today's Agenda, and in the future I just ask that we have extra Agendas on the table for the benefit of the public.

Florence Jones: Thank you very much.

Governor: You're welcome, Ms. Jones. Are there any Board members that have comment today?

Attorney General: No.

***12. FOR POSSIBLE ACTION – ADJOURNMENT**

Governor: The Chair will accept a motion for adjournment.

Secretary of State: So moved.

Governor: Motion by the Secretary of State.

Attorney General: I second the motion.

Governor: Second by the Attorney General. Any questions or discussion on the motion? Hearing none, all in favor please say aye. Motion passes unanimously. This meeting is adjourned. Thank you, ladies and gentlemen.

Respectfully submitted,

JEFF MOHLENKAMP, CLERK

APPROVED:

GOVERNOR BRIAN SANDOVAL, CHAIRMAN

ATTORNEY GENERAL CATHERINE CORTEZ MASTO

SECRETARY OF STATE ROSS MILLER