

# MINUTES

## MEETING OF THE BOARD OF EXAMINERS

March 8, 2016

The Board of Examiners met on March 8, 2016, in The 2<sup>nd</sup> Floor Chambers at the Laxalt Building, 401 N. Carson St., Carson City, Nevada, at 10:00 a.m. Present were:

### **Members:**

Governor Brian Sandoval, participated in Las Vegas  
Secretary of State, Barbara Cegavske, participated in Las Vegas  
Attorney General Adam Paul Laxalt, participated in Las Vegas  
James R. Wells, Clerk, participated in Las Vegas

### **Others Present:**

Keith Wells, Department of Administration, Fleet Services  
Don Soderberg, Department of Employment, Training and Rehabilitation  
Shelley Hendren, Department of Employment, Training and Rehabilitation, Vocational Rehabilitation  
Mary Harmon, Department of Employment, Training and Rehabilitation  
Scott Sisco, Department of Corrections  
Cody Phinney, Department of Health and Human Services, Public and Behavioral Health  
Richard Whitley, Director, Department of Health and Human Services  
Kelly Lafayette, Department of Administration, Public Works Division, Leasing Services  
Nick Trutanich, Attorney General's Office  
Lawrence Van Dyke, Attorney General's Office  
Gus Nunez, Department of Administration, Public Works  
Ellen Crecelius, Department of Health and Human Services  
Bonnie Long, Department of Health and Human Services, Health Care, Finance and Policy  
Jack Robb, Department of Wildlife  
Alonzo Hickerson, Member of the Public

A copy of the sign-in sheets of all of the attendees is available upon request:  
[budget@finance.nv.gov](mailto:budget@finance.nv.gov)

## 1. PUBLIC COMMENTS

### Comments:

**Governor:** Public comment. Is any member of the public here in Las Vegas that would like to provide public comments to the Board? No public comment in Las Vegas. Is there any public comment in Carson City?

**Carson City:** We do not have any public comment.

## \*2. FOR POSSIBLE ACTION – APPROVAL OF THE FEBRUARY 9, 2016 BOARD OF EXAMINERS’ MEETING MINUTES

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

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

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### Comments:

**Governor:** We’ll move to agenda item number 2 which is the approval of the February 9, 2016 Board of Examiners’ meeting minutes. Have the Members had an opportunity to view the minutes and are there any changes?

**Secretary of State:** I have no changes.

**Attorney General:** No changes, thank you.

**Governor:** All right.

**Secretary of State:** Motion for approval.

**Governor:** The Secretary of State has moved for approval, is there a second?

**Attorney General:** Second.

**Governor:** Attorney General has moved, or seconded the motion. Any questions or discussion? Hearing none, all in favor say aye. [ayes around] That motion passes 3-0.

## \*3. FOR POSSIBLE ACTION – APPROVAL FOR STATE VEHICLE PURCHASES

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 – Fleet Services	4	\$104,000
Department of Conservation and Natural Resources –	1	\$26,726

Conservation Districts Program		
<b>Total</b>	<b>5</b>	<b>\$130,726</b>

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

**Motion By: Attorney General**

**Seconded By: Secretary of State**

**Vote: 3-0**

**Comments:**

**Governor:** We'll move on to agenda item number 3 which is the approval for State Vehicle Purchases. Mr. Wells.

**Clerk:** Thank you Governor. This is a request for five vehicles. The first item is a request for Fleet Services to expand their fleet by purchasing three sedans and one SUV to rent to Nevada Transportation Authority (NTA) for their transportation network compliance officers. The NTA is going to be leasing these vehicles from Fleet Services, but the Fleet Services Division does not have these particular vehicles in stock. The NTA received approval from the IFC in October to rent the vehicles. This item is subject to IFC approval for Fleet Services to purchase the vehicles from their reserves. The second item is a request to replace two pick-up trucks, with a new one for Department of Conservation and Natural Resources.

**Governor:** All right, thank you. Is Keith present in Northern Nevada?

**Speaker:** Yes, he is, he's coming.

**Keith Wells:** Good morning Governor, Members of the Board. Keith Wells, for the record.

**Governor:** Good morning Keith. I don't have a question on these vehicles that are in here, it's just a general question for—so, I guess to make a long story short, we cut the ribbon or what have you on the Electric Highway. I know this was an NDOT fleet vehicle, but it was an electric vehicle and it had total range of 80 miles, which isn't really the most practical thing in the world. So, if you buy these EVs, do you buy them with more range than 80 miles? [laughter]

**Keith Wells:** That's a great question Governor. All the electric vehicles in the State Fleet right now, in the Fleet Services Division fleet are hybrids. We don't have any dedicated vehicles for that very problem. However, we're going to be purchasing dedicated electric vehicles to put in our car share program, but those vehicles will only operate in metropolitan areas and they'll have—the average trip, the driving range will be 30-40 miles. That's where they're best suited for. We're not going to place them anywhere that will create a liability for the operator or the State.

**Governor:** Well, not so much the liability piece, but I learned this new term called 'range anxiety'. [laughter] Somebody in my staff put it best, it's like driving with 1/8<sup>th</sup> of a tank all the time and you're just always nervous about there not being enough there. So, when you look at those vehicles, are there some that have more than that 80 mile range?

**Keith Wells:** Governor, the only ones that do is Tesla. I would love to buy some of those, but I don't [laughter] The average vehicle—

**Governor:** [crosstalk] I have a comment but the press is here, so I can't say. [laughter]

**Keith Wells:** Unfortunately right now Governor, the only vehicles produced by the main manufacturers, Ford, General Motors, people like that, they're built to have a typical range of 100 miles. Because that's—the Federal Government has established 100 miles as the travel path that the average consumer will travel in one given business day. So, that's why the manufacturers like Ford, GM have set it there, plus, the technology to go further, like Tesla has done is expensive. I mean, Tesla is \$70,000 versus a \$30,000 Ford Focus. But, you get enhanced range.

**Governor:** Well, in a couple of years, supposedly Tesla is going to have a \$35,000 vehicle with a 200 mile range.

**Keith Wells:** And, hopefully we'll have some of those.

**Governor:** All right. And I get this isn't really on the agenda, but I just—you know, I'm the one that drives around the Valley down here quite a bit and it just doesn't seem like 80 miles is sufficient. And, you know, I don't even know if we have charging stations here at the Sawyer Building. I don't think we do. So, if somebody was to drive to the Sawyer Building and go anywhere else and then try to go back to their office with this vehicle, you'd be cutting it pretty close. So, in any event, we need to have that conversation. I apologize for going off topic here. Board Members, any questions with regard to Agenda item number 3?

**Secretary of State:** No

**Attorney General:** No

**Governor:** Okay, is there a motion to approve?

**Attorney General:** Move to approve.

**Secretary of State:** Second.

**Governor:** The Attorney General has moved for approval of agenda item number 3, State Vehicle Purchase. Secretary of State has seconded the motion. Any questions or discussion? Hearing none, all in favor say aye. [ayes around] Oppose, no That motion passes 3-0.

**\*4. FOR POSSIBLE ACTION – AUTHORIZATION TO CONTRACT WITH A CURRENT AND/OR FORMER EMPLOYEE**

**A. Department of Administration – Purchasing Division**

Pursuant to NRS 333.705, subsection 1, the Purchasing Division requests authority to contract with Tirome Dale, a former Correctional Officer, to provide uniformed security guard services through AlliedBarton Security Services.

**B. Department of Transportation**

Pursuant to NRS 333.705, subsection 1, the Department of Transportation requests authority to contract with Ms. Halana Salazar for a period not to exceed four months. Ms. Salazar will be the liaison with the Federal Lands agencies to complete the acquisition of property necessary for the Boulder City Bypass Part 1 project.

### **C. Department of Employment, Training and Rehabilitation**

Pursuant to NRS 333.705, subsection 1, the Department of Employment, Training and Rehabilitation requests authority to contract with Mr. Norm Halverson, a former Department of Employment, Training and Rehabilitation, IT Professional 3 to provide technical assistance with Vocational Rehabilitation case management system, RAISON. The contract period requested is upon BOE approval, March 8, 2016 through June 30, 2017.

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

**Motion By: Attorney General**

**Seconded By: Secretary of State**

**Vote: 3-0**

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#### **Comments:**

**Governor:** Let's move on to agenda item number 4 which is, Authorization to Contract with a Current and/or Former Employee. Mr. Wells.

**Clerk:** Thank you Governor. Item 4 has three requests to contract with current and/or former employees pursuant to NRS 333.705, subsection 1. The first request is from State Purchasing to contract with AlliedBarton to provide uniformed security guards to various State Agencies. This request is for AlliedBarton to use a former employee who left State service last year, to perform these services. AlliedBarton will also be using the employee on other contracted jobs.

The second request is from the Department of Transportation to contract with a former manager of right-of-way to assist with the acquisition of property for the Boulder City Bypass. Ms. Salazar has the knowledge of the Boulder City Bypass Project and significant involvement in the related right-of-way activities, including extensive knowledge of federal land transfer requirements and established relationships with federal personnel involved in those activities. The contractor would be reimbursed at a rate of \$110.00 per hour, including the temp agency fees, for a period not to exceed four months.

The third request is from the Department of Employment, Training and Rehabilitation to contract with a former Information Technology Professional to assist with programming their Vocational Rehabilitation Case Management System; to modify reporting frequency from annual to quarterly and add 41 new elements to the report. These changes are mandated by the federal government and must be completed by October 1<sup>st</sup>, or the State could face sanctions for late or incomplete reporting. The former employee who retired in September of 2014 has both the technical and business function knowledge of the Department's computer system. This contract is through a Master Services Agreement for up to 30 hours per week, through June 30, 2017.

**Governor:** All right, thank you Mr. Wells. My only question is on the DETR one and it's just the length of it. It's more than a year and typically we do those a little bit more on a temporary basis. I see the Director is here.

**Don Soderberg:** Governor, Don Soderberg for the record. Shelley Hendren the Administrator for the Vocational Rehab Division and Mary Harmon from our IDP Division will answer the question.

**Governor:** All right, thank you.

**Shelley Hendren:** Thank you Governor, Shelley Hendren for the record. With regard to why we asked for a longer period of time, we have one work order and three enhancements that are all mandated by the federal government, which were previously discussed. In addition to that, we have three more work orders and a total of 18 additional enhancements that need to be done to our case management system. Some have been waiting since 2013. I think, if you'd like to know more, Mary Harmon could speak to what the challenges have been to find someone qualified to do that work. There's quite a lot of additional work outside of those mandated by the federal government that we need done.

**Governor:** I'm not questioning the need. I guess the question is, which I often have with regard to these longer contracts is, whether we're building a bench for when people retire or leave State service that they can step in and take these responsibilities.

**Mary Harmon:** Governor, Mary Harmon from DETR. We do plan to have Norm Halverson paired up with a couple of our IT trainees. Just like other state agencies, we're having difficulty recruiting talented programmers who have the experience, especially in this Oracle forms and reports technology that Oracle doesn't even offer training for anymore. We're planning on having him do knowledge transfer sessions and these trainees work with him to get the knowledge so they can support it in the future.

**Governor:** Okay. So you would expect by the end of 15 months that we would have some other employees that would be in a position to take on these responsibilities going forward?

**Mary Harmon:** Mary Harmon again, yes Governor, we do expect them to be able to support the system going forward.

**Governor:** All right, great. Thank you. Questions from other Board Members on agenda item number 4? If there are none, the Chair will accept a motion to approve or to authorize the contracts with current and/or former employees as described in agenda item number 4.

**Attorney General:** Move to approve.

**Secretary of State:** Second.

**Governor:** The Attorney General has moved for approval. The Secretary of State has seconded the motion. Any questions or discussion? Hearing none, all in favor say aye. [ayes around] Opposed, no. The motion passes 3-0. Thank you very much.

**\*5. FOR POSSIBLE ACTION – APPROVAL OF A CRITICAL LABOR SHORTAGE**

Pursuant to NRS 286.523, it is the policy of this State to ensure that the reemployment of a retired public employee pursuant to this section is limited to positions of extreme need. An employer who desires to employ such a retired public employee to fill a position for which there is a critical labor shortage must make the determination of reemployment based upon the appropriate and necessary delivery of services to the public.

**A. Department of Corrections**

Pursuant to NRS 286.523 the Department of Corrections requests a Public Employees Retirement System critical need position designation for rural correctional officer positions for which a critical labor shortage exists.

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

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

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**Comments:**

**Governor:** Agenda item number 5 is a request for approval of a Critical Labor Shortage for the Department of Corrections.

**Clerk:** Thank you Governor. Pursuant to NRS 286.523, it is a policy of the State to ensure that the reemployment of retired public employees is limited to positions of extreme need. For the purposes of state government, the Board of Examiners is the designated open body where the Critical Labor Shortage Designations are made. The Department of Corrections is requesting to designate Rural Correctional Officer and Correctional Officer Trainee positions as critical need and allow the Department to reemploy retired public employees who can perform critical correctional officer duties. The Department considers rural facilities to be those in Ely, Pioche, Wells, Humboldt County, Jean, Carlin, Tonopah and Lovelock. Deputy Director Scott Sisco and department staff are available to answer questions and to provide an overview of the program.

**Governor:** Thank you Mr. Wells, Mr. Sisco.

**Scott Sisco:** Thank you Governor. With your concurrence, I'll go ahead and just give a quick overview and then be happy to try to answer any questions that we can.

**Governor:** Please proceed.

**Scott Sisco:** Thank you Governor, Madam Secretary and Attorney General Laxalt, I'm Scott Sisco, the Deputy Director over Support Services Functions at the Department of Corrections. First, I'd like to express Director McDaniel's apologies for not being here for such an important request. He is representing the State of Nevada and the Department of Corrections in Washington DC today for a meeting on statewide recidivism reduction in which his attendance was a specific requirement for a second chance strategic planning federal grant. Hopefully we will be able to successfully convey the Director's sense of urgency with the request before you. With me here in Carson City is John Borrowman, our new Chief of Fiscal Services for the Department. Also, in Las Vegas is our Acting Deputy Director of Operations, Dwight Nevin.

The Department of Corrections is requesting the Board of Examiners to designate Rural Correctional Officer and Correctional Officer Trainee positions as necessary to respond to a critical labor shortage. The rural areas this designation would apply to as the Budget Director mentioned were Ely, Pioche, Wells, Humboldt, Jean, Carlin, Tonopah and Lovelock. If the Board provides this designation today, beginning April 1<sup>st</sup>, the Department will be able to reemploy retired public employees who can perform or be trained to perform critical correctional officer duties and that employment will not have a negative impact on their PERS Retirement.

The Department struggles with a high vacancy rate in many of these rural areas. Competition with the mining industry and those that support the mining industry in the rural areas, as well as competition with other law enforcement agencies, relocation costs and housing issues and other pay and benefit issues have left the Department struggling for many years with being able to fill all Correctional Officer positions in these areas. Vacancies in a 24-hour a day secured facilities do not save money. They in fact increase costs as the Department must still staff these critical posts.

The Department has 522 Correctional Officer positions approved for the rural areas throughout the State of Nevada. As the Department prepared this request, the vacancy rate in Ely alone exceeded 18% and it hasn't gotten any better since. 104 vacant positions, overall, in the rural areas, with a 19.92% vacancy rate. At one point last year, we had a 50% vacancy rate for a good part of the year at the Carlin Conservation Camp. In looking back at the last five years, there's not been a single point, at any time, at which we had less than 18 vacant Correctional Officer positions at the Ely State Prison.

This results in the Department paying substantial amounts in overtime, mostly mandatory overtime. Such ongoing mandatory overtime adds to our turnover issues, after months and even years of being required to work these difficult work schedules, employees burn out and look elsewhere for employment for a more stable work schedule and family life; further adding to the vacancy rate as we lose even more good employees.

These areas combined have had an average turnover rate of 20.88% in 2015, 23.37% in 2014 and 21.84% in 2013. I'd like to say that providing us this designation would be a sure fix. That it would reduce our use of mandatory overtime and solve our retention and recruitment issues, but I can't. It will help, but we've got a long way to go to completely solve the problem. It's one more tool in our toolbox to try to hold on to good employees.

As far as recruitment efforts, this year, we've worked with the Division of Human Resource Management and obtained approval to train new hires in urban areas and then provide a limited amount of admin time for the newly graduated cadets to move their families to these rural areas. Our new PIO has gotten us into Facebook, Twitter and more electronic employment opportunities than ever before. We've stretched our limited operating budgets with some advertising and we've managed to get the word out to areas of the country having high unemployment rates and those that are closing down correctional facilities. We attend every job fair, both civilian and military that we can find the funds for. These tools have helped somewhat in urban areas, but we still have a higher than acceptable vacancy rate in these rural areas.

In planning for this designation request, we reached out to recently retired employees and although we haven't received as much interest as we'd hoped for, we have received some level of

interest. As I mentioned though, this designation would apply to both Correctional Officers and Correctional Officer Trainees. So, upon your approval, we can get the word out and hopefully we'll find other retired public employees with an interest and a necessary skillset that with training we can put into these positions. Whether hired on as full time or just signed up for meeting on-call needs, we believe this will help our overtime issue and our employee morale, as well as our turnover issues. Ultimately, this designation should have a positive impact on our use of mandatory overtime in the rural areas, should result in better protection to the public, the staff and inmates.

The two highest causes of overtime in the Department are 1) vacancy position coverage and 2) hospital coverage. This partially addresses at least one of those primary causes. As these positions take hold and if the Legislature frees up the 2017 portion of the new Shift Relief Factor Positions the Governor provided for in our last budget request, and we get those positions on board and trained, we feel optimistic that we'll see reductions in mandatory overtime costs and hopefully position turnover. That concludes our prepared statements and we'll be happy to answer any questions you may have.

**Governor:** Thank you Mr. Sisco. The first comment I have, it's not really a question, but as you know the three of us, the Members of the Board of Examiners, also comprise the Board of Prison Commissioners. Frankly, a lot of what you talked about, I'm hearing for the first time rather than having had it brought up at the Board of Prison Commissioners. I'm wondering why this wasn't brought to the attention of that Board, prior to seeking an approval of a Critical Labor Shortage.

**Scott Sisco:** Thank you Governor. Again, I apologize with Director McDaniel not being here, he's not able to speak for himself. I can say that we were extremely optimistic Governor, with you of course, eliminating the furloughs and providing for the updated Shift Relief Factor, we were very optimistic that that was going to solve some of these issues. We've had ups and downs and the mines—the mines play a big role in our ability to fill these positions out in those areas. We've just finally reached a point where we're constantly at about 60 vacancies at the Ely State Prison. We just don't seem to be making any movement. With that—

**Governor:** No, and I'm not—let me interrupt you Mr. Sisco. I'm not questioning any of that. It just would've been helpful if you would've brought this to the attention of the Board of Prison Commissioners a while ago and I guess that's all I have to say about that. So, the other question is, obviously this has been a chronic issue since these prisons were opened, and, I don't know what the solution is. I guess I'll preface my remarks with, I'm going to be supporting this because we need to do this. I want to make sure that those prisons are adequately staffed.

You're right, we eliminated the furloughs. We approved 100 new positions throughout the budget. We've got that Shift Relief Factor and none of those things have seemed to help. And, as you say, even if we approve this today, we have some interest out there but still perhaps not enough to adequately staff this. Other than perhaps increasing the salaries out there a significant amount, what else—would that even be the solution to getting the proper staffing out there?

**Scott Sisco:** Governor, that absolutely would help because again, the competition that we have for those jobs is tough. One of the other things that we'll be talking to your office about and the State Budget Director about is some of the cuts that we're made during the budget crisis that affected, particularly those rural areas where there is some real pay differential and transportation

costs, things like that. We'll certainly be looking at those and having some discussions as we prepare the next go around of budgets.

**Governor:** All right. Madam Secretary, you have a question.

**Secretary of State:** I do, thank you Governor. And, thank you for the information. I know that we've talked about other agencies, our own included, trying to find peace officers. I know that Metro, others are still having the same concerns that all of us do about trying to find adequate coverage and people that are interested in law enforcement. We know it's not just Nevada. It's a national issue. I was wondering, how many have you had so far that have suggested that they would come back out of retirement for this?

**Scott Sisco:** Governor, Members of the Board, we did reach out to, first the last year's retirees, if you will, and the last couple of years' worth of retirees. Right now, we only have three or four that have absolutely indicated interest. However, one of the things that we've also started talking about was instead of just bringing them back into full time positions, if they would be willing to sign on for a kind of on-call, meeting on-call needs. That we haven't approached them about yet. We hope that that's going to increase some interest. That would be a tool that we would be able to use instead of keeping somebody over on a mandatory shift on overtime. So we'll look at that.

The other thing is, at the last minute, as we put this request together, we included Correctional Officer Trainees. That means we might have a Forestry Conservation Camp Supervisor or an NDOT retired worker or any other public retired worker, either a Highway Patrolman or somebody else, who might be in these rural areas that we can get into our Academy and help us there.

So, with some of these, once this is approved, we can get some advertising out, we're hoping that we can multiply that many times over in regards to those that might help us out.

**Secretary of State:** And, Governor, if I might, one of the other things that was a concern when we did meet was the talk about, they wanted to do their own facility for training and there's so many good facilities out here, I hope that we can have that conversation again about combining with some of the other law enforcement agencies instead of trying to get your own; I'd appreciate that conversation.

I think if it would be all right with the Governor at this time just to talk about this, I'm really concerned about the lack of interest in this arena. Any security officers, with any of our agencies. Is there some type of a Committee that's been formed or is going to be formed? I think we need to really seriously look into this. I know it's a national issue. We talk about it in the Secretary of State's meetings all the time. Those of us who have peace officers. I know nationally there is an outpouring of families not wanting their families to get involved in law enforcement because of things that are going on nationally. I was hoping that we could look at something that we would put together to kind of look into this. I know salaries is one of them. Location is another one. Going out to some of these rural areas for a family is a big concern. Would that be something we could talk about at the next Prison Commission meeting, or outside of this meeting, but I think it's a critical area that we need to have a discussion on.

**Governor:** I don't think this is the forum.

**Secretary of State:** No

**Governor:** I think that the—at least specific to corrections, obviously the Prison Commission would be the place to talk about it. You nailed it. It's a salary issue and it's a location issue. There are some states where the correctional officers are actually paid more than their troopers, the Department of Public Safety employees. In those states they have problems with the Highway Patrol leaving to work at the Department of Corrections.

**Secretary of State:** Wow.

**Governor:** Yeah, that's a conversation that I'm going to continue to have with Corrections. I don't know and I guess the question would be for Corrections. We could look, and depending on the budget situation which we're building right now, you do it for one, you've got to do it for all, because our Troopers, it's the same issue. They're leaving and going over to Metro.

**Secretary of State:** We see it from our office. It's like this revolving door, Governor. If there's a way we can stop the bleeding from coming out—how many positions do you have? You said, 104 for the rural areas, what do you have overall, in the prisons, what's your vacancy?

**Scott Sisco:** Like I said, we have 522 positions in the rural areas and 104 of those are vacant right now. We're really close to 20%. Overall, the vacancy rate, when you throw the urban areas in to it is probably more in the 8-9% range, if you combine all of the areas together.

**Secretary of State:** Okay, thank you Governor.

**Governor:** You're welcome. It's just a fundamental issue. It costs money.

**Secretary of State:** No, I understand that. I get it.

**Governor:** There are those that are not supportive of that. That's a conversation I'm going to have with the Budget Director. That's a conversation I'm going to have with Corrections. To see, for us to be competitive. Last month or the month before, we approved the very same Critical Labor Shortage for the Highway Patrol. Again, we are losing, not just entry level Troopers, but mid-level management because of Metro's ability to hire because of the More Cops money that was approved by the County Commission. It's just a cascading effect here.

**Secretary of State:** They go from agency to agency, but I think they had like 130, was that the Highway Patrol? Their number was so large of what they're down. I just thought if there was a way for us to put something together with all of these agencies to discuss the shortage because I have it, you know, for my small office with peace officers. I can't imagine what the larger ones, what they're doing.

**Governor:** It's about the money. I mean, it's that simple. It just—

**Secretary of State:** Well, we can't even get people to come even—I mean, we are one of the better offices and we still can't get people to come in and apply for the positions. I think there's more than the money, but I think the money is absolutely one of the issues. Thank you.

**Governor:** All right, any other questions on this Agenda Item? Mr. Sisco, before you go, I understand that you're going to be retiring in the very near future and I've had the pleasure of working with you for many years. I want to thank you for your service to the State in so many different capacities. I'm going to miss you. I think you've done a wonderful service to the State and who knows, maybe you'll come back under this Critical Labor Shortage. [laughter]

**Secretary of State:** There we go.

**Scott Sisco:** Director McDaniel keeps trying to talk me into that, but I've still got about four more months. I'm going to see you at a couple more Board Meetings and another Board of Prison Commissioners meeting. Yeah, he keeps trying to talk me into coming to Ely and becoming a Correctional Officer.

**Secretary of State:** I want to second the Governor's comments. I've had the pleasure of working with you through the Legislature as well. So, thank you and we look forward to the next few meetings, but also, good luck to you in your retirement.

**Governor:** All right. If there are no further questions, the Chair will accept a motion to approve the Critical Labor Shortage Designation as described in Agenda item number 5.

**Attorney General:** Move to approve.

**Secretary of State:** Second.

**Governor:** The Attorney General has moved for approval. The Secretary of State has seconded the motion. Any questions or discussion?

**Secretary of State:** The only thing I want to ask, if I can on this, which I forgot is, are there any federal laws right now because of the shortage that affect us, and I don't know if they can tell us now or if that's something we can discuss later.

**Governor:** I mean again, I think that's a topic for the Board of Prison Commissions.

**Secretary of State:** Okay.

**Governor:** Perhaps we can put that on the Agenda for that.

**Secretary of State:** Put that on the Agenda.

**Governor:** And, Mr. Sisco, I guess before I take the vote on the motion, if you could report back on how this is going, so we can have some actual numbers as to how many people have stepped out of retirement and taken positions as a result of the approval of this item.

**Scott Sisco:** Yes Governor, I absolutely will, thank you.

**Governor:** Okay. Any other questions or discussion? All in favor say aye. [ayes around] Opposed, no. That motion passes 3-0.

**\*6. FOR POSSIBLE ACTION – VICTIMS OF CRIME FISCAL YEAR 2016  
2ND QUARTER REPORT AND FISCAL YEAR 2016 3RD QUARTER  
RECOMMENDATION**

Pursuant to NRS 217.260 the Board of Examiners shall estimate available revenue and anticipated claim costs each quarter. If revenues are insufficient to pay anticipated claims, the statute directs a proportional decrease in claim payments.

The 2nd quarter fiscal year 2016 Victims of Crime Program report states all approved claims were resolved totaling \$1,801,635.19 with \$263,581.39 paid out of the Victims of Crime Program account and \$1,538,053.80 resolved through vendor fee adjustments and cost containment policies. The program anticipates future reserves at \$11 million to help defray crime victims' medical costs. Based on the projections the Victims of Crime Program recommends paying Priority One, Two and Three claims at 100% of the approved amount for the 3rd quarter of FY 2016.

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

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

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**Comments:**

**Governor:** Let's move to agenda item number 6 which is the Victims of Crime Report. Mr. Wells.

**Clerk:** Thank you Governor. Pursuant to NRS 217.260, the Board of Examiners is required to estimate the available revenue and anticipated claims costs for the State Victims of Crime Program. This item includes a report on the claims paid in the second quarter of FY 2016 and a recommendation to pay Priority One, Two and Three claims at 100% for the third quarter of FY 2016.

**Governor:** So, plenty of money in there for the future?

**Clerk:** There is at this point.

**Governor:** Okay. This is one of the most well managed funds that I'm aware of. We had that presentation not long ago. The funds from it go to such worthy causes in terms of those afflicted individuals who have been injured. I'm really pleased with how they're performing. Any other questions or comments? Hearing none, the Chair will accept a motion to approve the Victims of Crime Fiscal Report as described in agenda item number 6.

**Attorney General:** Move to approve.

**Secretary of State:** Second.

**Governor:** The Attorney General has moved for approval. The Secretary of State has seconded the motion. Any questions or discussion? Hearing none, all in favor say aye. [ayes around] Opposed, no. That motion passes 3-0.

**\*7. FOR POSSIBLE ACTION – AUTHORIZATION TO APPROVE A PROVIDER AGREEMENT**

**A. Department of Health and Human Services – Division of Child and Family Services**

The Division of Child and Family Services is requesting Board of Examiners’ approval of the following provider agreement forms to enable them to enter into an agreement with providers for specialized mental health and assessments for children and families:

- 1. Psychiatric Care Managers**
- 2. Medical Professional**

**B. Department of Health and Human Services – Division of Child and Family Services**

The Division of Child and Family Services is requesting Board of Examiners’ approval to amend the following provider agreements to include adults and adolescents. Since placements can occur up to age 21.

- 1. Drug and Alcohol Testing Services**
- 2. Substance Abuse Assessment**
- 3. Psychosexual Evaluation**
- 4. Psychological Testing**

**C. Department of Health and Human Services – Division of Public and Behavioral Health**

The Division of Public and Behavioral Health is requesting Board of Examiners’ approval to amend the following provider agreement form to include updated language referencing the “Individual Support Plan”, the “Medicaid Waiver Program” and “Accreditation Standards” and add language regarding homeowner approval for the intended purpose and use of the home.

- 1. Supported Living Arrangements (Residential Support)**

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

**Motion By: Attorney General**

**Seconded By: Secretary of State**

**Vote: 3-0**

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**Comments:**

**Governor:** We’ll move to agenda item number 7, Authorization to Approve Provider Agreements. Mr. Wells.

**Clerk:** Thank you Governor. Item 7 contains three requests for the Board to approve provider agreements for the Department of Health and Human Services.

The first is a request from the Division of Child and Family Services to approve two new blanket provider agreements for psychiatric case managers and medical professionals to provide services for incarcerated youth and adolescents.

The second item is a request from the Division of Child and Family Services to revise four provider agreements. In order for the division to use the agreements for individuals up to the age of 21.

The third request is from the Division of Public and Behavioral Health, to amend provider agreements to include updated language and approval requirements for supported living arrangements.

**Governor:** Thank you Mr. Wells. A & B are routine. As I've said before, we approve these all the time to improve the efficiency so that we can get the service out on the street as soon as possible. C is not routine. Part of the motivation for this is what has happened in Washoe County with regard to the residential living arrangements for the mentally ill. My understanding is that there are representatives here from the Department of Health and Human Services. I don't know if Director Whitley is present.

**Secretary of State:** That looks like him.

**Governor:** Yeah, I see you there Director Whitley. Why don't you commence with a presentation on the genesis of this Agenda Item.

**Cody Phinney:** Good morning Governor. This is Cody Phinney, Administrator for the Division of Public and Behavioral Health. I appreciate very much the opportunity to give you some information on how we're addressing this. Director Whitley has some additional information.

We are asking this morning for some changes to the amendment to the contract—I'm sorry, the attachment to the contract that allows us to provide these services. These are the changes we believe we have the current authority to make that will help mitigate some of the problems we've identified currently. Then we have additional longer term plans to seek authority to make additional changes. We do expect to be back once we have that regulation in place.

The changes in today's contract requests that the providers—the contract is an agreement between the providers of the service, as this is not a facility type, it's a service that's provided in the community. The contract language that we're asking to have changed today clarifies some of those requirements to make sure that it's clear to our providers that the mental health service language is used and also, ensures that the property owner is aware that services will be provided at that location.

**Governor:** Richard, can you provide a little more specificity with regard to what this will do?

**Richard Whitley:** For the record, Richard Whitley, Director of Health and Human Services. I think just to step back from what Cody presented, these types of residential supports that take place in the community, in houses, in neighborhoods are really regulated in three different ways. So, for the public, it's hard to distinguish really what authority resides over these facility types. So, you have the Bureau of Healthcare, Quality and Compliance that actually licenses and regulates residential facilities for like, assisted living and substance abuse treatment in a residential facility. Then you have supported living arrangements which are for people who have a developmental delay. The third type is the type we're before you today with which are residential supports for people with mental illness.

One of the things that has occurred since the Reno Gazette story came out was in examining these three different, sort of regulatory oversights, of essentially the same type of facility in a neighborhood, we determined that the oversight is not consistent. Probably the most rigor is involved with the Bureau of Healthcare, Quality and Compliance with assisted living and residential facilities for the treatment of substance abuse and the supported living arrangements for people with disabilities. Probably the least rigor is with the oversight of the housing arrangements for people with mental illness. What that regulatory oversight role has been—has occurred over time is it's embedded with the Case Manager. So, a service provider is serving both as a Case Manager and as a Regulator.

One of the actions that we've taken immediately is to go out and review all the residential facilities serving the people with mental illness. That assessment did not show any immediate jeopardy for any of the clients. There were some environmental health issues identified that were remediated on the spot. There were some issues with smoke detectors that needed battery changes. Those were corrected on the spot. But, nothing in terms of the photographs that were in the Reno Gazette Journal with the facility that was written about in the paper.

So, after going out to all these facility types, one of the things that became apparent is that it doesn't work to have this regulatory role embedded with the Case Manager. Cody did the assessment of what the time and effort is and it equaled about 2 1/2 employees who would just do the regulatory role. One of the actions that we've taken immediately is to fold that regulatory role in with the Bureau of Healthcare, Quality and Compliance so the oversight is more focused and deliberate.

The other thing that we've done is collected all of the residential types that occur in the community. I think it's important to acknowledge that the most complaints we get in the Bureau of Healthcare, Quality and Compliance are related to unlicensed facilities that occur in the neighborhood. Mostly because of environmental factors or because of the congregated living of individuals, neighbors get suspicious of what's going on. So, by not having all of these residential facility types in a centralized database, basically, we can't actually even communicate back to providers or to the community in a really timely and clear way to let them know what is occurring in that residence. That's the other immediate action that we have taken.

As Cody said, we are going to do longer term regulations. Both the developmental—the people with developmental delays and then the other residential types have regulations that spell out and actually require certification. This facility type does not. So, we want to move this to the same level of oversight and rigor that exists with the other residential types. I do feel confident that our immediate action verified that there were no residents in jeopardy and that the conditions of the residences were safe and the cleanliness was addressed.

I do think going forward though that having this in regulation so that we are more proactive and not reactive is our overall goal.

**Governor:** So, what will change after the approval of this? Does that mean there will be more onsite inspections?

**Richard Whitley:** For the record, Richard Whitley. What this will mean is that the provider, the service provider, who is our contractor—the key point is, they will have to inform the owner

of the home, of the business that they are providing in terms of the clients that will be residing in that home.

One of the, I think things identified in the news article was that the homeowner did reach out to Public and Behavioral Health to the Case Manager and there was no response. We are taking disciplinary action related to that because that is not the proper response, but we do believe that by amending this attachment in the contract, we actually require then the provider to inform the homeowner of the type of clients that will be residing in the facility. That's the big change in this attachment.

The other changes I mentioned are within our authority to manage the program. Just in doing the evaluation of how best to regulate to this, it became apparent that we could do a better job by consolidating the regulatory effort, much like we do with other health facilities.

**Governor:** So are you saying there will be more oversight in terms of looking at the facilities so they don't get to the place where, at least that one residence was that's in the RGJ.

**Richard Whitley:** For the record, Richard Whitley, that is absolutely correct.

**Governor:** Have you, you being the DHHS, has there been an effort to try and assist the homeowner with cleaning up the premise?

**Cody Phinney:** For the record, Cody Phinney. Yes, Governor, I have met with the homeowner personally and toured the home and offered to provide assistance in cleaning up the home.

**Governor:** Are you going to go ahead and do that?

**Cody Phinney:** As yet, I have not heard back from her and her attorney, but we are awaiting their response.

**Governor:** So you stand ready, willing and able to clean that up?

**Cody Phinney:** We absolutely do, yes.

**Governor:** All right. Questions from other Board Members? Madam Secretary.

**Secretary of State:** Thank you Governor and thank you Cody and Richard for giving us this overview. The question I have, Richard, when you said that you were going to do more oversight and also the other thing that you said was, you were going to inform the service provider and the home/business owner of the type of client. So, before we were not exchanging who was coming to stay at this residence, they did not know? Is that correct?

**Richard Whitley:** For the record, Richard Whitley, that is correct. There was not a requirement. What we do know is that many of the providers actually rent a home and that communication has not always been consistent with informing the homeowner of the type of residents of the facility and that they were, in fact a provider for the State for people living with mental illness.

**Secretary of State:** And we are within the rights of the clients to provide that information?

**Richard Whitley:** For the record, Richard Whitley. Yes, we've reviewed this attachment with our Deputy Attorney General. We're not disclosing identities of people, but we do believe that the home—

**Secretary of State:** Just type.

**Richard Whitley:** Type, yes. Correct.

**Secretary:** Okay, thank you Governor. Thank you very much.

**Governor:** Any other questions? One other question from me, Director Whitley, so you've done all the inspections in Washoe County, are there similar homes in Clark County?

**Richard Whitley:** Correct. For the record, Richard Whitley. There are about 1,156 individuals served in these residential facility types statewide and of that 390 are in Reno. The majority are in Las Vegas and we have been out to all of the facility types.

**Governor:** All right. Are they all in compliance?

**Richard Whitley:** For the record, Richard Whitley. Yes, they are—you know, in the regulatory environment, the first thing we look at when we go out to a facility, is the consumer in immediate jeopardy. If that's the case, we don't leave the facility until it's remediated. There were no conditions of that, but there were some situations where cleanliness needed to be improved upon. Where smoke detectors probably in, I think 8-10 of the facilities, there were smoke detectors that didn't have batteries. Those were—our staff did stay until batteries were replaced. That was the most severe, I think, of the situations that we found. The overall cleanliness, I think is a constant challenge in terms of needing to assure that the environmental safety is being adhered to. No immediate jeopardy to any consumers who were residing in those facilities.

**Governor:** So, I can be confident that we have gone through every home in the State, to look at the conditions of those.

**Richard Whitley:** For the record, Richard Whitley. Every resident that the State is using public dollars to pay the rent for those facility types. There are some private facilities that actually do provide and people pay out of pocket. Those are regulated by HCQC. I could pull together an entire report of these residential types and show, but I'm speaking just of the ones that are funded by mental health. It actually would be probably good for the public, since these all look similar. Part of the confusion is, people who live in a neighborhood don't know who is regulating this facility type.

So to be able to—the other part that I failed to mention is, we need to improve our transparency on our website to be able to show these residential sites so a public member who maybe has a concern or a complaint knows that, you know, the rent is being supported with public dollars. We do that with those facilities that are licensed by Healthcare, Quality and Compliance; the assisted living facilities, the residential facilities for substance abuse, but we don't do it with these residential facilities or people who are living with mental illness. It is an area where I think

the public in general gets confused, because they don't look to the statutory authority. They just know there's a group home, which is what the euphemism is of what they're called, is in their neighborhood and there's concerns about cleanliness. We want to make that overall easier for the public to be able to identify. And we also think that by doing that, if a concern gets raised and we go out, we can prevent a situation from progressing to the point like the photos in the Reno Gazette Journal.

**Governor:** And finally, Director Whitley, for me and if the Secretary has a follow-up, so who has influence over that other group that you talked about, that are not publicly funded?

**Richard Whitley:** For the record, Richard Whitley. So, people who may qualify for disability and get social security disability can pay rent and people with mental illness can live anywhere in the community. So they may be paying out of their own pocket and that just is an area where we don't provide an oversight because we're not paying for it. I do know from looking at the Healthcare, Quality and Compliance data that this is an area that we get a lot of complaints and we'll go out and investigate under the umbrella of an unlicensed facility. Sometimes we have to inform the neighbor that there is no regulatory oversight and then direct them perhaps to the local Health Department on environmental health concerns. There are people that room together and pay out of their own pocket and we don't regulate those types of living arrangements.

**Governor:** So, in other words, you have no jurisdiction over them.

**Richard Whitley:** Correct. The Department of Health and Human Services has jurisdiction over the three facility types that I mentioned and there's different levels of regulatory authority which we want to standardize so that we have a common approach to those. I think that that organized approach actually helps to even serve the unlicensed, I think it makes us more efficient in terms of going out when we look at a facility and determine that it's unlicensed. I think by organizing and having that scope of work practiced in a common way that there's efficiency and timeliness in that to address the concerns of most often the neighbors.

**Governor:** I'm sorry, I thought of another question. I appreciate your indulgence. There was another issue that I read in the RGJ with regard to the, I guess, how would I put it, somebody's ability to maintain their license to provide those services. To be more specific, the entity or the individual that had the license at the house that's the subject of the RGJ story is still eligible to operate facilities. Is there a mechanism, if someone goes out of business like that, like happened here and then can go and open another one the next day, or is there some type of process by which they forfeit their license because of what happened?

**Richard Whitley:** For the record, Richard Whitley. To clarify, I think and then answer your question. I think the provider in the Reno Gazette Journal was identified as also being a Medicaid provider. So, different services provided under Medicaid. Medicaid doesn't reimburse to residential to pay rent. A provider could be a provider to Medicaid and also a provider for residential support. Those two—so the scopes of work need to crosswalk so that if we identify an issue in one area, it prompts a review of another, and that is in place now that wasn't in place previously. So that communication for public services are communicated where there is a concern. I think for the current facility, Project Uplift, they elected to stop providing services, so they weren't terminated by Public and Behavioral Health. They chose to terminate their contract. It does appear that they grew very rapidly and the State relied on them as the major provider in

Northern Nevada for services. That again is something to be looked at in the regulatory process so that we don't do harm to a business either in terms of the need is so great and that we grow them at such a rate that they're not able to provide the service.

Again, I think the benefit in that, in all of that is by improving this regulatory role, the communication between Medicaid and Public and Behavioral Health is improved. The timeliness for getting out is improved. I think that helps the consumer as well as the business, and also the homeowner, in terms of not allowing for damage to be done to the property.

**Governor:** Okay and last—and I know I've said 'last' ten times, but lost in all this is what happened to the residents. Do we know what happened to those residents?

**Richard Whitley:** For the record, Richard Whitley. I think probably the nice outcome of this story, of this event is that the four residents who were residing with Project Uplift—one thing that Project Uplift did do was actually help cultivate a relationship of support between these four residents and they're living in another residential setting together. They wanted to continue to live together, so they are residing in another facility.

**Governor:** Okay, thank you. Madam Secretary.

**Secretary of State:** Thank you Governor. You had talked about the inside, you had went to the inside. I think in one of our other meetings, I had talked about, when they were talking about the drug and alcohol service providers that we have in the State and the homes they use. There were, in my former Senate District, were concerns. So I'm asking, are you also looking at the outside, when you go and examine, do you look at debris, old cars, trash? Do you look at the outside as well as what you've done to the inside?

**Richard Whitley:** For the record, Richard Whitley. Yes, we are. That's part of an environmental scan of the facility is both inside and outside. I would have to say, that's one of the most common complaints is when the outside does begin to look trashy in the neighborhood and it stands out as an eye sore to the rest of the neighbors; that has been a prompt to go in and then, typically to identify other issues that are going on inside the facility as well. So, that environmental piece is often an indicator of other deficiencies.

**Secretary of State:** Thank you. And, we do have a way now, you're going to put something on your website or some place so that neighbors or people know who to contact, who the correct—because, I know as a Senator, I would get those calls when that trash would line up. The old cars would be out there. There'd be a sofa out there and they'd sit and smoke at night. I mean, all of those issues were in a very, very nice neighborhood. I'm just curious if there's a way. Because they would call their Senator, they didn't know to call you.

**Richard Whitley:** Right. For the record, Richard Whitley. I think one of the benefits of integrating this regulatory piece now is that we're utilizing the Bureau of Healthcare, Quality and Compliance mechanism for complaint investigations; which is to take a complaint, whether it's anonymous or confidential, from the newspaper when we scan and see an article about a facility—there's two ways, there's an 800#, 1-800-225-3414, which is the phone number for the Bureau of Healthcare, Quality and Compliance. Again, that can be an anonymous complaint or a

confidential complaint. The other mechanism is that HCQCComplaint@Health.NV.gov. A person can make a complaint through an email as well.

**Secretary of State:** Thank you, thank you Governor, very much. I appreciate it.

**Governor:** Any other questions. Director Whitley, any other presentation you wanted to make?

**Richard Whitley:** No thank you.

**Governor:** All right.

**Secretary of State:** Can I just say thank you to them. I really appreciate all the effort and everything that you, as the Governor, but also what they did to go out and take care of this issue in such a fast response time. Thank you.

**Governor:** Thank you Madam Secretary and I will say this, it's a tough lesson. Again, these things come to our attention; I will give credit to the Gazette Journal and Ms. Damon who reported on this. Obviously, it wasn't something that I was aware of. Mistakes were made and they need to be fixed and they will be fixed. I do appreciate Director Whitley and Cody, your response to this and immediately going out and inspecting all these homes and making sure that the residents are living in a safe and sanitary environment, that the homeowners can have confidence that their homes are going to be taken care of. It is interesting to me that somebody can rent a house and not know that it's going to be used for that purpose, but that may be a discussion for another day. It's just very important to me that we learn lessons from this and that going forward that we take care of business and make sure that this can't happen again. I am, frankly, disappointed that the homeowner won't let us in there to clean it up, but that's in the legal arena now. We'll see what happens with that. Certainly, the State stands ready, willing and able to clean the premises up and take care of it. I have no further questions or comments.

**Attorney General:** Move to approve.

**Secretary of State:** Second.

**Governor:** The Attorney General has moved for approval of agenda item 7A, B and C. The Secretary of State has seconded the motion. Any questions or discussion? Hearing none, all in favor say aye. [ayes around] Opposed, no. That motion passes 3-0.

**\*8. FOR POSSIBLE ACTION – APPROVAL OF PAYMENT FOR THE CASH MANAGEMENT IMPROVEMENT ACT**

**A. Office of the Controller – Payment to U.S. Treasury not to exceed \$5,481**

The State Controller requests approval of payment to the U.S. Treasury not exceed \$5,481 from the General Fund. This is the highest possible payable liability for 2015. The U.S. Treasury is reviewing the report and should have a final liability figure by March 16<sup>th</sup>. Payment to the U.S. Treasury is required by March 31<sup>st</sup>.

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

**Motion By: Attorney General**

**Seconded By: Secretary of State**

**Vote: 3-0**

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**Comments:**

**Governor:** Let's move on to agenda item number 8 which is, Approval of Payment for Cash Management Improvement Act. Mr. Wells.

**Clerk:** Thank you Governor. Item 8 is a request from the State Controller, pursuant to Section 82 of SB 514 from the 2015 Legislative Session, to authorize a payment, not to exceed \$5,481 to the US Treasury for interest owed under the Cash Management Improvement Act (CMIA). The CMIA ensures that the equity between the time that federal funds are drawn and expended with the State incurring a liability if it draws funds too early and the federal government incurring the liability to the State if the State uses its funds for federal programs. The amount shown is the highest possible liability for 2015. US Treasury is currently reviewing the reports submitted by the State Controller and will provide a final determination by March 16<sup>th</sup>, with payment due to the federal government by March 31<sup>st</sup>.

If the calculations by the State Controller are accepted by the US Treasury, the federal government will owe the State \$12,417.

**Secretary of State:** I like that.

**Clerk:** So, last March, the Board approved a payment not to exceed \$14,053 for 2014, the final payment was—or, the final amount rather was a payment from the federal government to the State in the amount of \$3,495.

**Governor:** All right, so either way, we're pretty close, which is nice. I mean, I know in my experience, the number has been a little bit bigger before and it's good to know that the worst case scenario is \$5,481. I'll take that \$13,000 any day. Any questions from Board Members?

**Attorney General:** Move to approve.

**Secretary of State:** Second.

**Governor:** The Attorney General has moved for approval for payment of Cash Management Improvement Act in the sum of \$5,481. The Secretary of State has seconded the motion. Any questions or discussion? Hearing none, all in favor say aye. [ayes around] Opposed, no. The motion passes 3-0.

**\*9. FOR POSSIBLE ACTION – APPROVAL TO WRITE OFF BAD DEBT**

**A. Gaming Control Board – Nevada Gaming Commission - \$108,293**

Pursuant NRS 463, as amended by AB 14 of the 2015 Legislature, the Nevada Gaming Control Board requests the approval to remove delinquent debt from the Nevada Gaming Commission's records.

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

**Motion By: Attorney General**

**Seconded By: Secretary of State**

**Vote: 3-0**

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**Comments:**

**Governor:** We'll move to agenda item number 9 which is, approval to Write Off Bad Debt. Mr. Wells.

**Clerk:** Thank you Governor. Most State Agencies turn their uncollectible debt over to the State Controller who has the authority to request the Board of Examiners write off bad debt that has become impossible or impractical to collect. Bad debt under the purview of the State Controller cannot be removed from the State's books unless the Board of Examiners designates the bad debt as uncollectable. Prior to the passage and approval of Assembly Bill 14, from the 2015 Legislative Session, the Division of Industrial Relations Advisory Council and the Nevada Gaming Commission, by affirmative vote of a majority of their respective members could remove from the records of the State, the name of a debtor and the amount of taxes, penalties and interest owed by that debtor, if after a period of three years for DIR or five years for the Gaming Commission, they remain impossible or impractical to collect. Assembly Bill 14 amended the respective statutes to require the DIR Advisory Council and the Gaming Commission to report the debt determined to be impossible or impractical to collect to the Board of Examiners for designation as a bad debt. Upon such designation, the Clerk shall notify the State Controller to remove those debts from the State's books. This is the first request from the Gaming Control Board to write off bad debt under the provisions of Assembly Bill 14.

**Governor:** Mr. Wells, you're satisfied that this is uncollectable?

**Clerk:** Yes Governor, I think with a review of the amounts, most of them are minor and almost all of them are for legitimate reasons.

**Governor:** So, it wouldn't do any good to turn it over to the Controller, would it?

**Clerk:** No, at this point Governor, I think the Gaming Control Board has made every effort to collect the amounts. I don't think the State Controller's collection agencies would have any better luck.

**Governor:** Any other questions from Board Members. Okay, if there are none, the Chair will accept a motion to approve—for approval to write off bad debt in the sum of \$108,293 by the Nevada Gaming Control Board and Commission.

**Attorney General:** Move to approve.

**Secretary of State:** Second.

**Governor:** The Attorney General has moved for approval. The Secretary of State has seconded the motion. Any questions or discussion? Hearing none, all in favor say aye. [ayes around] Opposed, no. That motion passes 3-0.

**\*10. FOR POSSIBLE ACTION – APPROVAL OF AN EQUIPMENT LEASE**

**A. Department of Health and Human Services – Public and Behavioral Health – Carefusion Solutions Equipment Lease**

The Division of Public and Behavioral Health is requesting Board of Examiners’ approval of the fifth amendment to the Carefusion Solutions pharmaceutical medication dispensing equipment lease for the state’s facilities and hospitals. This amendment increases the maximum amount of the lease from \$3,964,308 to \$4,412,228 due to a continued need for these services.

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

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

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**Comments:**

**Governor:** We’ll move to agenda item number 10, Approval of an Equipment Lease. Mr. Wells.

**Clerk:** Thank you Governor. Item 10 is a request from the Department of Health and Human Services, Division of Public and Behavioral Health to amend a lease of pharmaceutical dispensing equipment. This amendment extends the lease for 10 months to December 31, 2016 at a cost of \$447,920 while the Division completes a Request for Proposals for a new contract that will be effective January 1, 2017.

**Governor:** I have no questions, Board Members? Is there a motion for approval?

**Attorney General:** Move to approve.

**Secretary of State:** Second.

**Governor:** The Attorney General has moved to approve the equipment lease as described in Agenda item number 10. The Secretary of State has seconded the motion. Any questions or discussion? Hearing none, all in favor say aye. [ayes around] Opposed, no. That motion passes 3-0.

**\*11. FOR POSSIBLE ACTION – LEASES**

Three 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**

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**Comments:**

**Governor:** We’ll move to Agenda Item 11, Leases.

**Clerk:** Thank you Governor. There are three leases in Exhibit 1 for approval by the Board this morning. Additional information has been requested for Lease number 1, for the Department of Employment, Training and Rehabilitation.

**Governor:** I asked for this one to be pulled. Director Soderberg, I don't know if you're here to respond to that one, but it's the first time I've ever seen a penalty clause, on us paying a penalty on a lease. I guess I'm wondering why we were late on the rent.

**Don Soderberg:** Governor, for the record, Don Soderberg. Shelley Hendren of our Vocation and Rehabilitation Division is with us in Carson City as well as Kelly Lafayette from the Buildings and Grounds. They will go into detail, but the short explanation is, this wasn't really a DETR lease, it was a co-lease of two of our divisions and one left and one really wanted to stay. They will give you the details and I can fill in any blanks if you have any.

**Governor:** Thank you.

**Kelly Lafayette:** Thank you Governor. For the record, Kelly Lafayette, State Public Works Division, Leasing Services Section. The amendment for the original lease was based on a total square footage of approximately 24,000 square feet. However, with the vacation of a tenant, the lease was reduced to approximately 14,000 square feet. The reason for the reduction was due to an issue in some partial lack of funding, on only a portion of the lease occupied by DETR. Previously two divisions under DETR were in the lease. One was the Employment Security Division, as well as the Vocational Rehab Division. The reduction of the space will accommodate the lack of funding for the Employment Security Division, who vacated the space in June of 2015.

The lack of funding clause in the lease was used in a very unique way, as you've stated, as the entirety of the space was not vacated as is provided in the lease agreement. Additionally, the vacated space was not usable or leasable as well. This required reconfiguration on behalf of the Lessor and the landlord to reconfigure and accommodate the lease in an amendment so that the remaining portion could be leased out. Due to these very unique circumstances, both our DAGs for both DETR, as well as the State Public Works Division, negotiated a written settlement agreement which the Lessor included in this amendment that you have before you.

The amendment represents the best and most effective solution for the Vocational Rehab Division. Some of these benefits include: omitting costly relocation expenses; retaining a property that has been occupied for over 20 years and has client familiarity; retaining extensive and costly tenant improvements in the form of fully operational rehabilitation labs; retaining a prime location with transportation services curbside onsite; and, retaining a property which is in line and priced actually just under market rate for the area. In addition to this, they also co-locate with a joint venture, if you will, that they have a co-location agreement with.

At this time, I'd like to open it to the floor to any questions, and I also have Shelley Hendren here, who is the Administrator, who can answer any fiscal questions if you have any. Thank you.

**Governor:** My specific question is, as I said, in my little over five years as Governor and then my previous experience as Attorney General sitting on this Board, I've never seen us pay a

penalty for a lease, because we always have those out clauses for lack of funding. So, why in this case are we paying \$25,000 to the landlord?

**Don Soderberg:** Governor, Don Soderberg for the record. The penalty payment is coming from our Employment Security Division which vacated the premises. It was part of our last budget that was approved by the Legislature. There was—we have to look back and see what mistakes were made. I think there was not good communication with the landlord at the time, so when we invoked that clause, the landlord pointed out, well no, you're not vacating the premises. You're only partially vacating the premises. And, from the landlord's point of view, we are one agency, we're the State. From our point of view, these are two separate divisions that have different funding sources, different budgets.

So, we entered into a negotiation with the landlord. At that point, the Vocational Rehabilitation Division informed us that not only, they don't want to move, but they actually would like to extend the lease. This is a very optimal location for them. So, essentially, Employment Security Division is paying a penalty for vacating the premises and depending on which lawyer is doing the arguing, maybe or maybe not violating the lease and Vocational Rehabilitation is extending their lease, now as the sole lessor at a favorable rate. Employment Security Division is actually out of there and has been out of there since last June. Vocational Rehabilitation will wind up staying there. As Ms. Lafayette pointed out, it has a number of positives for them, including synergies with the Washoe County School District in some joint youth programs. In fact, Washoe County School District moved some offices in that building because Vocational Rehabilitation was there. Part of our agreement with the landlord is, we will assist in working with Washoe County School District, so they would extend their lease to match up with what we're doing.

**Governor:** I'm not questioning that piece, I just don't want us to set any kind of precedent here. It sounds like this is a situation that's limited to its facts in terms of why we did what we did. As you know, we have probably hundreds if not thousands of leases throughout the State. I don't want a landlord, if one of our agencies was to leave early and say, well you paid over here, we want you to pay now. So, given the co-location, I think that's a unique situation but it sounds like, the landlord gets everything here. They get a penalty plus we're going to continue to rent the entire premises at an increased monthly rate.

**Don Soderberg:** Governor, for the record, Don Soderberg. No, we are only leasing the Vocational Rehab portion of the premises. We have vacated the part that Employment Security had, so it is a smaller footprint. What you see in the escalator is now an extension that we are told by Buildings and Grounds is slightly under market. We believe from Vocational Rehab's point of view, this is actually a very good deal. You are correct, this is an isolated incident based on the facts and we have discussed with Buildings and Grounds in the future, we will not enter leases as DETR when we have more than one division occupying. Each division will enter into a lease and therefore have the flexibility when budgets are tight to make their own decisions without potentially impacting another division's operations.

**Governor:** Do you know what the exposure was, otherwise? We settled it for \$25,000, I would assume it was a much bigger number that the potential exposure would have been.

**Don Soderberg:** I would defer to Ms. Lafayette for the total number, but it would've been the entire amount of the lease that Employment Security Division, specifically the UI program, had vacated.

**Kelly Lafayette:** For the record, Kelly Lafayette once more. Mr. Soderberg, or Director Soderberg, you are correct. The original obligation was a \$37,000 a month payment. The current lease instrument states that the property must be vacated in entirety when a lack of funding is basically executed. I believe from the point of perhaps August on, a reduced rent was paid based upon the vacating of the one entity. So in conjunction with that, the remainder of the space that was left for the lessor would not have been able to be leased out as well. The lessor did step up to the plate. He came up and provided a contractor as well as trying to make the facility work so that he could go ahead and lease out the remainder of the portion of the building. He did have some exposure, as far as trying to mitigate some risk with taking over the new—the vacated space and being able to have that space be actually marketable and rentable.

**Governor:** Okay. Madam Secretary.

**Secretary of State:** Thank you. I have to agree with the Governor. I have some real concerns about this. Number one a precedence, but why in negotiations, if you're staying, would a landlord penalize you and it's a different agency that left and you're paying the penalty—I'm confused. I don't feel like I've really gotten a solid answer to this, so I'm—that's why I'm asking. I felt like I heard two things. I felt like I heard that you wanted to stay, your division is going to stay. Somebody else left, another division left, and you're going and you're getting more square footage, you've negotiated more square footage and then I heard that you're not. So, I think I am misunderstanding or not hearing something, so could you explain—and again, \$25,000 is a lot of money and especially for a penalty. I heard that the amount was larger, but this is—this is really a concern as to why you would be paying it.

**Don Soderberg:** For the record, Don Soderberg. I apologize for us not being clear. This is a unique situation. DETR is not a cohesive agency, it is a collection of unrelated or semi-related divisions, who I believe at one time were all separate agencies. In this lease, it was signed by DETR as the mother agency, but really was occupied by two different divisions that operate under two different sets of authorities and two different budgets and streams of federal funding.

The Employment Security Division handles, most notably, the unemployment insurance program. The Employment Security Division had space within these premises to run that. They decided to close that office for budget reasons. The Vocational Rehabilitation Division is a completely separate agency, so to speak, that is under the DETR umbrella with separate funding from the federal government and they also had space within this premises.

For whatever reason, I think it was the practice at the time, the lease was signed by DETR, as a single agency, which was, in retrospect, part of the problem—the cause of the problem. So, when the Employment Security Division's UI Program felt it was necessary to vacate the premise and close that office and invoke the funding clause, it was brought forward to the Governor's budget, the Governor presented that budget. The Legislature approved it. They began to vacate the premises. Then the only lease payments that went to the landlord were the payments for the Vocational Rehabilitation square footage.

The communication there was not very good. The landlord was very surprised. He did not agree with our interpretation of the funding clause. The negotiation at that time centered around two areas. How do we take care of the Unemployment Insurance Program that does not want to have this office and make them not liable for the entire lease term? I apologize for not having that gross number and I will get that to you when we get back to the office. And, how do we keep the Vocational Rehabilitation Division, which operates separately, whole by actually staying in a location where they're at. We will be moving different places within the building, as Ms. Lafayette pointed out, but essentially, it's the same address and its clients will be going to the exact same location and it's interfaced with the Washoe County School District who will continue there.

In those negotiations, based on the information I was given from the Vocational Rehabilitation Division is, not only would they like to stay, it would be a hardship for them and their clients to move, but they actually would like to extend the lease term. So, that's what we have is this—

**Secretary of State:** So, it's an extension of the lease, not of the square footage is what you're—

**Don Soderberg:** No, overall, it's a reduction of the square footage because only Vocational Rehabilitation will be staying there.

**Secretary of State:** Okay, so the other two entities still are in existence, they still have budgets and they're not helping to pay the fine?

**Don Soderberg:** The UI Program will be paying the fine.

**Secretary of State:** It will be coming out of that, not out of—

**Don Soderberg:** Well, the UI Program is part of DETR as well.

**Secretary of State:** Okay, but you said there were two programs that were in there.

**Don Soderberg:** Employment Security Division's UI Program and the Vocational Rehabilitation Division Program. So, Vocational Rehabilitation will stay. Employment Security has already vacated the premises and will be paying penalty. Vocational Rehabilitation will then be paying its lease payments for a longer term.

**Attorney General:** If I understand correctly, had each of these divisions done separate leases then the one division that left would've been able to use the escape clause and everything would've been fine-

**Don Soderberg:** Correct.

**Attorney General:** --for the Governor's concern of precedent.

**Don Soderberg:** Correct.

**Attorney General:** The problem is, DETR signed for everyone so there's no real way to sever the other division in the same way or at least that was the legal debate that occurred, correct?

**Don Soderberg:** Exactly.

**Attorney General:** Does that make it clear?

**Secretary of State:** Yeah, you were much clearer, I'm sorry. He just was. It's just, it's frustrating, it really is, to have that. And, we don't know what it came down from? What the cost came down from, that got us to \$25,000.

**Attorney General:** I have a note here, 38% reduction, I think it's—

**Secretary of State:** 38%, all right.

**Attorney General:** Must be \$38,000 or something like that, to \$25,000.

**Secretary of State:** I just think since you're staying, it would've been nice that the landlord would've said, we're good to go, but he didn't.

**Attorney General:** But the landlord lost all the rents for all that time. He just was stuck, so.

**Don Soderberg:** I agree with the Secretary of State, as someone who is very miserly—worries about my budgets, but I believe we—in light of it, I think the two Deputy Attorney Generals did a good job for us in light of the circumstances. It could've been a lot worse.

**Secretary of State:** Okay.

**Governor:** Well again, lesson learned, I hope.

**Don Soderberg:** Yes.

**Governor:** As I said, in my memory, this is the first time that we've ever paid a penalty for an entity leaving a lease premises, so, again, it's unique on its facts and it won't happen again.

**Secretary of State:** Hope everybody goes back and looks at their lease agreements.

**Governor:** All right, any other questions with regards to this lease or any of the other leases that are included in agenda item number 11?

**Attorney General:** No questions, move to approve.

**Secretary of State:** Reluctantly second it.

**Governor:** The Attorney General has moved for approval of the leases contained in Agenda item number 11. Secretary of State has seconded the motion. Any questions or discussion? All in favor say aye. [ayes around] Opposed, no. That motion passes 3-0.

## **\*12. FOR POSSIBLE ACTION – CONTRACTS**

Thirty-four 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**

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**Comments:**

**Governor:** Let's move on to agenda item number 12. Contracts.

**Clerk:** Thank you Governor, there are 34 contracts in Exhibit 2 for approval by the Board this morning. Members have requested additional information on the following: Contract number 1 between the Attorney General and Bancroft Associates, LLC. Contract number 7 between the Public Works Division and H&K, Inc. Contract number 8 between the Public Works Division and Core Construction. Contract number 22 between the Department of Health and Human Services, Division of Healthcare, Financing and Policy and Clark County. Contract number 29 between the Department of Wildlife and Copter Lease, LLC.

**Governor:** Any other contracts members wanted held out? Let's begin with contract number 1.

**Nick Trutanich:** Good morning Governor Sandoval, Secretary of State Cegavske, Attorney General Laxalt; Nick Trutanich on behalf of the Attorney General's Office. Present with me in Carson City is our Solicitor General, Lawrence Van Dyke. In an effort to expedite the ESA litigation, the law firm of Bancroft, LLP, was retained to augment the resources within the Attorney General's Office on the ESA litigation. This Board has twice approved contracts with the Bancroft Law Firm to represent the State in two separate cases for a total of \$295,000. Those cases are the Duncan Case in Clark County and the Lopez Case in Carson City. This special counsel contract is again, for a fixed and discounted fee of \$125,000. The scope of work defines that Bancroft is to provide expedited assistance in the Lopez matter at the Nevada Supreme Court. It's important to note that under the scope of work in that contract, it allowed the State to file it's opening brief in the ESA litigation with respect to the Lopez case 99 days early. That happened last Friday. It's also important to note that under the prior contracts that this Board approved, there is a scope of work that is maintained during the duration of this contract. What I mean by that is, Bancroft is still obligated to give legal assistance in those cases at the District Court should something happen and they're remanded by the Supreme Court back down to the District Court.

So, in those two contracts that were previously approved, again for \$295,000, Bancroft has billed approximately 1,100 hours, to those two contracts, totaling somewhere in the neighborhood of \$800,000-\$900,000 in legal fees. Again, the State is getting those legal fees at the fixed and discounted rate under the previous contracts for \$295,000. So, they're doing a significant amount of this work pro bono. I'm happy to answer any other questions that this Board has.

**Governor:** Thank you Mr. Trutanich. Just so I'm clear, this \$125,000 is for the Lopez case, which is at the Supreme Court, right now?

**Nick Trutanich:** That's right Governor. And Bancroft is currently operating under the contract this Board approved in, I think December or November, with respect to the Duncan case. The Judge in the Duncan case is still deliberating on a decision but at the hearing last week, he

indicated that he would get a decision within the next couple of weeks and we certainly hope that that's true.

**Governor:** Did the Bancroft firm author the brief that was filed with the Supreme Court?

**Nick Trutanich:** So, I have the solicitor General who can discuss that, but like in all other briefs, what happens is Bancroft and our team, the Solicitor General and others in our office, work together on developing legal theories. Bancroft commits a significant amount of time, to the tune of 1,100 hours in the previous contracts, and they go back and forth and the product that has been written so far has been, in my opinion, phenomenal.

**Governor:** I haven't had a—I know that I was very impressed with the other brief that was filed, but I haven't seen the brief that you filed on Friday. I would appreciate a copy of that if I could get it.

**Attorney General:** I'll send it to you, I'm sorry Governor.

**Governor:** Also, you had expressed that this Board had approved the prior contracts. At any time, publicly or privately, have you interpreted anything that I've said as not being supportive of these contracts?

**Nick Trutanich:** No, Governor, the only chance that we've had to talk about it is here at the Board of Examiners Meetings and, no.

**Governor:** Well, the only reason I bring that up is, there was a national publication that quoted somebody that is a lawyer—"a lawyer familiar with Nevada's Board of Examiners, a body that includes Sandoval as a member and had to approve the contract with Clement, "the Governor's Office didn't want the Clement contract but the Governor publicly supported it when it became clear he didn't have the votes". Do you have an idea of where that came from?

**Nick Trutanich:** No Governor. In fact, when I read that about a week ago, I talked to your General Counsel late at night and told them that I had no idea where that came from. It didn't come from the Attorney General's Office. I will say, at the beginning, when we determined outside counsel was necessary in order to expedite this matter to the Supreme Court, as with every contract there are questions that come across to the Attorney General's Office from either the Clerk of the Board of Examiners, LCB and that, but those questions are routine.

**Governor:** So, how many lawyers are there familiar with the Board of Examiners' process? Not many. And, again, I—and I was not accusing the Attorney General's Office of doing this, I would hope that it would not and I don't believe that it would, but I'm not aware of any other lawyers that are familiar with this process. I will tell you right now that that comment is blatantly false. I always have questions with regard to any contract. I've already expressed publicly how important these ESAs are to the State, but—I mean, I'm not going to talk about this publicly, but I have a pretty good idea who said it and it's false. I don't know if you're familiar or aware of who it was, but I would hope that they would seek to correct this record because it's blatantly unfair.

**Nick Trutanich:** Governor, as soon as I read that, like I said, I told your General Counsel. I talked to members of the staff in the Attorney General's Office. I have no clue who said that and I—I definitely didn't say it and I don't think anybody in the Attorney General's Office said it.

**Governor:** As I said, please don't interpret anything I'm saying as in that regard. We need the best on this case. I've said that before. It is nice to have somebody who, as this article says, has argued more cases in front of the Supreme Court than any other lawyer in the history of the United States of America. So, God bless him. I hope they're successful at the Nevada Supreme Court, but as I said, there aren't many lawyers that are familiar with Nevada's Board of Examiners. So, as I said, it's a pretty small group. It's not the Attorney General's Office, so that kind of gives me an idea of who it might be. And, as I said, you said you don't know who said it, but if you ever become aware of who did, I'd appreciate it if they would correct the record with the author of this publication.

Other than that, do you think this is it, Mr. Trutanich, in terms of what the expenditures will be with this law firm?

**Nick Trutanich:** No, I think that there will be another contract, should the Duncan case—should we receive a decision on the Duncan case in Clark County, either an adverse decision or a favorable decision. I believe this Board will again have the chance to deliberate a similar contract with respect to the appeal in that case. I will say that I am proud of the deal that we have been able to get in this—with respect to each of these contracts. The State is getting phenomenal legal representation for a very steeply discounted price.

**Governor:** I agree with you. I am appreciative of that firm discounting it's fees. We are getting a good deal out of this. Do you know or can you anticipate or did you put in that brief—so, we've got two cases, we've got this Duncan case, we've got the Lopez case. The Lopez case is, as you've said, is at the Supreme Court. The Duncan case is still sitting here in Clark County. Does the Nevada Supreme Court have the ability to take on any of the constitutional issues that are being considered in the Duncan case in the Lopez case, or do we have to wait for the outcome of the Duncan case before it can take on all of the constitutional issues?

**Nick Trutanich:** Governor, I'm going to let my Solicitor General answer that.

**Lawrence Van Dyke:** Governor, Lawrence Van Dyke for the record. I don't believe, I mean, the Supreme Court, I suppose—I think it would be very difficult for the Supreme Court to take on the issues that are only in the Lopez case, and that is the Section 10 challenge, or, I mean, that are only in the Duncan case in the Lopez case, which is why just a week ago we were there in the Duncan case at a hearing and urging the Judge to issue a ruling as soon as possible so that we can try to get those issues up to the Nevada Supreme Court, perhaps and hopefully maybe even in a consolidated fashion. I don't believe—there are issues in the Duncan case that are separate from the Lopez case, I don't know that the Nevada Supreme Court can just sort of rule on those without the parties having joined. The Judge in the Duncan case asked the parties in that case whether they would want to add claims, I think in order to try to facilitate getting the two cases more similar and the Plaintiffs did not do that in the Duncan case. They really are—there's different claims. It's overlapping claims, but there's different claims in the two cases, that's why it's really critical that we get that second case up to the Supreme Court as soon as possible and get a ruling from the District Court Judge.

**Nick Trutanich:** And, Governor, can I add too—

**Governor:** I agree—I was just going to say, I agree. I'm glad that the Supreme Court expedited the briefing on this. Hopefully—I don't know if they've decided yet whether they're going to consider oral arguments in that case, but conceivably, we could go through this entire Duncan case, have an outcome and then basically start all over again with the Lopez case and have that have to be fully briefed at the Supreme Court and considered as well. I appreciate your coming to the Judge here in Clark County because as time moves on, it creates some doubt with regard to what the status of the ESA program is going to be going into the fall, for the fall school term.

**Attorney General:** Governor, I think it's important to note for the record that the northern case started well after and is now sitting in Carson—or, sitting at the Supreme Court. So, we are hoping that the Vegas Judge will make a decision soon, either way.

**Governor:** Mr. Trutanich, I apologize, I interrupted you, please proceed.

**Nick Trutanich:** Just two other points that might be important to this Board's deliberation. First, with respect to other similar cases in either school voucher systems or educational savings accounts, for example, one in Colorado, it took four years to get a ruling from complaint to the Colorado Supreme Court. We're already up at the Supreme Court. So, the Attorney General's Office is proud of that. That's in large part because the Board has approved these contracts; both, perhaps this one and the others this fall.

The second thing is that the Judge in the Lopez case in Carson City, the District Court Judge, last week entered a \$75,000 bond. That's important to note because there is a chance—and I'm not going to commit the Board to it, but there is a chance if the Attorney General Office's is successful at the Supreme Court, that some of those costs could offset this \$125,000. It's possible it was included in our filings as proof of what an appeal would cost the State, so it's certainly possible that we would be able to recoup some of this contractual cost from that bond.

**Governor:** Do you know if the plaintiff's prayer for relief includes attorney's fees and costs?

**Lawrence Van Dyke:** I think it does—I think it does, Your Honor, I mean, Governor.

**Governor:** All right. Best of luck, I'll be watching this very closely and would appreciate a copy of the brief so I can take a look at it. I look forward to seeing the opposition brief and the reply brief and hopefully an oral argument in the very near future. All right, any other questions with regard to Contract Number 1?

All right, let's move to Contract Number 8 which is Department of Administration and Core Construction. Hello Mr. Nunez, and let me cut to the chase here on this one, I'm just curious about the increase in this contract. If it was a construction manager at risk, typically those are a fixed price contract.

**Gus Nunez:** Governor, for the record, Gus Nunez, Administrator of Public Works. Typically these contracts have what we call a guarantee maximum price, however, that guaranteed maximum price does not cover any unknowns that may come up in projects such as this where you're actually remodeling an existing building. So, as you tear into the building, into the walls,

ceiling, roofing system, mechanical system, there are things that are typically not anticipated, they're not visible during the design of the project. Therefore, change orders are the process that take care of these things.

Typically, Governor, with these types of issues, unknowns arising on remodel projects are numerous, but they're usually small in cost. However, in this particular project, we've run into two large items, which compared to what we had in there in the owner's contingency for this project to take care of these things was \$152,000, to take care of these matters. We had one item for instance, which is the fact that the pipes which were underneath the building, we found that it was completely corroded. It wouldn't hold pressure and it had to be completely replaced. We had to knock out the concrete, remove it, excavate down, replace the pipe and then patch the concrete floor back up. That is the complete entirety on the whole building.

The other thing that occurred was when we went to put in the loading dock and we started excavation, we had to excavate approximately four feet. We ran into basically what I would call a landfill, a lot of garbage that we found underneath the parking lot when we were doing the excavation to put in the loading dock. The sewer by itself—the replacement of the sewer line, plus cutting the concrete and then patching the concrete, that came in at about \$90,000 out of the \$152,000 that we had and then the loading dock, our excavation to remove all the unsuitable soils that we found came in at about \$25,000.

What this does here now, it will replenish the owner's contingency in here so that we can continue to provide for these unknowns if they do—when and if they do arise and be able to fund them through so that we can get the project completed.

**Governor:** All right, thank you Mr. Nunez. You've been very thorough on that. It just clarifies for me that these unknown risks, the State bears the risk on those and for those associated with the contractor, the contractor bears those.

**Gus Nunez:** That is correct. If for some reason there was a detail that was shown on the drawing and the detail wasn't, let's say 100% completed, but the contractor had a chance to review it during the design of the project, then he would've been responsible for that. But, on things that are not visible that are not known, they're not shown on the plans, such as sewer lines underneath a concrete slab or soils that are varied underneath the ground where you just don't know until you actually dig into them. You just can't hold the contractor responsible for those. If you did, the original cost would be much, much more than these change orders.

**Governor:** All right, thank you very much.

**Gus Nunez:** You're welcome.

**Governor:** I inadvertently skipped over item number 7, oh Sherry's not here. Okay. Well, I was just going to point out on contract number 7, that we're moving forward with some of the planning associated with the Stewart Indian School. Ms. Rupert who is Head of the Nevada Indian Commission isn't present today. I just wanted to give her an opportunity to talk about that. I think it's a very important project. I'm pleased to see we're starting the planning to accomplish that. That's all I have on that one Gus, thank you.

**Gus Nunez:** You're welcome. She, Sherry Rupert, did send me a memo, basically a prepared statement. If you're—you know, she wanted me to read to you in case you had—you wanted to, but I'll stand by and at your pleasure, if you would like to put this into the record.

**Governor:** Yeah, if you would just submit it for the record and ship a copy down here to Las Vegas, I'd appreciate it.

**Gus Nunez:** You bet, we'll take care of it.

**Governor:** Thank you. So, that takes us to contract number 22. I understand it, but it's a big one, so I think it's important to make a record on that. It's \$54M with DHHS and Clark County.

**Ellen Crecelius:** Good morning, I'm Ellen Crecelius, Deputy Director for Fiscal Services at DHHS. With me at the table is Bonnie Long who is the ASO at the Division of Healthcare, Financing and Policy. This contract is a two-year contract with Clark County regarding their voluntary contribution. What happens with this is the voluntary contribution is matched with federal funds and then is used to finance several different programs within our Medicaid Program.

For example, this helps finance the Public Hospital In-Patient and Out-Patient Upper Payment Limit Program, which helps us provide supplemental payments to hospitals to increase the rate Medicaid is paying for service clients, up to or closer to the Medicare rate. That improves access to care for our clients.

The second program that this funding goes to is the Graduate Medical Education Supplemental Payment Program, which provides a financial incentive to Public Hospital—Public Teaching Hospitals, to expand their opportunities for interns and residents. That helps broaden the healthcare workforce here in Nevada and also improves access to care.

The final program that this funding goes to is the Enhanced Managed Care Organization Payments, and in this case, the payments flow through to public hospitals that provide behavioral health services for managed care clients. Again, this helps improve access to care for our clients. This contract really is a great example of the collaboration we have between the County and the State to help improve access to healthcare services for Nevadans. I'd be happy to answer any questions you guys might have.

**Governor:** Thank you. I just asked this to be pulled out because it is a great thing. It's not just the \$54M. Do you know the top line number with the multipliers and the matches how much money this turns into?

**Bonnie Long:** Good morning, for the record, Bonnie Long, Administrative Services Officer. With this program, this is only one piece of the total match that we have for these programs that were identified. The total, with the state match, federal funds and the voluntary contribution, the total amount is \$160 million in State FY '16 and for '17, actually the same \$160 million.

**Governor:** That's real money. \$320 million. I want to applaud you and applaud Clark County for the relationship because that obviously turns into quality medical care for a lot of individuals

out there and it's very creative. It allows for a lot more services in Nevada and specifically in Clark County. I wanted to complement you and thank you for your efforts.

**Ellen Crecelius:** Thank you.

**Governor:** All right, let's move to contract 29 which is Department of Wildlife Game Management and Copter Lease. Mr. Robb.

**Jack Robb:** Good morning, Governor Sandoval, how are you, Board Members.

**Governor:** So, I understand that we need those helicopters to do the wildlife surveys and those things but what was brought to my attention was that first, to verify that the lessor has a Nevada Business License, and then second, within that contract, there was a New Mexico choice of law, provision. So if something went bad I would prefer that we consider it in Nevada versus New Mexico.

**Jack Robb:** For the record, Jack Robb, Deputy Director, Nevada Department of Wildlife. Luckily Mr. Wells got in touch with us and we were able to solve a couple of the issues you just brought up. We've amended the contract, had them resigned and submitted. I have a copy of them here if you'd like to—

**Governor:** No, that's like, bam, you took care of it. Thank you.

**Jack Robb:** Luckily we had a good heads up and we were able to get that taken care of.

**Governor:** That was it for me. I understand that it's important to your mission and getting things done. You guys are doing a fabulous job. If something did go bad with this contract, you know, respectfully, I didn't want to have to be litigating it and I'm sure the Attorney General can appreciate this, in Albuquerque or Santa Fe, or whatever the venue within New Mexico was.

**Secretary:** Good catch.

**Governor:** Yeah.

**Jack Robb:** The original contract did say New Mexico and then we had that paragraph struck out. The Attorney General's Office then did say that they wanted it to specifically say Nevada and we were able to get that taken care of.

**Governor:** All right. Thank you.

**Attorney General:** May I just follow-up on, I think there was an insurance question as well, did all of that get resolved?

**Jack Robb:** The additionally insured, or the self-insured, yes that has been signed off also.

**Governor:** And this is actually a lease purchase versus a rental, correct?

**Jack Robb:** This is a lease with the option to purchase. We have an aging air fleet that we're currently working with Purchasing to dispose of two of our aircraft. We want to test drive this aircraft to make sure that it will perform to what we have been told it will perform to and meets what we need to do for our job.

**Governor:** All right, any other questions?

**Attorney General:** No thank you.

**Governor:** Thank you Mr. Robb.

**Jack Robb:** Thank you.

**Governor:** All right. Board Members, any other questions with regards to Contracts 1-34?

**Attorney General:** Move to approve.

**Governor:** The Attorney General has moved for approval of Contracts 1-34 as described in agenda item number 12.

**Secretary of State:** I'll second it.

**Governor:** The Secretary of State has seconded the motion. Any questions or discussion? Hearing none, all in favor say aye. [ayes around] Opposed, no. That motion passes 3-0.

### **\*13. FOR POSSIBLE ACTION – MASTER SERVICE AGREEMENT**

One independent contract was 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**

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**Comments:**

**Governor:** Let's move to the Master Service Agreement in agenda item 13. Mr. Wells.

**Clerk:** Thank you Governor. There is one Master Service Agreement in exhibit 3 for approval by the Board this morning. No additional information has been requested by any of the members.

**Governor:** I have no questions. Board Members?

**Secretary of State:** Can I ask one?

**Governor:** Of course.

**Secretary of State:** Thank you Governor. The Master Service Agreement that we have with AT&T, this is just one of many? Do we have other telephone companies that we do a service with or is it just AT&T? I'm just curious because all of the phones in our office, our State phones are all AT&T. When I travel, I rarely can use my AT&T phone in the rural areas, so I was just curious.

**Clerk:** So, this contract is for Southern Nevada Communications and I believe that there are three vendors. I think this is the last of the three contracts for the phone service. These are not cell phone—these are office, your office phones.

**Secretary of State:** The office phone system. Okay. All right, that helps, thank you.

**Governor:** Any other questions? If there are none, the Chair will accept a motion to approve.

**Attorney General:** Move to approve.

**Secretary of State:** Second.

**Governor:** The Attorney General has moved to approve the Master Service Agreement contained in Agenda item number 13. The Secretary of State has seconded the motion. Any questions or discussion? All in favor say aye [ayes around] Opposed, no. That motion passes 3-0.

#### **14. CONTRACTS APPROVED BY THE CLERK OF THE BOARD ([Attached as Exhibit 4](#)) – INFORMATION ITEM**

Pursuant to NRS 333.700 subsection 7 (a), the Clerk of the Board may approve all contract transactions for amounts less than \$50,000. Per direction from the August 13, 2013 meeting of the Board of Examiners, the Board wished to receive an informational item listing all approvals applicable to the new threshold (\$10,000 – \$49,999). Attached is a list of all applicable approvals for contracts and amendments approved from January 19, 2016 through February 12, 2016.

Twenty-nine contracts were submitted for the boards review

##### **Comments:**

**Governor:** We'll move on to agenda item number 14, contracts approved by the Clerk of the Board. Mr. Wells.

**Clerk:** Thank you Governor. There were 29 contracts under the \$50,000 threshold that the Clerk approved between January 19<sup>th</sup> and February 12<sup>th</sup> of 2016. This item is informational only, but there was additional information requested on contracts 1-3 between the Attorney General—

**Governor:** I'm good on those. I know what those are for and so I'm satisfied. Are there any questions on the contracts contained in agenda item 14? Okay, that's for information only.

#### **15. INFORMATION ITEM**

## A. Fiscal Year 2016 - 2<sup>nd</sup> Quarter Overtime Report

### Comments:

**Governor:** We will move on to agenda item 15 which is the Second Quarter Overtime Report.

**Clerk:** Thank you Governor. This item is the Overtime Report for the Second Quarter, FY 2016. Overtime pay and accrued compensation leave for the first six months of the year has totaled about \$18,100,000 or 3.98% of total pay, which is a 14.7% increase from FY '15. The highest dollar amount for that first half of the fiscal year is the Department of Corrections with \$5.4 million, primarily you see that at High Desert Prison, which was \$1.2 million, the Ely State Prison is just under \$900,000, Southern Desert at \$620,000 and the Northern Nevada Correctional Center at \$510,000.

The highest as a percentage of total pay was the Department of Public Safety at about 8.6%. The top three increases by dollar from FY '15 to '16, were Corrections, which increased by \$1.5 million, the Department of Health and Human Services is just over \$700,000 and the Department of Public Safety is up \$350,000. There were three departments who actually decreased their overtime by more than \$100,000 in that same period. They were the Department of Administration, Veterans Services and DETR.

As certain organizations have periods that are trends over different years of the biennium, we compared the FY '16 to FY '14 to see if there were differences between the two. The Department of Corrections increased over that two year period by \$2.6 million, the Department of Health and Human Services up by about \$1.4 million and the Department of Public Safety is up by about \$800,000. The Department of Administration decreased by \$7,000, Veterans Services decreased by \$105,000 and the Department of Employment, Training and Rehabilitation decreased by about \$37,000.

So, what we're seeing on kind of a trend is Health and Human Services, Corrections and Public Safety and to a lesser extent, Transportation are all on a three year upswing. They have continued to increase for the last three fiscal years. Veterans Services on the other hand is on a three year downward trend. They have decreased their overtime in each of the last three years. Most other agencies are stable or negligibly different when you see small swings from one year to the next. With that, I'm happy to answer any questions.

**Governor:** Just a comment. I would assume or hope that with this Board's decision on the Critical Labor Shortage for the Department of Public Safety and for Corrections that we would see a reduction in overtime, given that we'll be adding individuals for both of those entities. Obviously if we're adding more people, in the long run, we should be saving money, correct Mr. Wells?

**Clerk:** Correct. And the Department of Public Safety, you should start to see their overtime come down. The Department of Corrections has two factors that are coming into play, as we move into the third quarter. Their first wave of shift relief guards is now up and deployed. That should start to play as well as the Critical Labor Shortage that you approved today.

**Governor:** And, what you're eluding to is, at least out there at High Desert is that out of those 100 positions for corrections, so now they're getting through the academies and starting to go to their posts and hopefully we'll see, as you say, some reductions there in overtime given that we have more people out there. Okay. Any other questions from Board Members? All right.

## 16. BOARD MEMBERS' COMMENTS/PUBLIC COMMENTS

### Comments:

**Governor:** That brings us to agenda item 16, are there any Board Member comments? I understand there is some public comment from Northern Nevada?

**Speaker:** That is correct Governor.

**Alonzo Hickerson:** My name is Alonzo Hickerson and I am the so-called owner of the Project Uplift, that earlier, that you guys were talking about. There's some things I just want to bring to light. First of all, give me one second, I'm a little nervous here.

**Governor:** Sir, your microphone is turned off.

**Alonzo Hickerson:** Hello?

**Governor:** Yeah, you're back. Thank you.

**Alonzo Hickerson:** Sorry. We would like that you guys do a full investigation of the policies and procedures for Northern Nevada Adult Mental Health. Because we—you know, we started off as a small mom and pop and they turned us into this big corporation. They helped us along the way, but as time got further on, they kind of threw us under the bus. We worked so closely with Northern Nevada Adult Mental Health, two of their high ranking employees came to work at our company, actually took over and ran the company. And, Ms. Phinney would know their names and their positions over there, but we didn't know them as much.

They kind of took over because we were just ordinary people who really, we couldn't run a big company like that, so they kind of took over and ran it for us. That's how it got the way it got. Again, are we not at fault? Yeah, we're with some fault because we should've been more involved, but we thought our—you know, these officials would take care of it and run it the way it was supposed to be ran. When we was a small mom and pop, we were the best providers in town and documents will show that. I mean, we left nothing unturned. Our houses were very efficient. Our clients—we were the only providers in town that had our own counseling, in house. We had our own therapist, in house. We had our own day treatment.

To go on with the house that showed on the news—that showed in the newspaper, I'm sorry, was the State cut the hours in that house, they didn't tell you that. They would give us 14, 16 hours a day and then we would cover the rest. But, when they went down eight hours, coming straight out Mr. Mendel's mouth, he told us, only cover the house for the amount of hours that we pay you. Well, if you do that, you have mentally disabled people in the homes 14 hours by themselves. So, when you come in the house in the morning, it's going to be in that condition.

So, these are issues that you guys need to investigate, so that the next providers won't go through the same stuff we went through. Of course, we're going to get the bulk of it because we were the biggest ones out there. At one time, we had 16 homes that we were supervising. So, if you've got the next biggest one with only two or three of them, of course, by percentages, we would get the more complaints.

I hope I articulated this more correctly, but that was the biggest issue. I need you guys to really look into that and look into those people because we were running fine until they came and took over the company. When we were smaller, me and my wife and Mr. Mike Ross ran the company. Then they came over, Priscilla Longmeier and [inaudible] they're both employees for Northern Nevada Adult Mental Health. They weren't just ordinary case managers, they were high ranking people for the State and came and ran the company. That's when we started having problems. Thank you.

**Governor:** Thank you very much sir. Is there any other public comment from Carson City? All right.

**\*17. FOR POSSIBLE ACTION – ADJOURNMENT**

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

**Motion By: Attorney General**

**Seconded By: Secretary of State**

**Vote: 3-0**

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**Comments:**

**Governor:** Is there a motion to adjourn?

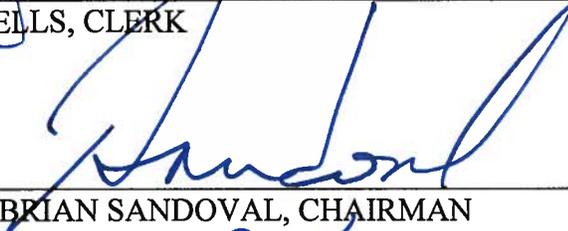
**Attorney General:** Move to adjourn.

**Secretary of State:** Second.

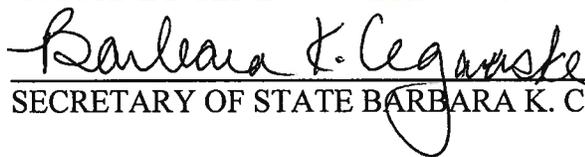
**Governor:** The Attorney General has moved to adjourn. Secretary of State has seconded the motion. All in favor say aye. [ayes around] This meeting is adjourned, thank you ladies and gentlemen.

Respectfully submitted,

  
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JAMES R. WELLS, CLERK

**APPROVED:**  
  
\_\_\_\_\_  
GOVERNOR BRIAN SANDOVAL, CHAIRMAN

  
\_\_\_\_\_  
ATTORNEY GENERAL ADAM PAUL LAXALT

  
\_\_\_\_\_  
SECRETARY OF STATE BARBARA K. CEGAVSKE

**BRIAN SANDOVAL**  
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**STATE OF NEVADA**  
**INDIAN COMMISSION**

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**State of Nevada Indian Commission**  
**Statement for the March 8, 2016 Board of Examiners Meeting**  
**Contract #109994 Hershenow & Klippenstein, Inc.**

Good Afternoon Governor and Members of the Board,

I apologize I am unable to be here with you today, but felt that the importance of this contract and this project warranted a brief statement.

The contract before you is to provide architectural services for the design and construction document phase for the Welcome Center at the Historic Stewart Indian School and a Master Plan for the Facility.

Both of these items are vital to the advancement of the Stewart Indian School Living Legacy. With your continued support we continue to move closer in creating an experience that will be new and unique to the State of Nevada and to the nation.

We have had initial meetings in regard to the Master Plan and were tasked with creating a Core Message that would drive the Master Planning effort and inform the interpretation of the school. The following is the core message of the Stewart Indian School:

*The Stewart Indian School changed the course of generations of American Indians. For more than 90 years American Indian children were removed from their homelands, family and culture with profound impacts on their lives. The Stewart Indian School Living Legacy preserves their stories and cultural legacy – Never to be Forgotten.*

I would like you all to know that I have had the honor to work with my fellow state colleagues on this project and all have conveyed an earnest interest in this project and I am extremely confident that we are well on our way to creating something remarkable for the New Nevada.

Thank you for your consideration and the opportunity to provide comments in regard to this contract.

Sherry L. Rupert, Executive Director  
Nevada Indian Commission