

MINUTES

MEETING OF THE BOARD OF EXAMINERS

December 13, 2011

The Board of Examiners met on December 13, 2011, in the Annex on the second floor of the Capitol Building, 101 N. Carson St., Carson City, Nevada, at 10:00 a.m. Present were:

Members:

Governor Brian Sandoval
Attorney General Catherine Cortez Masto
Secretary of State Ross Miller
Clerk Stephanie Day

Others Present:

Mike Willden, Department of Health and Human Services
Charles Duarte, Department of Health and Human Services, Health Care Financing and Policy
Romaine Gilliland, Department of Health and Human Services, Welfare and Supportive Services
Louise Bush, Department of Health and Human Services, Welfare and Supportive Services
Brenda Ford, Department of Employment Training and Rehabilitation
Mike Torvinen, Department of Health and Human Services
Patricia Cates, Department of Wildlife
Robert Halstead, Nuclear Projects
Martha Adams, Attorney General's Office
Janet Geary, Department of Tourism and Cultural Affairs, Nevada Magazine
Steve Woodbury, Department of Tourism and Cultural Affairs
Dawn Rosenberg, Department of Corrections
Deb Reed, Department of Corrections
Cindy Jones, Department of Administration, Budget Division
Danette Kluever, Department of Health and Human Services, Child and Family Services
Jeff Morrow, Department of Health and Human Services, Child and Family Services
Brenda Moore, Department of Health and Human Services, Mental Health and Developmental Services
Dave Prather, Department of Health and Human Services, Mental Health and Developmental Services
Rich Gilbert, Department of Public Safety
Colman Schmidt, Department of Health and Human Services
Christi Mackie, Department of Health and Human Services
Deborah, Harris, Department of Health and Human Services
Stacey Johnson, Department of Health and Human Services
Marla McDade Williams, Department of Health and Human Services
Dr Tracey Green, Department of Health and Human Services
Richard Bartholet, University Nevada Reno
Emily Nunez, Office of Energy
Johnean Morrison, Department of Public Safety Highway Patrol
Nancy Bowman, Attorney General's Office
Steve Quinn, Attorney General's Office
William Chisel, Department of Taxation

Caren Jenkins, Commission on Ethics
Rorie Fitzpatrick, Department of Education
Clark Leslie, Attorney General's Office
Colleen Murphy, Department of Health and Human Services Mental Health and Developmental Services
Rachel Richards, Department of Health and Human Services Mental Health and Developmental Services
Kirk Hawkins, Department of Health and Human Services Mental Health and Developmental Services
LT Daniel Barraza, Office of the Military
Luana Ritch, Department of Health and Human Services, Health
Katrina Nielsen, Department of Administration, Budget Office
Margene Stenger, Economic Development Commission
Teri Preston, Department of Administration, Public Works
Beth Wicks, Nevada Works
Tamara Nash, Department of Employment Training and Rehabilitation
Frank Woodbeck, Department of Employment Training and Rehabilitation
Grant Nielson, Department of Employment Training and Rehabilitation

1. PUBLIC COMMENTS

Comments:

Governor: Good morning everyone, and welcome to the Board of Examiners meeting. First item on the Agenda is public comment. Is there any member of the public here in Carson City that would like to provide public comment to the Board? All right. Is there anyone present in Las Vegas that would like to provide public comment?

Secretary of State: It does not appear so, Governor.

***2. FOR POSSIBLE ACTION – APPROVAL OF THE NOVEMBER 8, 2011 BOARD OF EXAMINERS’ MEETING MINUTES**

Clerk’s Recommendation: I recommend approval.

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

Comments:

Governor: All right. Thank you. We’ll move onto Agenda Item No. 2, approval of the November 8, 2011 Board of Examiner’s Meeting Minutes. Have all members of the Board had an opportunity to review the Minutes?

Attorney General: Yes, Governor.

Governor: Any changes to the Minutes? Hearing none, Chair will accept a motion for approval.

Attorney General: I’ll move for approval of the Minutes.

Secretary of State: Seconded.

Governor: There’s a motion by the Attorney General to approve the Minutes, and a second by the Secretary of State. Any discussion or questions on the motion? Hearing none, all in favor of the motion, please say aye. Motion passes unanimously.

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

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

A. Department of Education – Education State Programs - \$4,521

Pursuant to NRS 353.268, the Department of Education is requesting an allocation of \$4,521 from the Interim Finance Contingency Fund to provide funding for travel for the

top three applicants for the Superintendent of Public Instruction position which is anticipated to become vacant in April 2012.

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Agenda Item No. 3, Request for General Fund Allocation from the Interim Finance Committee Contingency Fund, Item A, Department of Education.

Clerk: Thank you, Governor. Item A is for a request from the Department of Education's education state programs for a total of \$4,521. Dr. Keith Rheault, the current superintendent of public instruction will be retiring, and this is a request to provide funding for travel up to the top three candidates for that position per NRS 353.268.

Governor: My only question, is that enough? If it's not enough, what happens?

Clerk: We believe it is enough. The calculations that were done were sort of the worst case scenario, the furthest travel that we felt could occur, so we believe it would be sufficient.

Governor: All right. Any further questions? I'm going to break these apart. The Chair will accept a motion for approval of Agenda Item 3A.

Attorney General: I'll move for approval.

Secretary of State: Seconded.

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

B. Office of the Governor – Ethics Commission – \$65,000

Pursuant to NRS 353.268, the Ethics Commission is requesting an allocation of \$65,000 from the Interim Finance Contingency Fund to provide funding to contract with a temporary, full-time attorney for a 6-month period from January through June 2012 in order to assist the Commission in addressing its over two-year backlog in writing and publishing its opinions.

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Agenda Item 3B. Please proceed.

Clerk: Thank you, Governor. 3B is our request for IFC contingency fund allocation for the office of the Governor Ethics Commission for a total of \$65,000. The Ethics Commission is requesting funds for a temporary full-time attorney for a six month period from January through June of 2012 in order to assist the Commission in addressing its over two-year backlog in writing and publishing opinions. Caren Jenkins, the executive director, is present today if you have any questions.

Governor: I do. Ms. Jenkins?

Caren Jenkins: Good morning. I wonder if your question is, is it enough?

Governor: That's not the one that came to mind. Ms. Jenkins, if you would please just provide a background. I know you've provided a lot of detail, but provide some background. Then I have some questions and I'm sure some of the other members do as well.

Caren Jenkins: Certainly. We are currently a little over two years behind in writing and publishing the opinions of the Commission on Ethics, mostly due to an enormous increase in our caseload since 2005, the last time we had an increase in staff from three to five full-time positions. In that time, we went from 58 active cases that were actually considered by the Commission annually to the current estimate for this fiscal year of 172 cases. The Commission has prioritized its activities to address in hearings the cases as they come in, and keep those decisions moving instead of slowing down the process for the writing of opinions. So an oral opinion of the Commission is given at a hearing, and then we move onto the next fire that might be lit by the next request, and what has fallen to the wayside is the actual writing of the formal opinion. That has two fallouts. One is that the public and the public officers and employees are not able to be easily aware of the current application of the statutes and any court that would fall behind two years in its opinion writing would be certainly in tough shape for the public to be on notice of the current state of the law. And secondly, any public officer or public employee that receives an adverse opinion from the Commission is entitled to a written opinion. And there are several individuals who have contacted not just my office but other executive branch offices and certainly the legislature to say, my due process is being delayed, I can't appeal until I have a written opinion, and that certainly is a concern of the Commission's as well. This six-month full-time, not-entry-level contract employee is being requested because our statutes provide that the Attorney General's office is the backup -- the back stop if the Commission's Council is unable to complete her work. And the Attorney General's office is just as squeezed as the Commission on Ethics is as far as having people sitting around with extra time on their hands. The Attorney General's office has provided a nominal amount of attorney support to the extent of their ability, and this was really our last opportunity would be to seek contingency funding for a six-month position. We did go before the money committees during the legislative session and asked for a full-time continuing Deputy Commission Council and that request was declined.

Governor: A few questions, Ms. Jenkins. Are there systemic improvements that can be made in order to generate more opinions? I know you don't have supervisory authority over the attorney.

Caren Jenkins: That's correct.

Governor: And does that create any issues? Are there opinions being generated now?

Caren Jenkins: There are two questions there, Mr. Governor. First, it's true that the hiring and supervision of the Commission Council, that authority belongs to the Commission itself, and that was a change that was made I believe in 2005 or 2007 when a former Commission Council went to the legislature and asked for those changes and they were granted. As a result, it's difficult to steer a ship with two captains. I look at the Commission Council as my peer, but as the individual response was executive director responsible to make sure that the work of the Commission is done, it somewhat ties my hands to be able to direct someone that I don't have authority over, or supervision or hiring, what have you. Luckily I work well with this Commission Council, but certainly I'm not in a supervisory position. My position is, however, that I have a responsibility to get resources for the Commission for it to do its job, and that's why I'm here, but I feel it's somewhat at a loss to promise results because I don't have the ability to do that. Secondly, I think that there are systemic changes that can be made. I think the Commission has fallen into a serve everybody, do everything role, and we can put an awful lot more emphasis on efficiency. We don't need to write opinions for every matter, only those that expound upon the current state of the law, advisory opinions, and the confidential advisory opinions. Abstracting those is really critical for the public at large to know what the state of the law is, but providing a specific written opinion for the public officer seeking the opinion is less important. Our hearings can be a lot more streamlined with bench memoranda that are more directed toward staff recommendations than open-ended objective analysis and so forth. And those are the sorts of things the Commission has been undertaking analysis and trying new things and really working towards speeding up the process even if we do have to handle our own case load and catch up on our own without this funding. I know that it's unusual to fund a position at this level, but I fear that without immediate attention to the backlog, we'll never catch up.

Governor: No. And I understand the need part, and perhaps this isn't something that can be solved today with regard to these systemic issues. But how many opinions are being generated now? Is the Ethics Commission issuing opinions as we speak? Written opinions, I should say.

Caren Jenkins: The Ethics Commission is hearing matters and adding to the backlog as we speak. There are currently approximately 60 opinions to be written out of 172 cases in 2011-12, current fiscal year, that are estimated. So there are very few outputs that have been accomplished in the recent past as far as opinions generated. The opinions that have been published are stipulations.

Governor: Why isn't there any output?

Caren Jenkins: We simply can't get to it.

Governor: And what is Commission Council doing instead of writing opinions?

Caren Jenkins: Preparing analysis, subpoenaing witnesses, helping the Commission process the new requests for opinion. Every month we have a two-day meeting to hear first-party requests for opinion and contested cases called third-party requests, and those require significant input of material for the Commission to continue its work. In addition, we have a case pending before the Ninth Circuit, and I'm sure that you're aware we had the United States Supreme Court case this

past year, and the Attorney General's office has been very helpful in providing assistance on those cases. And then there's basic legal advice to the Commission that needs attention. So the Commission Council has got a whole lot on her plate other than -- in addition to writing opinions, and the opinions have fallen to the wayside because everything else has been on fire.

Governor: But you have no way to measure the performance of the Council since that Council doesn't report to you, correct?

Caren Jenkins: I have no way to measure it? I don't have any authority to measure it, that's correct.

Governor: And then on the financial side, you're seeking the \$60 plus thousand. Do you assess the administrative costs to the counties or the cities?

Caren Jenkins: NRS 281A.270 authorizes and mandates that based upon the caseload, and currently it's 74 percent I believe local governments and 26 percent state governments, 74 percent is paid by the local governments of the Commission's operating expenses. Had this request been approved by the legislature, that assessment would be permitted. However, it's my interpretation of NRS 281A.270 that only that portion of the legislatively approved biennial budget can be assessed to the local governments. And certainly I'm not council to the Commission and I'm not the only one that's able to interpret that provision, but that's my reading.

Governor: So because the legislature didn't approve your requested increased budget, you're saying this statute provides that you can't collect for the extra opinions from the local governments?

Caren Jenkins: That's my interpretation, sir.

Governor: So even though your caseload's increasing and you're doing that work, you can't collect for it?

Caren Jenkins: And that's exactly why it was requested before the legislature. But what we found is that our backlog has continued to increase since that time, and I fear that we can't and we shouldn't wait until the 2013 legislative session to address the backlog. Without removing enormous other duties from the Commission Council's desk, and there aren't other staff to pick it up, we won't be able to get to it.

Governor: And you talked about some of the systemic improvements that can be made, and this has been an issue since the summer of 2010? I mean, even before that.

Caren Jenkins: It actually has been an issue for longer than that.

Governor: But is there an adoption or an effort to implement those systemic improvements to provide for the solution of some of these problems that you have identified? I mean, what are we waiting for? What is the Commission waiting for?

Caren Jenkins: For the last three Commission meetings, three Commission meetings ago, the chairman appointed a task force of three members to address issues related to the backlog, and that task force made some recommendations to the full Commission at its last meeting. And we are, as I mentioned before, trying new ways to approach our caseload that can be more streamlined and more efficient. We're not waiting for anything. We're already implementing those. But even with those changes, we won't be able to relieve the burden such that we'll be able to catch up.

Governor: Right now there's no catching up. Are all 170 of those so complex that they require a full opinion? Aren't some of those simpler ones that could be accomplished?

Caren Jenkins: They are. And indeed there are a number of requests for opinion that simply are an application of existing law. There's no or little interpretation or analysis that needs to be done. And in fact, the Commission has decided that perhaps they don't even need to have a written opinion issued, more of a document that would be similar to an order of the court, and that's something that could be done prospectively that will reduce the burden on the writing.

Governor: So what's the real number in terms of the complex opinions that need to be accomplished?

Caren Jenkins: The real number is 60, the 60 outstanding opinions. And it's give or take two or three. Sixty approximate opinions that need to be written. And these are opinions that about a third of them are from contested hearings and we'll call those third-party request for opinion that have hearings that public officers are waiting for their document that either clears their name or outlines their violations, and probably two-thirds are advisory opinions which would be terribly helpful to the future application of the ethics and government laws if they were available to the public.

Governor: Two-thirds of the 60?

Caren Jenkins: Yes.

Governor: And if this were approved by the BOE and the IFC, because you have to go in front of them as well, so approval here would be subject to IFC approval, who will have authority over this attorney, you or the Commission Council or the Commission?

Caren Jenkins: That's to be determined tomorrow at our monthly meeting. It's an Agenda item to be addressed, and my recommendation is that I would have authority to hire, supervise and direct the activities of this contract person. As executive director, I have the hiring and supervision responsibility for the entire staff with the exception of the Commission Council. And I think that with two heads we might be able to address this problem more directly than with simply one.

Governor: It should be under you. You're the one who's sitting here and having to answer all these questions, and I don't know if we can make approval contingent upon that. I don't know if I have authority to do that, but it appears to me that you have a pretty good grasp of what's needed here, and approving it another way may just not solve the problem. And I want to ensure

that if we're to approve this, that this individual who is retained on a temporary basis does nothing but catch you up in the future. And then once we're caught up, we'll probably have another conversation with what's going to happen in the future. And I would imagine, as you said, this bifurcation that has occurred is a creature of statute now and that's something that would have to be explored in 2013. I have no further questions. Are there any questions from other Board members?

Attorney General: I have a question, Governor. Does the Ethics Commission support your recommendation today?

Caren Jenkins: The Commission gave executive director authority to seek funding from the Board of Examiners and the Interim Finance Committee when I first brought to them this problem of the backlog, and it's been in the media obviously. So I was given the authority to go forward with this request, nearly unanimous positive feedback has been provided to me regarding this sum, this process and this specific request. There are Commissioners who feel that the backlog is a function of our circumstance and that we as well as the other state agencies that are behind need to, you know, do more with less. Frankly, our Commission has been doing more with less for a really long time, and there's not a whole lot less that we can do with. So nearly unanimous support.

Attorney General: The system changes that you talked about, are any of those going to require legislative action in the next legislative session?

Caren Jenkins: I don't believe so. I believe they're all within the authority of the Commission and there need not even be regulatory changes at this point.

Attorney General: So how will you prevent this from occurring again without any additional staff?

Caren Jenkins: I don't know that I can. It would be disingenuous for me to represent that this is going to be a circumstance that's going to be solved in a six-month period and never reoccur. The increased case load of the Commission, the digest of the Commission opinions haven't been addressed since 1997. The statutes haven't been annotated nearly in that length of time. The backlog is not something new, it's just gotten to critical mass. I can't assure anyone that the future is going to be able to be maintenance and no backlog will ever occur again. It is my hope that if we are not behind, we can at least stay current, or certainly not fall two years behind without holding our horses and saying what needs to happen here, and maybe readjusting priorities.

Attorney General: And is the Commission Council supportive of this request?

Caren Jenkins: Yes, absolutely.

Attorney General: Okay. And just so I understand, so the Commission Council is the only attorney on staff that handles all of the legal issues?

Caren Jenkins: Correct.

Attorney General: Okay. And tomorrow or did you say there's an Ethics Commission meeting coming up?

Caren Jenkins: Ethics Commission is tomorrow and IFC is Thursday.

Attorney General: And is there specifically on the Agenda to address all these systemic issues including this issue?

Caren Jenkins: The Agenda item is the same one that's been there for the last few meetings, and that is an Agenda item status update to address Commission opinion backlog, and that's among the items to be discussed.

Attorney General: Okay. Thank you.

Governor: Mr. Secretary, do you have questions?

Secretary of State: Yes. Very briefly, could you describe how you arrived at the amount of the request of \$65,000 for the six months?

Caren Jenkins: Certainly. In our request to the legislature in the 2011 session, the Department of Administration budget office assisted us to estimate an annual sum for a Deputy Commission Council. That was the starting point. We also considered availability of attorneys in the community, as well as the assessment that the Attorney General's office would assess us if the Attorney General's office had additional staff, we would do a chargeback, and so that's how we came up with the \$65,000. It's a rough number. I think it comes up to \$64,875 or something like that when we put it out for a six-month period.

Secretary of State: And so if I understand this, you said that the starting point was based on the number that had been recommended to you through the legislative process. Was that salaried position you're referring to approximately \$130,000 a year?

Caren Jenkins: With the benefits and what have you that come with employment, it's my recollection it was near that amount.

Secretary of State: What is the current salary of the Commission Council?

Caren Jenkins: Before the furloughs and the reduction, my recollection is it's around 97, the same as an entry-level Deputy Attorney General.

Secretary of State: Okay. So this position would be paid substantially much more; is that correct?

Caren Jenkins: When you calculate the approximately 24 percent benefits, I would say they're roughly similar.

Secretary of State: Okay. Thank you.

Governor: Ms. Jenkins, one more question with regard to the systemic changes or improvements. Have you provided the Commission with a document essentially laying out what you described to us today, such as here are ways -- here's a menu of what we can do to improve the ability to get some opinions out and the efficiency of the Commission?

Caren Jenkins: Mr. Governor, I don't know that there's a single document, but a brainstorming meeting was held, that list was provided to the Commission. I had consulted with your general counsel as well as other folks who know the Commission's workings well enough to provide us with input, and I provided that list to the Commission, and those have formed the basis for the discussions in the Commission meetings.

Governor: No. I just would like to I guess...

Caren Jenkins: See it in writing.

Governor: Well, and also convey a sense of urgency here. It's not just money I guess is the bottom line. It is about improving efficiencies and internal mechanisms in order to accomplish this. I mean, if this has been going on for a few years and there's still discussion, you know, I'm going to vote to support this today, but I would like to see some demonstration by the Commission that it is seeking to improve its efficiencies and efficacy as well.

Caren Jenkins: We'll do what we can.

Governor: Any further questions from Commission -- one last question. Do you ever try to like go to UNLV Law and see if there are any law clerks or anything like that that could help?

Caren Jenkins: I'm delighted you asked that question. As a matter of fact, we have been seeking externs and law clerks during the summer and during the legislative session, and we've come up rather shy of applicants. But the Governor's office had a whole bunch of law clerks that Ann Wilkinson on your staff lent to me during the legislative session or prior to that, and we were able to make a dent in the backlog of digests. And these weren't even law clerks, they were just externs from general education, and they were a great help. We have contacted UNLV and we even considered offering for credit work practicum, because we don't have funds to pay somebody to help us, but they certainly would get a great experience working with the Ethics Commission. And in addition, we've engaged in dialogue for a clinic for a law clinical experience for folks at UNLV to not only work with the Ethics Commission, but maybe generate some Law Review articles about some of our opinions and our processes. And so we've been developing that relationship with the law school down in Las Vegas, and it's been a very positive session. I'm not certain that that's the best route toward producing, you know, precedent-setting opinions, but it certainly is a resource available to the Commission, its staff and its constituents.

Governor: And I agree with the more complex opinions, but perhaps with the over 100 of the more standard ones that could be done, they would appear to be a nice resource. So if I can be helpful in that regard, I'd be happy to do so.

Caren Jenkins: Well, I know you write delightful findings of facts and conclusions of law, so if you'd like...

Governor: Well, not me personally, but in terms of ...

Caren Jenkins: Thank you, Mr. Governor.

Governor: ...if we have clerks or externs during the summer, or communication with the law school to assist you.

Caren Jenkins: Thank you.

Governor: There are no further questions. The Chair will accept a motion to approve the request by the Ethics Commission contingent upon approval by the IFC.

Attorney General: I'll move for approval.

Secretary of State: Second.

Governor: And was there one other item, counsel, that we talked about today with regard to this motion being subject to an issue?

Clark Leslie: You were asking about a recommendation that your office could make in terms of the proposal tomorrow. That was the one item that you glanced at me at. And the executive office does have the power and authority due to its general oversight and supervisory position to...

Governor: Oh, that's what it was. If I could ask you to recap the motion to make it subject that this position be subject to the authority of the executive director. That's what the issue was, yeah.

Attorney General: All right, so moved.

Secretary of State: Second.

Governor: Any questions or discussion on the motion? Hearing none, all in favor of the motion, please say aye. Motion passes.

Caren Jenkins: Thank you all very much.

Governor: Thank you.

***4. FOR POSSIBLE ACTION – AUTHORIZATION TO CONTRACT WITH A FORMER EMPLOYEE**

A. Department of Tourism & Cultural Affairs – Nevada Magazine

Pursuant to Assembly Bill 240, Section 1, Subsection 3 of the 2011 Legislature, the Department of Tourism & Cultural Affairs Nevada Magazine hereby seeks a favorable Board of Examiner's decision regarding Nevada Magazine's determination, as an enterprise fund, to use a temporary services contract to employ a former Ad Director for Nevada Magazine for the purpose of continuing advertising sales for the Nevada Magazine and Visitor's Guide for the current Ad Director who is on leave for the period not to exceed 4 months.

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Next Agenda item is Agenda Item No. 4. Please proceed.

Clerk: Thank you, Governor. Item No. 4 is a request from the Department of Tourism & Cultural Affairs Nevada Magazine to contract with a former employee. The Nevada Magazine is requesting the use of temporary services to employ a former ad director for Nevada Magazine for the purpose of continuing advertising sales for the Nevada Magazine and Visitor's Guide for the current Ad Director who is on leave for a period not to exceed four months.

Governor: I have no questions regarding this matter. Board members?

Attorney General: No questions.

Governor: The Chair will accept a motion to approve.

Attorney General: Move for approval of Agenda Item 4A.

Secretary of State: Second.

Governor: There's a Motion by the Attorney General to approve Agenda Item 4A, second by the Secretary of State. Are there any questions or discussion on the Motion? Hearing none, all in favor of the motion, please say aye. The motion passes.

***5. FOR POSSIBLE ACTION – AUTHORITY TO PAY MINING CLAIM REFUNDS**

A. Department of Taxation – \$522,960

Pursuant to Senate Bill 493, Section 16.7 of the 2011 Legislature, the Department of Taxation must submit mining claim refund requests to the Board of Examiners for approval. The Department is requesting authority to pay 61 refund requests totaling \$522,960.

Clerk's Recommendation: I recommend approval.

Comments:

Governor: Next Agenda item, Agenda Item No. 5, Authority to Pay Mining Claim Refunds.

Clerk: Thank you, Governor. Item No. 5 is the authority to pay mining claims refund requests from the Department of Taxation. The 2011 legislative session passed Senate Bill 493, which appropriated approximately \$10 million to pay these claims. There was a request that was approved by the November BOE of approximately \$18.8 million was the original request. The November BOE approved approximately \$8.2 million. The request for December is \$522,960, which would leave a balance of \$10,059,921 and the Department of Taxation is here if you have any questions.

Governor: Thank you. Mr. Chisel, are you here to speak on behalf of the Department of Taxation?

William Chisel: Governor, members of the Board, for the record, my name is Bill Chisel, I'm with the Department of Taxation. As was stated earlier, there was a mining claim refund. Initially in 2010 during the special session AB6 was passed where mines were required to pay a mining claim fee. Then in this last session SB493 was passed which repealed this law, and so there's about \$18.1 million in mining claim fees that need to be refunded. Last BOE meeting I think there was about \$8.1 million refunded, and this meeting we're requesting a refund of \$522,000. We anticipate refunds potentially through June of 2013. That's the time period they have to request refunds. Are there any questions?

Governor: I do. And first, we're within our budget on that, I mean, you're confident that we're not gonna get more claims than that we have funded?

William Chisel: I'm confident there's a total of 18.1 out there. Now, whether all those will be requested or not, that's the next question. I anticipate next BOE meeting, we'll have another request for refunds of about 5.7 million which will total to date at that point 14.4 million refunded, so we're getting close to the 18.1.

Governor: And I also noticed on a memo from the Department of Taxation that before you refund this amount, you cross-reference whether any of those entities owe taxes in other areas, and then you are providing for a set off?

William Chisel: That's correct. We're verifying first that they've paid those taxes by checking with the counties to ensure that the monies were collected, and then we're refunding them. Some of those amounts will be offset against the MBT if they can be offset within a year period.

Governor: Thank you, Mr. Chisel. I have no further questions. Any other questions from Board Members?

Attorney General: No, Governor.

Governor: Mr. Secretary, do you have any questions?

Secretary of State: No, Governor.

Governor: The Chair will accept a motion to approve the payment of mining claim refunds.

Attorney General: Move for approval.

Secretary of State: Second.

Governor: There's a motion by the Attorney General to approve the payment of the refunds as described in Agenda Item No. 5, second by the Secretary of State. Any questions or discussion on the motion? Hearing none, all in favor of the motion, please say aye. The motion passes. Thank you, Mr. Chisel.

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

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

AGENCY NAME	# OF VEHICLES	NOT TO EXCEED:
Department of Wildlife – Director's Office	1	\$33,055
Department of Wildlife – Diversity	1	\$23,964
Department of Wildlife – Heritage	1	\$38,949
Department of Wildlife – Game Management	6	\$154,560
Department of Wildlife – Habitat	1	\$38,949
Department of Wildlife – Law Enforcement	3	\$72,539
Total:		\$362,016

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Next Agenda item, State Vehicle Purchase, Department of Wildlife.

Clerk: Thank you, Governor. Item No. 6 is the request for the purchase of state vehicles pursuant to NRS 334.010. The Department of Wildlife is requesting the purchase of 13 vehicles in many budget accounts. The requests are going to the Interim Finance Committee for 12 of the 13 vehicles on Thursday. The vehicle for the Heritage account is included in a non-executive budget, so that one does not require IFC approval. I would suggest that if they are approved, the motion would include contingent upon IFC approval of the work programs.

Governor: Thank you. Is there a representative from Department of Wildlife here?

Patrick Cates: For the record, Patrick Cates, Deputy Director Department of Wildlife. I'll be happy to answer any questions you have.

Governor: Will you provide a bit of background in terms of why this wasn't included in the budget in the first place?

Patrick Cates: Certainly. We had some challenges when we prepared our biennial budget. One of the things that we did was split our budgets. We had one massive operating budget and split that out into eight operating budgets. That was quite a monumental task, pretty atypical for government. We were uncertain through that process exactly where our reserves stood as we were piecing apart and reconstructing our budget. We also had some really unrealistic revenue assumptions in our prior biennial budget, and some extra authority. I did a work program to decrease the revenue early in the biennium to bring it more in line with where we thought revenue was heading. That gave the appearance on paper that our state reserves were dwindling, so all of that together we thought that we would not have the reserves to be able to purchase vehicles in this current biennium and opted not to make that move. After we submitted our budgets and during session, we explored other opportunities to be able to purchase vehicles. And traditionally we purchased all our vehicles with state reserve funds and then cost charge them to various programs based on usage. That meant we would have had to come up with a large chunk of money to be able to afford these purchases, but we worked with the feds and found opportunities to cover a lot of these purchases with federal funds. About three-quarters of the amount we're requesting will be covered by federal funds. That is new and we kind of had to work through the feds on how we would do that without creating some issues on the back end of disposal and use of vehicles were purchased with federal funds. So all of that combined really improved our outlook once we went through the budget process. We did a really good job in the last biennium of conserving our funds and bolstering our reserves. That combined with the availability of federal funds, which I might add is sort of a temporary increase in federal funds. Our major wildlife restoration grants saw a large increase the last couple of years, what they call the Obama bump. People buying ammunition and weapons and that sort of thing increased our federal grants. That has since gone back down, we have federal funds that we wanted to use for one-time purchases. And our fleet is aging. All these vehicles are well over 100,000 miles, most of them are ten years or older. Some of them have as much as 150,000 miles on them, and for the most part these are field biologist vehicles. They're bumping around the back country and the Nevada outback. Those miles have a lot more wear and tear on them than say a highway patrol vehicle with a similar amount of miles. So given all that, we felt it was really imperative that we come forward now asking for the vehicles.

Governor: Thank you. And you brought up a fleet. You have 212 vehicles in your fleet?

Patrick Cates: That's correct.

Governor: And how many employees do you have?

Patrick Cates: I can't remember the exact number. We have over 200 employees, 230, 220.

Governor: So is there a vehicle that's assigned to almost every employee there?

Patrick Cates: For our field biologists, they have a vehicle assigned to them, our field biologists and our wardens which are most of these vehicles, and those are really their mobile offices. They probably spend more time in that vehicle than otherwise. But we also have a lot of older vehicles that are on our wildlife management areas that have been converted to various uses on those WMAs. They're used like farm equipment. Some of them are highly modified for that purpose, and they're older vehicles, larger mileage, so they have a fleet of vehicles on each of those WMAs that they use as farming tools basically.

Governor: And then when you negotiate the purchase of these vehicles, do we get a discount from the sellers, from the car dealerships?

Patrick Cates: Well, we go to the state contracts or state purchasing and they are discounted.

Governor: Like a fleet rate?

Patrick Cates: Yes, yes.

Governor: I just was making sure we're not paying sticker price.

Patrick Cates: Absolutely.

Governor: I have no further questions. Board members, any questions?

Secretary of State: No, Governor.

Governor: Okay. Chair will accept a motion.

Attorney General: Governor, I'll move for approval of Item No. 6, contingent upon IFC approval for the work programs associated therewith.

Secretary of State: Second.

Governor: There's a motion by the Attorney General for approval, second by the Secretary of State. Any questions or discussion on the motion? Hearing none, all in favor of the motion, please say aye. Motion passes. Thank you, Mr. Cates.

***7. STATE ADMINISTRATIVE MANUAL REVISIONS**

The State Administrative Manual (SAM) is being submitted to the Board of Examiners' for approval of additions and revisions in the following Chapters: **0328 - Lease Contracts, 1600 - Information Technology, 2622-Stale Claims.**

Clerk's Recommendation: I recommend approval.

Comments:

Governor: Next item is Agenda Item No. 7, State Administrative Manual Revisions.

Clerk: Thank you, Governor. Item No. 7 has a request for approval of three separate chapters of State Administrative Manual. The change in the first chapter is Chapter 328, Lease Contracts. The request would make the leases consistent with the approval levels for all contracts by the Board of Examiners with the thresholds consistent. Currently every lease must go to the Board of Examiners. This would delegate the authority of leases under \$10,000 either to the agency or to the clerk of the Board, consistent with the current contracts. The second one is Section 1602 which is changes to the Information Technology section of the State Administrative Manual. The main changes are changing the agency name, the Department of Information Technology merged with the Department of Administration and the name changed to the Division of Enterprise Information Technology Services. It also aligns SAM with the current services provided, and it removes the approval level of work programs by that division which will streamline the process to state agencies. The last item is the stale claims section of SAM which is 2622. It changes the definition of a stale claim to less than \$100 would not be considered a stale claim. Those claims would just be paid out of the agency's current fiscal year budget instead of going through the stale claim process. It also allows for medical expenses pursuant to a claim from a third party administrator to be paid out of the agency's budgets. This mainly impacts the Department of Corrections. Their claims would be processed through their current year budgets instead of the general funds salary adjustment account, and funds have been placed in their budget to cover those expenditures.

Governor: Just a little more background on the stale claim portions, what was essentially the genesis for seeking the change, efficiency?

Clerk: Thank you. Yes. It definitely was an efficiency item. Every claim had to come through the Budget Division for approval. It could be a \$2 claim that had to come through the budget division. And with all of the approval levels prior to that, it was quite a cumbersome process. We felt that \$100 could be managed in all of the state budgets.

Governor: Are there any questions from Board members on this Agenda item?

Clerk: Governor, I'm sorry, one more thing. The legislature did approve the change in the definition in a bill this last session for the stale claim.

Governor: Board members, any questions with regard to Agenda Item No. 7? Hearing none, the Chair will accept a motion for approval.

Attorney General: Move for approval.

Secretary of State: Second.

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

***8. FOR POSSIBLE ACTION – TORT CLAIM**

Approval of tort claim pursuant to NRS 41.037

**A. Donald Hixon – TC15995
Amount of Claim – \$175,000**

Recommendation: The report recommended that the claim be paid in the amount of \$175,000.

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

Comments:

Governor: Agenda Item No. 8, Tort Claim.

Clerk: Thank you, Governor. Item No. 8 is a request for a tort claim approval pursuant to NRS 41.037. The claimant is Donald Hixon, and the amount of the claim was \$175,000.

Governor: Mr. Quinn, are you here on this matter?

Steven Quinn: If you have questions, I am Steven Quinn. I'm one of the Chief Deputy Attorney General's for the Attorney General's office.

Governor: Is there any background that you can provide with regard to the tort claim?

Steven Quinn: Yes. This is a inmate civil rights Section 1983 action that arose out of a discharge of weapons in an institution by a correctional officer that came under circumstances and resulted in serious injuries to an inmate. The inmate's made a claim. The claim is disputed. The actions of the correctional officer who discharged the weapons came under investigation. The matter was referred for criminal prosecution. Prosecution went forward and the result of the prosecution was an acquittal. In a criminal prosecution, there's a significant risk of an adverse outcome that will be significantly larger in dollar amount than the amount of this settlement, so this settlement is to fairly and significantly minimize that risk of exposure to the state.

Governor: Mr. Quinn, is this settlement the product of a settlement conference before a Magistrate, or is this something the parties did together?

Steven Quinn: This is something -- it's probably a combination. There's always a settlement conference before the Magistrate, but this is independently negotiated. The inmate in this case is represented by an attorney, which is part of the reason why this is so -- the amount is high. The case has gone to the Ninth Circuit and been remanded, so that if there is an outcome that's unfavorable, all of the attorney's fees will be part of the amount that the state will have to pay in an adverse judgment.

Governor: And that was -- you've led to my next question because it is a significant amount of attorney's fees, and I was going to ask you how advanced in the litigation we are in order for there to be such a high amount.

Steven Quinn: The stage of the litigation was almost at the trial -- it was at the trial stage, having also already gone to the Ninth Circuit on appeal and been remanded. So it's not at the discovery stage or anything of that nature.

Governor: So you had -- and I don't want to get too much in the weeds on this, but who was the appellant in that Ninth Circuit case?

Steven Quinn: The inmate.

Governor: So you stayed and succeeded on summary judgment, there was an appeal of the Ninth Circuit, it was referred back and then had advanced to a trial?

Steven Quinn: Correct.

Governor: All right. I have no further questions. Questions from Board members?

Secretary of State: No, Governor.

Governor: And, Mr. Quinn, you feel like this is a good result for the state?

Steven Quinn: I think this is a very good result for the state, Governor.

Governor: Hearing no further questions, the Chair will accept a motion for approval of Agenda Item No. 8.

Attorney General: Move for approval.

Secretary of State: Second.

Governor: And that is in the sum of \$175,000.

Steven Quinn: Correct, Your Honor.

Governor: And we're done with the payment of this amount, this case is over, correct?

Steven Quinn: This case will be dismissed without prejudice, without an admission of fault by the state, and a settlement agreement will be signed, and there will be an agreement to release all people involved, and no further action may be taken on these events that led up to this.

Governor: Thank you. So we have a motion for approval by the Attorney General, second by the Secretary of State. Any further questions or discussion on the motion? Hearing none, all in favor of the motion, please say aye. Motion passes. Thank you.

***9. LEASES**

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

Clerk's Recommendation: I recommend approval.

Motion By: Attorney General

Seconded By: Secretary of State

Vote: 3-0

Comments:

Governor: Next Agenda item is 9, Leases.

Clerk: Thank you, Governor. There are six leases on the Agenda for the Board's consideration this morning. There is one for the Housing Division, two for the Department of Health and Human Services Aging Disability Services, one for the Health Division, one for the Secretary of State's office and one for the Department of Wildlife.

Governor: I didn't calculate this myself, but are there savings within those leases on behalf of the state?

Clerk: Yes, there is. The Housing Division lease, the rate was reduced from \$1.22 a square foot to \$1.15. The second one for the Aging and Disability Services, the existing space the lease rate was reduced from 1.4862 per square foot to 1.45. The third one for the -- and that also included some new space. The third one for the Aging and Disability Services was originally 1213 square feet at \$1.50 a square foot. It's actually changing to 1,878 square feet at 9.969 per square foot, so less than a dollar a square foot. And the last one that has savings for the Health Division is reduced from \$1.35 a square foot to \$1.20 a square foot.

Governor: So can you put that in the real money terms? Do you have any idea, and you can answer this question later, but that would be several thousand dollars worth of savings annually for the state.

Clerk: Absolutely. The number for the Health Division is \$3,400 annually is just for that one particular lease.

Governor: Every little bit helps.

Clerk: Absolutely.

Governor: I have no further questions on this Agenda item. Board members?

Attorney General: No questions.

Governor: The Chair will accept a motion with regard to Agenda Item No. 9.

Attorney General: Move for approval of Item No. 9.

Secretary of State: Second.

Governor: There's a motion for approval for the leases described in Agenda Item No. 9, one through six. Motion by the Attorney General, second by the Secretary of State. Any questions or discussion on the motion? Hearing none, all in favor of the motion, please say aye. The motion passes unanimously.

***10. CONTRACTS**

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

Clerk's Recommendation: I recommend approval.

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

Comments:

Governor: Agenda Item No. 10, Contracts. I have questions on a few of them, so I will call these out. Number 1, number 8, number 9, 28 and 29, 36, 39. And Mr. Willden on those, I'll just say 39, but I want to include all those other county contracts on there. Number 46, 51 and 80. Board members, do you have any other contracts you'd like to hold out? Mr. Secretary?

Secretary of State: No, Governor.

Governor: Good morning.

Emily Nunez: Good morning. I'm Emily Nunez with the Office of Energy, and Richard Bartholet with the University of Nevada Reno.

Governor: And my question is this. I just needed a little further explanation as to what this money is actually going to do. In the purpose of the contract, it says allow contractor to purchase equipment materials and certifications for local jurisdictions, building departments and staff, and I just want a little further detail on what that means.

Emily Nunez: Okay. What we did is since this is a new program for the building codes, what we did is we (inaudible) we've been working with all the code officials trying to find out what their needs are to help them to comply with the new law. We've just adopted it go into effect July 1, 2012. So we're trying to put all whatever they need to help them comply, and so the type of equipment that we'll be purchasing under this contract is we'd like to get them the blower door test, you know, whatever the new law requires them to go out and do with the (inaudible) for compliance of the 2009 International Energy Conservation Code. That's the type of equipment, the blower door test, duck blaster test, materials includes 2009 IECC code books, where the certifications includes, you know, a lot of our code officials want to learn the new code before it goes into effect. So we're providing the training and the certifications for them to all become international co-counsel certified under this amendment.

Governor: So in other words, we train the trainers, is that a fair way to do it? I'm just looking for mechanically how this works. So we retain the university, the university goes out to the local governments and assists their employees?

Richard Bartholet: For the record, Dick Bartholet. Yes. Through the Business Environmental Program, and actually it's now Business Environmental and Energy Program, we go out and work with the code officials in all the counties and cities that have asked for assistance and bring them current on the 2009 IECC and then help them with equipment needs. This all results from going out and meeting with these code officials throughout the state and finding out what they needed, and they viewed this in a sense as an unfunded mandate coming down from the feds to the state. And this is using some of the ARRA funds to fund these things so that they can comply without putting an extra burden on the local level.

Governor: Thank you. And I just, you know, we have 100 contracts and I read through these and I'm always curious what this really looks like in the real world. And so you go out and train them, there's some equipment or materials that you purchase on their behalf because they don't -- you said they don't have the funding for that, and I guess that takes care of things for now going forward. I guess we'll just have to wait and see. Thank you very much. Contracts 8 and 9. Is there anyone here from the College Savings Trust or Higher Education Tuition?

Troy Watts: Yes.

Governor: I'm sorry. I was looking here in Carson City. Will you please identify yourself?

Troy Watts: For the record, my name is Troy Watts. I'm the acting Senior Deputy Treasurer for the State Treasurer's office.

Governor: Thank you, Mr. Watts. And my question on Number 8 is I have no issue with regard to the contract, but does the office provide that type of financial literacy training for other populations as well?

Troy Watts: For other populations other than what we're doing here?

Governor: Well, this one here says this is by reaching out to women and working mothers and implementing a women's money conference in Reno and Las Vegas, I think that's great, but is there more outreach to others who may need this type of training?

Troy Watts: For the record, Troy Watts, acting Senior Deputy Treasurer for the State Treasurer's office. This is a pilot program that we are doing with the International Association of Working Mothers for a financial literacy conference in Las Vegas and Reno. And to answer your question, this is a pilot program that we're just doing so far with working mothers, but, yes, we do have plans to reach out to other organizations in the community once we complete these conferences.

Governor: All right. Thank you. And are you here for number 9 as well?

Troy Watts: Yes. I am here for number 9 as well.

Governor: This may be a silly question, but I just had to ask why there's a Wolf Pack Sports Properties in Jefferson City, Missouri.

Troy Watts: I'm not seeing that.

Governor: It has as the contractor Wolf Pack Sports Properties, and the purpose of the contract is to provide direct marketing of the Nevada College Savings Plans and prepaid tuition programs to parents and other family members attending basketball games at UNR and UNLV.

Troy Watts: Correct.

Governor: And I was just curious why we're, I guess, contracting with somebody in Jefferson, Missouri to do that here, and I thought it was interesting that their name was Wolf Pack Sports.

Troy Watts: For the record, again, Troy Watts. That may be where their headquarters are in Jefferson City. But to answer your question, Wolf Pack Sports Properties, they are located in Reno, so it's to do prepaid tuition advertising at a specific UNR game coming up in February, and also they worked with UNLV, so it's to advertise at UNLV as well. So we're not advertising anything in Jefferson City, Missouri. I wasn't aware of that. That's probably where their main parent company is. All of the advertising is going to be at the UNLV game here and the UNR game in Reno.

Governor: And I apologize if I conveyed that. I understand that we won't be advertising in Missouri. I just wanted to make sure that if we're doing something at our local universities, that we are retaining local contractors if possible to do that.

Troy Watts: Yes. Okay.

Governor: But as I said, I saw that Jefferson City, Missouri, and it piqued by interest.

Troy Watts: Okay. Thank you.

Governor: So if you could perhaps provide to the Department of Administration just a brief explanation as to how -- why they're -- if they've got an office in Reno, why they're based in Missouri.

Troy Watts: Okay. For the record, Troy Watts. I can find that out for you.

Governor: All right. Thank you very much. Any other questions from Board members?

Secretary of State: Yes, Governor, very quickly. Mr. Watts, with regard to Contract No. 8, that particular contract, where will the attendees come from, instate, out of state?

Troy Watts: For the record, Troy Watts. Yes. They will be coming from instate.

Secretary of State: Thank you.

Governor: Thank you, Mr. Watts. We have no further questions.

Troy Watts: Okay. Thank you.

Governor: Next item is Contract No. 28, Office of Veteran Services. Anybody here from the Office of Veteran Services? I'll ask Mr. Cage perhaps offline my questions with regard to this Agenda item. Contract No. 36.

Charles Duarte: Good morning, Governor. For the record, Charles Duarte, I'm the Administrator for the Division of Healthcare Financing and Policy, and happy to answer any questions.

Governor: Now, this contract is an amendment to the original contract. And I know this item has a history. So is there an RFP that is out right now with regard to seeking a vendor for this service?

Charles Duarte: Yes, Governor. The RFP is on the street. We have received six viable bids on that contract. And we have a panel that's gonna be reviewing the proposals tomorrow.

Governor: And this contract will -- or Logisticare will be providing these services through April 30, 2012?

Charles Duarte: Correct, Governor.

Governor: All right. And is this RFP process going to go smoother than the previous one?

Charles Duarte: Well, we always hope so. And there are some protections that are in place in terms of some of the issues that occurred that resulted in the withdrawal of the award, the original award earlier this year. And one of them had to do with panel makeup, and so there's much greater scrutiny in terms of the individuals who are serving on the review panels and their respective affiliations or employment to make sure that they comport with the requirements of the NRS as a state employee or a using agency. And Kimberly Tarter is here from purchasing if you need more information on that.

Governor: I do not. Thank you Mr. Duarte. Questions from any other Board members on this Agenda item? Thank you. Mr. Willden, instead of going to a specific contract, can you just provide us an update with regard to your negotiations with the counties on the respective contracts with them?

Mike Willden: Thank you, Governor and members of the Board. For the record, Mike Willden, I serve as the Director of Health and Human Services. Apologize to Board Member in the south that he doesn't have a copy of the spreadsheet, but I think he's seen it before. This is the spreadsheet we've used at the last, I think, three or four Board meetings. This is how we're tracking the county assessment contracts. I think I've reported to the Board again three or four times a number of pieces of legislation that was passed during the last session that made it the responsibility of the various counties to pay for certain human services including long-term care

institutional costs in the Medicaid program, some health protection costs, costs for developmental services for children, youth parole costs, child protective services costs, you can read down the list. The yellow on the spreadsheet are the areas we're still having ongoing work, I guess I would call them the challenges or the problems. You can see that we're down to not very many areas. I would probably highlight just three areas. If you go down the columns which is status by county, you'll still see there's quite a bit of yellow in Douglas County and Nye County. Douglas County I think we're ending the process there. We still had some renegotiation work with our developmental services costs. And youth parole and CPS costs are in the final phase of getting, I think, those contracts signed. So I don't really have any long-term concerns with Douglas County. In Nye County, the yellow is getting better. We still have an ongoing I guess I'd say debate with Nye County, particularly the Nye County District Attorney. We have exchanged correspondence and phone calls and discussions over whether they will ultimately be paying all of the assessments. A significant change this time from the last Board was that they have paid for the youth parole services this last month which they had not last time, and we're still awaiting a decision whether they're gonna pay for Child Protective Services, and they have indicated they disagree with our billing for the assessments. They disagree with correspondence from the Attorney General's office that they have a legal responsibility to pay the assessments. And they also disagree with a written opinion from legislative counsel that they have a legal responsibility to pay the assessments. The last one that I would report on is rows rather than column, the row dealing with the mental health developmental services for kids. You can see quite a bit of yellow going across there. Still a lot of contracts out to the Commission, the Board's County Commission, we'll probably be seeing those -- you'll see those at the January BOE or maybe as late as the February BOE. I think we're in the 90, 95 percent getting done. I feel pretty comfortable that -- it's actually been pretty amazing that -- it's taken a while, but at the six month mark we've mostly got everything negotiated. I would advise or warn the Board, I think I've mentioned this before, we've been working on some sort of good cause policy. I think I mentioned that at the last Board. There will be counties, maybe up to six counties and maybe more, that will not be able to pay all of these assessments, that they sort of noticed us that they are at the max taxing capability, max resources, and they may have difficulty in the spring or the last couple months of this biennium to pay all of these assessments. We'll have to cross that bridge when we get there. A couple of hopeful items, if the state spends less than we estimated that they would have to pay, then that would be an offset to them. However, the opposite can happen. Some of these assessments were particularly in county match, if we have more people in nursing homes or institutions, the counties may have to pay more than what we've estimated, and so we don't know until we progress through the year. All the mechanisms we hope will be in place for payment, but we may be approaching the Board probably March/April saying we may have some difficulty in getting all the assessments in, and we'll have some options for you at that point in time. So I feel pretty good. Been a long journey, and staff are here to answer any questions you have on any specific one of these contracts. I think you have about a dozen or 15 of the contracts in front of you today.

Governor: And thank you, Mr. Willden, and I want to compliment you because I know a lot of time and effort has gone into your meetings with the respective representatives of the counties, and to get to 90 to 95 percent, it's quite an accomplishment. With regard to, and perhaps this is just better left to the process, but what is the ultimate remedy if there is a refusal to pay? I mean, does it go to litigation?

Mike Willden: Governor, that's still a bit unknown. I mean, again, the opinions that I've received from both LCB's legal counsel and the AG's office, they feel that we're on pretty strong footing to be able to collect the assessments. And the first thing I would do if somebody -- if we get to the point where there's absolute refusal to pay, we'll notice them and go to the Treasurer's office and attempt to do a debt offset, and I'm assuming that will work. The LCB opinion says we have the authority to do that, and I believe the Attorney General's office would concur with that. I'm hoping we don't have to go there. And, again, if the county has made every effort to raise the revenue to pay the assessments, I would prefer not to move that way. I would prefer to see how the year progresses and see whether we can make ends meet without having to do that.

Governor: I am pleased to hear you respond that way, because I think we should have the good relationship with the counties and continue to have that dialogue so that it doesn't go there. I have no further questions on any of these contracts then. Other Board members?

Attorney General: I do, Governor. Just for clarification, Mike. So the assessments, these assessments that we're putting on the counties now, these are annual assessments, so the dollar figure you have here in total of 16.7 million of assessments from all of the counties, the 17 counties, that's an annual figure we will be getting from them depending on the services we provide to them?

Mike Willden: Yes. It's an ongoing assessment the way the laws -- there are several bills that were passed to do these, as these are estimated costs, so, yes, in this year there would be about \$17 million worth of assessments coming in from the counties, and so that would go forward each year. And in fact, in some cases, the assessments get bigger each year because the projection for the cost, you know, for something like county match where, you know, we've changed the responsibility for who pays for nursing home residents and have substantially shifted a burden to the counties to do that, that will be increasing going forward.

Attorney General: Okay. And so it's safe to say prior to the change in the law it was the state that was covering these costs?

Mike Willden: Yes.

Attorney General: Okay. Thank you.

Mike Willden: These are all costs that used to be paid for with state general fund dollars, and through the legislative process are now being assessed to the counties, \$17 million a year roughly.

Attorney General: Thank you.

Governor: Thank you, Mr. Willden. Contract 51.

Dr. Tracey Green: Members of the Board, for the record, Dr. Tracey Green. I serve as the Medical Director for Mental Health and Developmental Services.

Governor: Good morning, Dr. Green. My question with regard to this contract is, is this the solution to the issue that was occurring there at that hospital with regard to performance by the medical providers there? I mean, there was an issue several months back at the Executive Audit Board that there were medical providers that were billing for eight hours in a day and were only physically present for a couple hours a day. Is this the contract that solves that issue?

Mike Willden: Governor, Mike Willden for the record. Maybe I could lead and then Dr. Green can weigh in. There's actually two issues here. The short answer to your question is yes, that will help solve that problem, but this is a planned effort that we began as part of the executive budget process a year ago that we identified, and the budget decision unit was E663, and the legislature approved that, that we identified that there were five professional medical staff that were costing us to the tune of about \$975,000 a year, and we had difficulties recruiting, retaining, we delivered those services through state employees, through individual contracts. It was just a hodgepodge of delivery service. And so that decision unit was approved to save the \$975,000 a year and that we would go out to bid for this contract and ongoing it would cost us about \$800,000. So instead of 975 a year, 980 a year, it would be 800. And so I'd like Dr. Green as our acting Medical Director to talk further on that, but it solves two problems, consistency and the accountability issue that you've asked questions about many times with the physician services, and that saves us money.

Dr. Tracey Green: Yes, Mr. Governor. In answer to your question, when you have so many different contracting types and the difficulty that we've have in recruitment, this one agency model will assure us that we can have accountability and also the cost savings. So I think the answer is yes, it will.

Governor: The third component, I brought this up before as well, is yes, cost savings is great, the accountability is important, but also providing treatment to the patients. And what really concerned me on the accountability piece is that there was maybe one round made and then there was a six hour -- there's a significant portion of the day where those medical providers weren't present. And this contract will save money, will provide for that accountability and provide more services to the patients; is that correct?

Dr. Tracey Green: Yes, Mr. Governor and members of the Board. Not only will we have more providers, but where we had two positions we now have four available providers, but we also have a system of accountability where we can actually assure that the patients are getting the best care.

Governor: I don't have any further questions. Other Board members?

Attorney General: Just a follow up, Governor. So is it safe to say that the quality of care to the patients will improve because of the additional staff that will be available?

Dr. Tracey Green: That is our goal. We will be measuring the quality and assuring that we are getting all patients seen in a timely manner and that their medical conditions are being addressed and we'll be monitoring.

Governor: Do you have any questions, Mr. Secretary?

Secretary of State: No, Governor.

Governor: All right. Thank you. Thank you, Dr. Green. Thank you, Mr. Willden. Contract 80.

Patrick Cates: Good morning. For the record, Patrick Cates, Department of Wildlife. Be happy to answer any questions you have.

Governor: Thank you, Mr. Cates. This is a contract for predator management, specifically mountain lions.

Patrick Cates: Yes.

Governor: Do we have -- is this in addition to what we do with the federal government?

Patrick Cates: It is, Governor. Most of the wildlife control that the department initiates is done with Wildlife Services. In fact, all of it's done with Wildlife Services. We do issue permits for some private companies to deal with nuisance wildlife in the urban area, kind of critter control type of people. This is really separate from that. This is under the Heritage Program. The Heritage Program is administered by statute by the Board of Wildlife Commissioners, not the department. We just provide some administrative support. Every year in the Heritage Program the Commission awards four to \$600,000 a year for a variety of projects, and this project was selected by the Commission back in I think it was May or June. That was prior to your appointments to the Commission. And the Commission as constituted at that time had a particular interest in predator control. So in addition to the four, \$500,000 the department spends every year for predator control, they awarded this as well as a lot of other awards that ended up going to wildlife services under the Heritage Program separate from the department.

Governor: Understood and thank you. And my other question has nothing to do with this contract, but I don't know if I saw it reported in the newspaper, but that mountain lion that was wandering around Carson City is no longer there, correct?

Patrick Cates: My understanding is yes, they took that lion.

Governor: All right. For the benefit of all the runners out there and the dog walkers, I know that it scared a lot of people when they saw that it was in the community, and I wanted to make sure that it was...

Patrick Cates: It was unclear to me, it was either one of our wardens or a sheriff that took the animal.

Governor: I have no further questions. Well, actually I do. On Contract 81, and this isn't with regard to the contract, I just noted in your purpose of the contract there's a reference that the Big Horn Sheep populations have grown far beyond expectations. Can you provide more specificity with regard to that? It sounds like some good news.

Patrick Cates: Certainly. I'm a bean counter, not a biologist, but what I can tell you is most of the herds have been thriving. We have had some issues with a die off last year in the rubies, but for the most part, our herds have increased substantially and we have a very ambitious trap and transplant program this year to distribute those herds throughout the state. In fact, it was I believe last month that we reintroduced Desert Big Horn into the Virginia range east of Reno for the first time, so that was really exciting.

Governor: Thank you very much. I saw Mr. Woodbeck here. Is he still here? I neglected to mention Contract 87, and I guess that's Employment Security Division. I don't know if that's within your purview. I just had some questions with regard to these employment contracts, and I had seen that there was more utilization for the Train Employees Now program. I don't know if you have any knowledge with regard to that. Please proceed.

Frank Woodbeck: Thank you, Governor, Board Members. For the record, Frank Woodbeck, Director of DETR. The Train Employees Now program has been used over the last several years in conjunction with the Commission on Economic Development to provide training and funding for training for new companies coming into Nevada or expanding in Nevada. It's a means by which we assist the company in underwriting the training for the employees being hired. It's a very efficient program in that the employer matches the expenditure by the state, at least on a dollar for dollar basis. There is virtually no administrative cost involved, and the money goes directly to training new employees. Over the last few years, we have used up to a half million dollars in a fiscal year. This year I had a tally done, and there was up to a half million dollars, it was a \$460-some-odd-thousand dollars committed prior to December. So consequently we felt that adding another \$250,000 to that program was a very efficient use of career enhancement programs funding.

Governor: And you referenced, or I don't know if it was you, but it's referenced in the contract that there's more utilization of this program. Does that mean that there are more entities that are becoming aware of it, or that there's just more jobs?

Frank Woodbeck: Yes, both. More entities are becoming aware of it because it's utilized by the local development authorities as part of the attraction packages, if you will, the package to attract companies, and approved by the Commission on Economic Development. So their awareness of it has been increased, and the utilization of it has been increased in this particular year.

Governor: Thank you very much. Any further questions from Board members? All right. Before I accept a motion, any further questions with regard to Contracts 1 through 86?

Secretary of State: I have a quick disclosure, Governor. On Contract No. 12, the contractor is Paul Lamboley Law Offices, and for the record, that is my Chief Deputy's father, but I don't believe there's a conflict and I can vote.

Governor: And I misspoke. It's 1 through 96. And I appreciate your making that disclosure, Mr. Secretary, because it reminded me on Contract Item 3, there's a contract between the Attorney General's Office and Jones Vargas Law Firm which was my former employer. I had nothing to do with the negotiation of that contract, nor would I benefit in any way from its

approval, so I will participate in the vote on that contract. The Chair will accept a motion with regard to the approval of Contracts 1 through 96.

Attorney General: Move for approval.

Secretary of State: Second.

Governor: We have a motion by the Attorney General to approve Contracts 1 through 96 under Agenda Item No. 10, a second by the Secretary of State. Are there any questions or further discussion with regard to the motion? Hearing none, all in favor of the motion, please say aye. Motion passes.

11. INFORMATION ITEMS

A. Department of Conservation and Natural Resources – Division of State Lands

Pursuant to NRS Chapters 111, Statutes of the Nevada, 1989 at page 263, the Division of State Lands is required to provide the Board of Examiners quarterly reports regarding lands or interests in lands transferred, sold, exchanged, or leased under the Tahoe Basin Act program. Also, pursuant to Chapter 355, Statutes of Nevada, 1993, at page 1153, the agency is to report quarterly on the status of real property or interests in real property transferred under the Lake Tahoe Mitigation Program. This submittal reports on program activities for the fiscal quarter ending September 30, 2011 (reference NRS 321.5954).

- **1989 Tahoe Basin Act**

The agency reports there were no transfers of lands or interests in lands during the quarter.

There were no acquisitions of lands or interest in lands during this quarter.

- **Lake Tahoe Mitigation Program**

The agency reports that there was one land coverage sales transaction under this program for the quarter. That transaction involved the sale of 2,473 square feet of Class 1a potential land coverage in the Incline Village Hydrological Zone. This transaction generated \$43,879 in proceeds and administrative fees for the Nevada Land Bank.

No other transactions are reported for the first quarter of FY12.

Comments:

Governor: Agenda Item No. 11, Information Item with regard to Department of Conservation and Natural Resources.

Clerk: Thank you, Governor. Item No. 11 is an information only item. It is with the Department of Conservation, Natural Resources Division of State Lands. Pursuant to NRS Chapter 111, Statutes of Nevada, the State Lands is required to provide BOE quarterly reports

regarding lands or interest of land transferred, sold, exchanged or leased under the Tahoe Basin Act Program. The 1989 Tahoe Basin Act, the agency reports there were no transfers of land or interests in lands during the quarter. There was no acquisition of land or interest of lands during this quarter. The Lake Tahoe Mitigation Program, the agency reports that there was one land-covered sales transaction under the program for the quarter. The transaction involved the sale of 2,473 square feet of Class 1A potential land coverage in the Incline Village hydrological zone. The transaction generated \$43,879 in proceeds and administrative fees for the Nevada land bank. And no other transactions are reported for the first quarter of FY12.

Governor: Thank you very much. Any questions with regard to Agenda Item No. 11?

12. BOARD MEMBERS' COMMENTS/PUBLIC COMMENTS

Comments:

Governor: Agenda Item No. 12, any Board member comments?

Secretary of State: No.

Governor: Public comment, is there any member of the public here in Carson City that would like to provide public comment? Mr. Fontaine?

Jeff Fontaine: Thank you, Mr. Governor, Members of the Board. For the record, I'm Jeff Fontaine with the Nevada Association of Counties. And, Governor, I'd like to thank you for your comments related to working with the counties and their willingness and ability to pay the assessments for the Department of Health and Human Services. And as Director Willden indicated, and I'm sure you are well aware of, we have a number of counties out there that are really struggling. A number of counties, I think six, are already at the statutory property tax cap of \$3.64, so even if they wanted to, they couldn't increase their tax rate to pay for some of these services. And in total, you know, when you look at the total amount of assessments for some of these counties, it's a large amount and it's going to have a significant impact on some of them. And particularly related to the Medicaid Match program, what's different about the assessments now is that there's no longer a cap on the amount of money that counties have to pay for that program. In the past there was an eight cent property tax cap. In other words, whatever revenue was generated by eight cents in property tax was the maximum amount that the counties would have to pay for their share of the Medicaid Match program. Now there is no longer that cap in place, and I think more importantly there's no limit on the amount that the counties will have to pay for this program. And so that's obviously a great concern. I would just like to ask for your consideration in supporting some type of system or policy or waiver or something along those lines, and assuming that there are some resources available to do that, to try to work with some of these counties to help them and pay some of these assessments. You're not gonna see, at least in the current spreadsheet, counties that haven't been able to pay, but I think as time goes on in the third and fourth quarter, you will see situations where counties just simply don't have the resources to pay those assessments. And so we would ask for your support in that area. And lastly, I would just like to publicly acknowledge Director Willden and his team for the great work that they've done. It's no surprise we didn't support these assessments, but Director Willden and

his team made the best of the situation that helped us understand the process. He came out to counties, he worked with us and we appreciate that very much.

Governor: Thank you, Mr. Fontaine. Is there any further public comment here in Carson City? Mr. Secretary, is there anyone present in Las Vegas?

Secretary of State: Just my staff, Governor, and since we're late for our holiday party, I will kill them if they get up to make a comment.

***13. FOR POSSIBLE ACTION – ADJOURNMENT**

Comments:

Governor: Well, the only thing standing in your way is our motion for adjournment, so I'll take that as a motion, Mr. Secretary.

Attorney General: I'll second.

Governor: We have a motion by the Secretary, a second by the Attorney General for adjournment. All in favor, please say aye. Motion passes. Thank you. Happy holidays everyone.

Respectfully submitted,

JEFF MOHLENKAMP, CLERK

APPROVED:

GOVERNOR BRIAN SANDOVAL, CHAIRMAN

ATTORNEY GENERAL CATHERINE CORTEZ MASTO

SECRETARY OF STATE ROSS MILLER