

Steve Sisolak
Governor
Chairman

Warren Lowman
Administrator
Division of Internal Audits
Governor's Finance Office



STATE OF NEVADA EXECUTIVE BRANCH AUDIT COMMITTEE

209 E. Musser Street, Room 302 | Carson City, NV 89701-4298
Phone: (775) 684-0222 | <http://budget.nv.gov/IAudits/About/EBAC/EBAC/> | Fax: (775) 687-0145

Members
Kate Marshall
Lieutenant Governor
Barbara K. Cegavske
Secretary of State
Zach Conine
State Treasurer
Catherine Byrne
State Controller
Aaron D. Ford
Attorney General
Trudy Dulong
Public Member

MINUTES

DATE AND TIME: June 25, 2019 1:00 PM

LOCATION: Old Assembly Chambers of the Capitol Building 101
N. Carson Street
Carson City, Nevada 89701

VIDEO CONFERENCE LOCATION: Grant Sawyer State Office Building
555 E. Washington Avenue, Suite 5100
Las Vegas, Nevada 89101

1. Call Meeting to Order, Roll Call, Remarks

Governor Sisolak called the State of Nevada Executive Branch Audit Committee Meeting to order on June 25, 2019 at 1:00 PM.

Members Present

Governor Steve Sisolak
Lieutenant Governor Kate Marshall
Secretary of State Barbara Cegavske
Treasurer Zach Conine
Controller Catherine Byrne
Attorney General Aaron Ford

2. Public Comment

Margi Grein, Executive Officer at the Nevada State Contractors Board, thanked the Governor's Office of Finance and in particular Mark Richards for their efforts in compiling the audit information and managing the request for information in a professional and polite manner. She said she would be happy to offer her services at any time to anyone on the committee from this point forward.

3. Approval of the October 17, 2018 Executive Branch Audit Committee Meeting Minutes (For Possible Action)

Motion: Approve October 17, 2018 Executive Branch Audit Committee Meeting Minutes
By: Secretary of State Cegavske
Second: Controller Byrne
Vote: Motion passed unanimously

4. Presentation of the Division's Audit Six-Month Follow-Up Status Reports Pursuant to NRS 353A.090 (Informational Only)

A. Secretary of State, Report No. 19-01 – Elections Division

Warren Lowman reported that there had been lots of movement on the recommendations to the Secretary and the Elections Division. Two recommendations, number 5 and number 4, which could be accomplished through the Secretary's Office itself, are moving forward and they anticipate fully implementing those recommendations by the end of the year. The remaining three recommendations, 1 through 3, have gotten some movement based on legislative action.

Scott Anderson, Chief Deputy Secretary of State, reported on the three recommendations that hinged on legislation.

Recommendation #1: Evaluate using risk limiting audit methodology for post-election audits and modifying the NAC to reflect such change. SB 237, signed by the Governor a week ago, gave the authority for the office to move forward with risk limiting audits. This will allow the Secretary of State to adopt regulations and then to provide and conduct a pilot audit after the 2020 election. In 2022, full blown risk limiting audits will begin. This will give a better sample going forward for post-election audits and will ensure that the results of an election are indeed correct.

Recommendation #2: Evaluate using Oregon's recall petition signature verification methodology. SB 450 of this past session related to recall elections; it basically makes this recommendation moot because it actually makes the signature verification of recalls more stringent than the Oregon model. In statewide elections, for example, constitutional officer elections would require a 25 percent sample verification and all of the races would require 100 percent verification, so it's much more stringent than the Oregon model.

Recommendation #3: Revise and clarify NRS and NAC. There were some very antiquated provisions relating to the Federal Elections Commission which no longer exist for the purposes of Nevada statute and instead replaces that with the EAC or the Elections Assistance Commission that was also changed in SB 123.

B. Department of Conservation and Natural Resources, Report No. 19-02 – Nevada Division of Forestry

Vita Ozoude reported that the Division of Forestry fully implemented one recommendation and partially implemented three. The division fully implemented the recommendation to expedite the billing process. As a result, all fiscal year 2019 bills submitted by the Department of Corrections have been paid. The division's actions on partially implemented recommendations are as follows:

Recommendation #1: On the recommendation to automate the billing process, the division received funding in their 2019-2020 budget to purchase an automated fire billing system. The division anticipates full implementation of this recommendation by June 2020.

Recommendation #2: On the recommendation to develop a strategic plan, the division is working on a broad agency strategic plan which will incorporate the goals and strategies of the Wildland Fire Protection Program (WFPP).

Recommendation #3: Finally, on the recommendation to require WFPP participation, since the audit, three fire jurisdictions have joined and seven more are planning to join the WFPP. Additionally, Assembly Concurrent Resolution 4 that requires an interim study of wildfires by the Legislative Commission was passed during the last legislative session. The division hopes the results of the study will help in furthering discussion on participation in the WFPP.

5. Presentation of the Division's Audit Reports Pursuant to NRS 353A.085 (Informational Only)

A. Nevada's Occupational and Professional Licensing Boards, Report No. 19-03 – State Governance

Mark Richards presented the second report of the Boards and Commission Audit which focused on state governance and regulatory practices of 34 independent licensing boards. The audit objective was to improve oversight of those boards.

Recommendation #1: In furtherance of the objective, it is recommended that executive branch oversight of the Boards be established under the Department of Business and Industry (B&I). In response to questions raised in the first report, the Office of the Attorney General determined that the Boards, even though fee-funded, were subject to oversight by both the executive and legislative branches.

Oversight of the Boards has been an ongoing discussion for many years. In 1992, a study of Nevada's state government structure found that the proliferation of Boards diluted responsibility and accountability such that the Governor may not have been able to coordinate and ensure the appropriateness of Board policies and actions. The study recommended that a liaison state department provide executive oversight of the Boards. The findings of the 1992 study are still relevant today. Each Board, through its enacting legislation, is granted the authority to oversee its own practices. Board members, generally appointed for their knowledge of their profession, are solely responsible for the oversight of their Board's activities. There is no executive branch agency or official with responsibility for the coordination or oversight of all Boards.

Existing oversight is exercised primarily by the Legislature through the Legislative Commission's Sunset Subcommittee. Sunset's mandate is to review a minimum of 10 Boards each interim session. With the lack of executive oversight and only interim oversight by Sunset, it is not unexpected that Board practices are inconsistent or may not comply with state guidelines. Sunset noted multiple areas of concern with Board practices during the last interim as did both of our reports. This last session, the Legislature adopted Sunset's recommendation that a study of the Boards be performed to address its concerns.

Of the executive branch departments, B&I is uniquely positioned to fulfill the state liaison role contemplated by the 1992 study. In that role, B&I could ensure the coordination and appropriateness of Board practices as well as provide the benefit of support and shared services

for some Boards. B&I is organized, staffed, and experienced in providing oversight and support for a diverse group of 23 regulatory bodies, including many with independent regulatory authority. A recent study showed that B&I's oversight umbrella includes regulatory bodies that are typically under many different agencies in other states.

While B&I's eventual oversight structure is currently undetermined, a semi-autonomous structure may be best for balancing executive oversight with the responsiveness allowed by the existing autonomous structure favored by the boards. Under a semi-autonomous structure, Boards could retain their independent authority to license and establish standards for their professions and would also benefit from B&I's oversight and support as appropriate. B&I's oversight could also benefit Sunset by providing coordinated information and analysis for all boards as a group. In addition, B&I could provide legislative assistance to the boards, instead of the boards hiring outside lobbyists, thereby potentially reducing board expenditures for lobbyist activities.

Further, B&I could share supervisory authority for Board executive directors in order to provide institutional support for those positions. Finally, B&I could function as a state supervisor to mitigate exposure to anti-trust liability that may result from boards being controlled by members who are also active market participants. Because Board size and complexity varies greatly, a one-size-fits-all approach to oversight may not be desirable. Instead, a phased approach may be more effective. Funding B&I's oversight may require general fund appropriations initially to offset additional personnel and other resources B&I would incur to fulfill its oversight role.

Recommendation #2: As a corollary to establishing executive oversight under B&I, it is also recommended that B&I establish board standards of operation that address the areas of concern and inconsistencies noted by Sunset and our reports. Existing legislation assigns the Department of Administration the responsibility to adopt regulations for establishing standards. In order to fulfill its executive oversight role, it would be more effective and efficient if B&I were provided that authority directly. Moreover, establishing standards by regulation may not be practical or required. Alternatively, B&I could be given the authority to establish standards through policy statements and manuals where appropriate.

Controller Byrne asked how much direct involvement does the state have with the 34 Boards. Mr. Lowman responded that Title 54 Boards, specifically the Boards reviewed in the audit, were not subject to certain statutes, to include the Personnel Act, Budget Act, state internal controls procedures, and that there is not a state agency going out and following up on any of that regularly. Mr. Lowman notes there is a closer association with the Office of the Attorney General. Each of the Boards has access to a Deputy Attorney General that assists in open meeting law and other legal determinations. In terms of active oversight of the Boards, there's not a state agency that does that.

Mr. Lowman introduced Department of Business and Industry Director Michael Brown who noted the department was proposed in 1963 by Governor Sawyer in an attempt to bring a regulatory coherence to the regulation of real estate, savings and loan banks, and other financials. The department was expanded in 1993 to what you see today.

Director Brown noted B&I provides shared accounting, purchasing, and administrative services through the director's office. These shared services have effectively removed agencies from having to deal with that on an individual basis and gotten some economies of scale from bringing it on a horizontal basis. When the Division of Internal Audits brought this to the department as an idea, the department looked at what other states are doing in this area and particularly noted that the states of Utah and Colorado, both growing western states of approximately equal size to Nevada with prosperous economics have within their equivalent of the Department of Business and Industry created a Division of Occupational Licensing. Within the Division of Occupational Licensing, these states have applied really modern IT technologies and standardized everything so you don't have 14 Deputy Attorneys General explain the Open Meeting Law. You go right to the Colorado website and it shows what the Open Meeting Law is for all of those units.

Director Brown commented that Colorado and Utah, and particularly Colorado because it's consistently ranked as one of the best managed states in the nation, is an achievement Nevada will surpass at some point. These two states have taken a very integrated and modern approach that allows subject matter experts on the occupational boards to focus on the subject and not focus on the administrative matters of running it. They have also been able to provide the public safeguards that they need to assure public dollars are properly spent follow all the state procedures.

Director Brown stated antitrust is a growing body of law the Justice Department has taken a much stronger view of matters across the board since 2010. Antitrust enforcement continues.

Director Brown stated the issue of Boards had been debated in Nevada since as early as 1948. This is an area for the Governor and the Legislature to decide. Should they wish to go in this direction, B&I could certainly tap the expertise in Colorado and Utah and modernize this in a 21st Century way.

Deputy Director Terry Reynolds stated B&I did not insert itself into the policy issues of each one of the Boards and Commissions under its purview but provided an administrative review in procedural consistency that allows them to handle the day-to-day business within their specific areas. Mr. Reynolds noted B&I brings consistency and discussion of issues of Open Meeting Law, of how meetings should be conducted, working with the different chairs and the agencies that deal with commission issues, making sure they are consistent in terms of how they conduct meetings and carry out the administrative processes under Nevada law.

Controller Byrne voiced concern that if the state creates oversight by B&I, she was a bit wary about how close the connection is and will oversight processes create some sort of conflict of interest with the Boards.

Director Brown responded the audit report was bringing forward an idea for further thought and consideration and those are the kinds of things that you'd want to make sure that you ensure against and the kinds of things that if the Governor and Legislature wanted to go this route B&I would reach out to the states that have this kind of system and see how they provide those kinds of protections.

Governor Sisolak clarified that this would require legislative change and all the policy questions would have to be decided as well as who should pay for such a transition. The Governor told Director Brown they'll probably move forward with this during the next legislative session in order to get a handle in terms of how to do this. If it goes to B&I, there are going to have to be resources that are attached in order to deal with the multitude of boards that would follow.

Secretary of State Cegavske thanked staff for the audit and stated it's a great idea and innovative. The Secretary asked if anybody looked at the cost; was there a cost analysis?

Mr. Lowman responded that a cost benefit analysis was not part of the audit because of a lack of specific data. The audit looked at cost in terms of all the functions that Boards currently pay for through fees and other revenues and that there may be an opportunity to achieve efficiencies, effectiveness, and economies of scale over time. The audit recognized that for B&I to get up to speed on an oversight role there may be an initial cost that needs to be covered through a general fund appropriation. Those funding details would be clearer under B&I's concept of how they wanted to operate their oversight responsibility. The audit assumed that over time, it may be cheaper for Boards and it may be cheaper for everyone.

Secretary Cegavske asked if Boards would still be within themselves and regulate themselves with the help of the department or how would that look? Mr. Lowman responded the vision in the audit was that Boards retained their regulatory authorities; their practice acts would remain. Oversight of how Boards in fact were regulating, consistency in their hearing and disciplinary process with statute, and administrative matters would rest with B&I.

Treasure Conine noted we've all heard about lobbying efforts happening on behalf of some of these regulatory Boards and asked if the expectation was those would go away or Boards would continue to do it and under what statutory authority are they doing it now? Mr. Lowman responded the lobbying activity that currently goes on is part of a legislative education effort B&I would certainly be able to fulfill with resources or possibly additional resources.

Mr. Lowman added that Boards, by their practice acts, are allowed to purchase legal services. It comes to a fundamental question of is the Board there to conduct regulatory responsibilities for the industry or do Boards function as more of a professional organization. What is the degree to which lobbying goes on to further the professional organization as opposed to the regulatory mission? This issue would be part of the discussion as B&I would assume oversight of the Boards.

Treasurer Conine stated that question goes back to the crux of the argument and asked who answers it? Is that a legislative piece of business or a regulatory piece of business?

Mr. Lowman responded that question would certainly be part of the discussion at how statute would change, Title 54 itself, and as Boards come under the oversight of B&I. Just as other state agencies are not allowed to lobby, would Boards under the department be allowed to lobby? That conversation would be one the Legislature would want to have.

Director Brown responded this question would depend on how the Legislature actually put the enacting legislation together and the Governor's proposal. Director Brown noted his former

home state of Virginia banned lobbying completely, including local and city governments. It was a very broad ban.

Treasurer Conine stated it feels fundamentally like a conflict of interest inherently and wanted to continue the conversation.

Governor Sisolak thanked the Treasurer and stated he had asked for a list of all agencies and how much they are spending on outside lobbyists, outside consultants, outside attorneys, and outside everything else of taxpayer money or fee generated money to lobby the Legislature. The Governor was expecting that information before the next time we get together because during the session it was discovered that these Boards, some other Boards, the school districts, the pseudo-agencies have enormous lobbying teams assembled and are paying for that with taxpayer dollars. The Governor asked for an accounting in detail on lobbying expenses.

Attorney General Ford noted that moving all of these agencies under B&I is not necessarily going to eliminate the need for Deputy Attorneys General to be at every meeting advising on the different issues that arise under the law. The Attorney General asked about the calculation that there's going to be a savings in the amount of monies that have to be allocated toward the Attorney General's Office vis-à-vis the representation to these Boards. The Attorney General noted the Boards are executive branch agencies who carry out at some level the will of the Governor. The ultimate responsibility and decision-making authority on how a Board is to be proceeding, notwithstanding the fact that it's a professional board and one that is to protect a particular industry, it's also to be putting forth an agenda that the executive branch wants to put forth.

The Attorney General stated he didn't know how this played into placing it under B&I with the exception of the fact that obviously B&I is also a governmental agency. The Attorney General stated the savings the audit contemplated by placing it under B&I may be tempered somewhat because B&I is going to need more resources, not just at the outset, but as a general matter, especially if Boards are going to be allowed to continue lobbying during session on certain issues. The Attorney General noted B&I is very smart and have people who can come up on particular issues but didn't think simply moving 34 agencies is going to remove the necessity for B&I to get additional funding.

Governor Sisolak stated he appreciated the Attorney General's comments and noted there was a bigger issue here. The Governor stated the Open Meeting Law information provided by 12 or more Deputy Attorneys General wasn't the problem. The problem was not following of the information provided by Deputy Attorneys General.

The Attorney General noted Boards don't take it as serious as they should, maybe.

Governor Sisolak stated Boards don't understand the obligation they have to follow, at least subject to the Open Meeting Law, and it's explained well. It's just not followed well. The Governor stated this is a Legislative issue. Should Boards be regulatory or should they be advocacy. The Governor noted these are policy question to be decided and then who should pay for that if in fact that's the case.

The Governor advised Director Brown that his administration would probably move forward with the audit recommendations during the next legislative session in order to get a handle on how to do this. The Governor noted that if the Attorney General is correct and it goes to B&I, there will have to be resources attached to deal with the multitude of Boards that would follow.

Director Brown responded there is an incredible level of transparency in Utah and Colorado and sensed the Attorneys General in both states had their folks deployed among all relevant boards.

Governor Sisolak asked Director Brown to follow up and reach out to Governor Polis and his B&I counterpart in Colorado and come up with some suggestions.

B. Nevada State Board of Dental Examiners, Report No. 19-04 – Board Operations

Heather Domenici, Executive Branch Auditor, reported the audit focused on the Dental Board's investigative, enforcement, and regulatory processes with the objective of developing recommendations to enhance Board operations. Enhancing operations will help increase transparency in Board processes and activities, ensure the health, safety, and welfare of the public, and protect the state's interest by reducing liability and costs. To that effect, the audit made four recommendations.

Recommendation #1: The audit recommends the Board strengthen oversight of investigative and enforcement activities to help ensure the health, safety, and welfare of the public are protected and Board activities are transparent and impartial. Board oversight is lacking for Disciplinary Screening Officer (DSO) Coordinator decisions that may restrict the rights of complainants and licensees.

Additionally, the DSO Coordinator's duties may conflict with other duties and some Executive Director duties may not be in the best interest of the public. Moreover, the Executive Director assigns the majority of investigations to a limited pool of DSOs.

Recommendation #2: Additionally, the audit recommends the Board avoid conflicts of interest in actuality and in appearance to help increase transparency and to ensure the separation of private and public interests for the protection and benefit of the public. This will require the Board to consult with the Nevada Commission on Ethics to determine compliance with ethics law.

Potential violations include: not separating private and public interests, using Board positions for personal gain, improperly voting on Board matters, and using board positions for private opportunities immediately following Board service.

Recommendation #3: The audit further recommends the Board comply with state contracting requirements to help ensure transparency in operations, protect the state's interests, and reduce liability and costs to the state. This will require the Board to consult with the Office of the Attorney General and the Purchasing Division to determine appropriate contracting procedures.

The Board procures professional services to support its investigative and enforcement process but does not enter into written contracts for the services as required by statute. The Board provides general liability insurance coverage to professional service providers and reimburses

costs not provided for in a written contract, contrary to statute. These practices and the nature of the services provided to the Board increase liability and costs to the state.

Recommendation #4: Finally, the audit recommends the Board comply with the Administrative Procedure Act (or APA) to increase transparency in rulemaking and rules of practice, to ensure regulations are evaluated through the public rulemaking process and are consistent with statutory authority and legislative intent.

Complying with the APA will also help ensure adopted rules of practice are clearly defined and are implemented through formal administrative procedures with Board oversight and public disclosure. Some Board procedures apply to the public in general or to all licensees and affect the private rights or procedures available to the public. These procedures have not been formally adopted by the Board as regulation or defined in the Dental Practice Act. Changes to the Board's rules of practice were implemented without public notice or Board adoption at a public meeting.

Governor Sisolak thanked Ms. Domenici and asked who was going to represent the Dental Board for questions.

Ms. Melanie Chapman, counsel for the Board, said she would represent the Dental Board.

Governor Sisolak first asked about the DSO Coordinator and some DSOs who may have violated ethics laws. What was the story there?

Ms. Chapman said they believe Board member number one to be Yvonne Bethea who was appointed to the Board December 2017. The first meeting she attended was January 2018. The DSOs at issue, according to the findings of the auditor, are clinical staff at UNLV. Ms. Bethea's husband is a UNLV employee who's the Director of Operations. He is not in any way involved with the clinical staff. He is not in any way involved in any hiring or firing. None of the DSOs that they believe are mentioned, not by name, have any control or authority over him. And therefore, it's not believed that there is any conflict or ethical violation. Ms. Chapman state that to the extent that Ms. Bethea needs to disclose her husband's affiliation with UNLV she will begin to do that, but certainly nothing was done with any attempt to not disclose anything. It just did not appear relevant.

Governor Sisolak asked Ms. Chapman if she said that it did not appear relevant. Ms. Chapman stated that yes, it wasn't even considered at the time and Ms. Bethea's husband's employment by UNLV really has nothing to do with the DSOs that were appointed. She stated that DSOs are reappointed yearly as a panel. All of the DSOs that were on this panel were DSOs long before Ms. Bethea was on the Board. This was merely a yearly reappointment. They were on a panel. The panel is determined at each point as a group and if there is anything that needs to change in this regard, they certainly will.

Governor Sisolak said he felt very strongly that the appearance, the lack of transparency, was surprising to him, and he might suggest they go to the Ethics Commission and ask for an opinion before saying it's not relevant, because he thinks it's relevant.

Ms. Chapman stated that she didn't mean it's not relevant, she meant that it wasn't something that was seen as an issue at the time. She stated that if they were mistaken in that, then they will certainly fix it.

Governor Sisolak commented that the question is or relates to the DSO Coordinator reviewing complaints and also acting as investigator and review panel member.

Ms. Chapman said that is a misunderstanding. The DSO Coordinator does not investigate complaints and at this point after this audit he will no longer even be reviewing for jurisdiction. The DSO Coordinator merely reviewed for jurisdiction to determine if what was stated in the patient's complaint fell within the practice act as anything that the Board could do anything about, if true. He did not investigate, he does not make any determinations whether there have been any violations at that point, and he merely reviewed for jurisdiction. He is a member of the review panel, and his review as a member of the review panel takes place after the DSO does their investigation. However, at this point they have taken the auditor's suggestion and they will no longer be doing a pre-verification jurisdictional review. Anybody who wants to file a complaint can do so. It will be verified, and they will investigate all complaints. There will be no pre-verification jurisdictional review.

Governor Sisolak asked for clarification: the DSO Coordinator has sole authority to dismiss complaints prior to complainant verification and without further review? Ms. Chapman replied it's not a dismissal. He had the authority together with the Executive Director to determine whether or not there was initial jurisdiction. Their practice act, unlike the other practice acts in the state, requires that all verified complaints be investigated.

Governor Sisolak stated the audit says the DSO Coordinator can dismiss it prior to complainant verification. Ms. Chapman stated that it's not a dismissal, it's a statement that the Board doesn't have jurisdiction and therefore there was no jurisdiction.

Governor Sisolak asked if the audit was incorrect in stating that the DSO Coordinator can dismiss complaints. Ms. Chapman stated the DSO Coordinator could determine that there was no jurisdiction and that there would not be an investigation.

Governor Sisolak asked what due process the complainant has. Ms. Chapman said the due process is what is afforded to the licensees. The due process is not for the complainant. The Governor asked that if a complainant comes forward and it's dismissed out of hand by the DSO Coordinator, what rights does that complainant have - none. Ms. Chapman said they have their civil remedies. If it is found to have no jurisdiction, what that means is that even if they investigate it and even if it's found that what they were saying was true, it wouldn't be within the Board's jurisdiction to do anything about it. And that's all that means.

Governor Sisolak stated it's his understanding that part of the function of the Board is to protect the health, safety, and welfare of the public and that can't be correct if Ms. Chapman is saying they have no rights. Ms. Chapman said the due process rights are what are afforded to the licensees. It's not that they don't have any rights, but the Board can't discipline a licensee for something they don't have any jurisdiction over.

Governor Sisolak said he has never seen an audit this egregious, ever, in over 20 years. He stated that Ms. Chapman was just shaking her head yes, but he thought she didn't understand the magnitude of these questions. Ms. Chapman stated she understood the questions and was there to answer them.

Governor Sisolak asked regarding Board employees whose salaries exceeded the statutory threshold of 95 percent of the Governor's salary. Ms. Chapman stated the Executive Director is not one of the boards that was found to be over 95 percent in a previous audit. Governor Sisolak asked is someone on this Board was found to be over the 95 percent. Ms. Chapman stated no.

Governor Sisolak moved on to the topic of Board members acting as DSOs after Board service. He asked if there was a cooling off period. Ms. Chapman stated that Board members are DSOs, so when they are no longer Board members sometimes they continue as DSOs. This has not occurred in recent times and she thought the last one was in 2016.

Governor Sisolak called attention to the headline that Board members may have used Board positions for personal gain. Ms. Chapman stated they disagreed with the headlines and asked the Governor if he had a chance to review the Board's response. Governor Sisolak replied that he had reviewed the response and felt it did not adequately address items that are brought up.

Governor Sisolak read from the audit report, noting former Board members used their positions for private opportunities by appointing DSOs immediately following Board service which violates ethics law. He asked Ms. Chapman if she disagreed it violates ethics law? Ms. Chapman said she disagreed that this audit could make that determination. She disagreed that there was any purposeful violation, if there was a violation. And again, that has not occurred in many years.

Governor Sisolak stated that Ms. Chapman was taking the heat for the whole Board which he was really troubled by. He asked Ms. Chapman if they had outside representation with the Legislature. Ms. Chapman confirmed the Board hired Michael McDonald, who was not present at the meeting.

Governor Sisolak stated he was not happy with the way this turned out and requested Ms. Chapman to take it back to the Board that he is very unhappy with it. He asked if there were any Board members at the meeting at all. Ms. Chapman stated there were not. The Governor asked if they knew the committee was going to have the discussion on this audit. Ms. Chapman stated that they were advised that it was not to be discussed with the Board member until it was brought forth at the meeting.

Governor Sisolak asked who advised this and Ms. Chapman stated the auditors advised that it was not to be discussed prior to presentation to the committee. The Governor asked if Ms. Chapman understood this was a public meeting and she confirmed she understood. The Governor stated that everyone at the meeting were entitled to come to the meeting and it's open to the public, including to Board members. The Governor asked whether the Board members were advised the meeting was taking place, so they could be there. Ms. Chapman stated she believed some of them were advised and she was under the impression that they were not to discuss this at all with them.

Governor Sisolak asked the auditors if they advised Ms. Chapman to not let the Board know there was an audit or be aware of the findings. Mr. Lowman stated that based on statute, he advised that the contents of the audit could not be disclosed publicly prior to submission to the Committee. He noted that the response was signed by the President of the Board so at least one Board member was aware that the audit was going to go forward, and at no time did he say the Board couldn't be advised that there was a meeting and they could attend.

Governor Sisolak stated he is very concerned about the findings. He stated that he had prided himself, as well as Attorney General Ford and the members of the committee in conducting as transparent, open, and fair process as possible for every complainant, every applicant, every member, and he didn't know if this was doing that. He stated he would be honest that he's concerned about that.

Ms. Chapman stated she would be happy to meet with the Governor and Attorney General Ford to discuss anything they feel is necessary to discuss. Speaking for the Board, they are in no way attempting to have a lack of transparency. These are all incredible people that have been doing very incredible things for the dental community. She stated she has been there a year and a half and is working to make things as transparent as possible.

Ms. Chapman stated they have a disagreement with a lot of things and that the findings are not based entirely on a full understanding of what is occurring. She tried to point that out in their response. She stated that if that isn't adequate, she is happy to answer any questions but she doesn't feel that a lot of this was appropriately in this audit.

Attorney General Ford stated the Board has come to the committee's proceedings before, there have been conversations about complaints that have arisen in the community about this Board and interactions with some of the members of the Board and non-members. He acknowledged Ms. Chapman's effort to be open and honest but also agreed with the Governor that this report is very problematic. He said he was trying to understand why Ms. Chapman said she doesn't think some of the things belong in the report. He asked if she was saying that the auditors didn't have the authority to touch on certain things, what specifically is she complaining about, and what did she mean that it should not have been in this report?

Ms. Chapman said she thought the determinations that have been made in this report for a large part are legal determinations which are contrary to legal determinations that have been made in a court of law. Attorney General Ford asked Ms. Chapman to provide an example, because these are really recommendations and they aren't determinations.

Ms. Chapman stated she absolutely agreed with Attorney General Ford and the recommendations themselves. She stated they are certainly not opposed to any recommendations. The problem the Board has is the determinations that there have been statutory and ethical violations. She does not believe these are appropriate. She stated if there's a concern about ethical violations, she believes that needed to be said to the Ethics Commission. She believes that they have exclusive jurisdiction and she has spoken to them. The Board is not ignoring any of this; they just think it went a little far afield of simply making recommendations. The way the audit was written made certain conclusions that Ms. Chapman didn't think were appropriate to make in a recommendation type audit.

Attorney General Ford said he respectfully disagreed. He stated that the audit uses the words “may”, “may have”, and the recommendation to consult with the Ethics Commission. Ms. Chapman responded that they certainly will.

Attorney General Ford said that based on some of the communication the Board has had with the Governor, he agrees there should be some communication with the Ethics Commission on some of the decisions the Board is making. He said that he knows that Ms. Chapman has been on the Board for a year and a half and this is not a brand new problem. He stated that in his time in the Legislature he heard about the Board for six years and this is an evolving issue. He said frankly, one that has to be fixed.

Ms. Chapman responded that she understood that and would like to point out that what precipitated this audit were multiple public comments regarding accusations against the Board, board members, board counsel, and the board Executive Director. She would like to point out that this audit did not find any merit to those accusations. The audit came up with some other things that the Board certainly will work on and will be happy to deal with, but the accusations of misappropriation, the accusations of favoritism, the accusations of bias – none of that was supported by this audit. She stated there was one small paragraph in the audit regarding not finding any merit to the accusations of bias. To simply ignore that the accusations were made and there were no findings for those accusations is not appropriate, and she mentioned some of that in her response.

Ms. Chapman said that while the audit found other things that they’re not ignoring and are happy to work to correct if there are issues. None of these have anything to do with what was being alleged. She stated that as far as the DSO Coordinator position, the Board will work to change that procedure entirely based on this audit. There will be no more pre-verification jurisdictional reviews but that is going to lead to more investigations and she stated she foresees that they will be back here with complaints about that. She stated that they are happy to do it but may need to hire more staff and expend more resources. The Board may be investigating cases that at the end of the day they have absolutely no ability to do anything about but they will do it. So, that issue is no longer an issue.

Lieutenant Governor Marshall said she believed Ms. Chapman had an opportunity now with a series of recommendations. She stated that whether Ms. Chapman believes they are based on complaints she does or doesn’t appreciate, Ms. Chapman has the opportunity to guide the Board to set in place some policies and procedures that would allow the Board and the audit committee to move forward in a positive way. She could help guide her Board to come back to the audit committee to show that they adopted the recommended policies and procedures and the Board is doing what they have the intent to do, that might help everyone move forward.

Lieutenant Governor Marshall stated this looks like it is longstanding. It sounds like there’s a lot of frustrations and tensions, but right now Ms. Chapman has the unenviable task but also the challenge of guiding the Board forward in a positive way. This could probably help everyone here. Ms. Chapman stated that she didn’t disagree.

Governor Sisolak stated that the Lieutenant Governor’s comments were very well put. He stated that the auditors did not play “gotcha audit” and he has been through gotcha audits. He really

doesn't believe the auditors do that but the Board's response was 19 pages. He stated that's a lot of response for what shouldn't be. The Governor stated he thinks the comment that the Board takes issue with and rejects many of the legal findings and conclusions that make this audit go beyond the scope, expertise, and jurisdiction of this audit is a legal interpretation. The auditors have jurisdiction to audit this and you might not agree with the findings.

Governor Sisolak stated he was concerned about the findings and he asked Ms. Chapman to go back to the Board and to ask for help from the Ethics Commission. He stated he was going to ask the Board to ask for help from the Attorney General's Office in terms of Open Meeting Law and get a presentation to the Board in terms of what Open Meeting Law is. He stated he didn't know if Board members had read the manual and Ms. Chapman said she was certain some have. She stated that she can't speak for them, but she knows they have been given it.

Governor Sisolak stated that they're all supposed to have read Open Meeting Law and Ms. Chapman stated that they have advised them. She stated she has personally sat with them about Open Meeting Law and they are very well aware of it. Ms. Chapman stated she didn't believe there have been Open Meeting Law violations. She stated she thinks there's an issue that the auditors think that some disclosures should have been made and they will be made from this point forward. She stated she can't change history and if she could, she would. All she can do is go forward.

Secretary of State Cegavske said she looked at this as a positive because she sat and listened for hours and hours of both sides coming into the Grant Sawyer Building talking about the issues. She said they listened to both sides on a regular basis for public comment. She stated she knows there are two sides and there's a lot of conflict.

Secretary of State Cegavske stated this audit was to help and be informative, which she thinks the audit team did. She thought the auditors did an excellent job of coming in and saying these are areas that need some improvement. She said for her, reading Ms. Chapman's response to the auditors was really a shock because she doesn't believe she has ever seen a response to auditors in the negative tone and nature of what was presented. So her view, along with the Lieutenant Governor's, is to take this as a positive, move forward, and utilize it. Coming in with a negative attitude hasn't helped. She stated that Ms. Chapman is kind of rearing up some ugliness and she remembered all the comments and conversations.

Secretary of State Cegavske stated that she knew Ms. Chapman had been with the Board a year and a half, but Secretary of State Cegavske also heard about the Board when she was in the Legislature. She said this is nothing new. Regarding the Attorney General's point regarding the last eight years, they've been hearing these discussions long before that. She stated that if she were Ms. Chapman, she would take this as a positive and move forward as the Lieutenant Governor has explained. Additionally, Ms. Chapman might want to rewrite her response. The auditors did the Board justice in giving their recommendations, the Board should adhere to them, and all the comments that the Governor and other members are giving should be well-heeded.

Governor Sisolak thanked the Secretary and said he couldn't agree more. He told Ms. Chapman he gave her a lot of credit. Her Board sent her out here on her own without a shield

or without any defense to take an awful lot of questions from him and a bunch of other folks who are all well-intentioned. He stated he feels the audit committee is well-intentioned. The response could easily have been that the Board appreciates the audit, the auditors raised valid concerns, the Board is going to address all those concerns, and the Board is going to do a lot better, as opposed to getting the comments and pushback that it seems like this has given.

Controller Catherine Byrne said when she sees an audit report like this, one of the first things she thinks about is litigation and liability to the state. She stated she didn't know if there was any past litigation and it's one of her concerns when she sees an audit report like this.

Ms. Chapman said there has been litigation against her and the Board regarding the investigatory and disciplinary processes. There have been three suits filed. They've been presented to two different judges in the Eighth Judicial District Court and the Board has prevailed on all three suits, and the investigatory process was vetted extensively by those judges. The arguments that were made leading to this audit were made in front of those judges.

Governor Sisolak said that while he appreciates the fact they might have prevailed, he hoped it had not emboldened them to not take these things seriously because they're serious to him. He suggested that she go back to her Board, give them the audit and tell them to read it along with the Open Meeting Law manual. Maybe get a presentation from the Attorney General's Office in terms of the Open Meeting Law and also get in a presentation from the Ethics Commission to eliminate a lot of problems on the front-end, then bring this back at the next meeting. He closed by saying he commends Ms. Chapman for having the fortitude to stand up to a lot of tough questioning and the Board should much appreciate the fact that they sent somebody of her caliber to address these issues and to defend them.

C. Department of Conservation and Natural Resources, Report No. 19-05 – Division of Environmental Protection, Petroleum Fund

Michelle Isherwood reported on the audit of the Division of Environmental Protections Petroleum Fund. As a result of that audit they've developed five findings that will improve management and operational accountability. The division has accepted all five recommendations.

Recommendation #1: Adhere to the legislative intent of the Petroleum Fund statute. The intent of the fund was to create equity and allow for small businesses to compete in a capital heavy environment. The statute was created such that small businesses are those that are defined as businesses that receive or that have less than \$500,000 gross receipts annually. These small businesses pay \$50,000 per tank as a deductible for cleanup activities. Other businesses defined by anybody over \$500,000 in gross receipts pay \$100,000 per tank. While this does create some equity, \$50,000 per tank for a business making less than \$500,000 in gross receipts is still pretty steep where larger businesses that pay \$100,000, this amount could be significantly less than 10 percent of their annual gross receipts. Since 1989 only two percent of the \$230 million that has been spent on Petroleum Fund cleanup has gone to small businesses. The bulk of the money has gone to larger businesses, which has created a corporate welfare system.

Recommendation #2: Petroleum Fund should follow the statute for third party liability. The statute designates \$1 million for cleanup activities and \$1 million for third party liability. Third party liability funds are meant to protect the public and cover damages incurred by innocent third parties. These funds are designated to go to someone other than the state or an owner-operator. The statute designates that costs for additional cleanup must be borne by the owner-operator. Currently as written, the statute has all carrot and no stick. There are no real penalties written in if the owner-operator chooses not to continue with cleanup once their petroleum fund allocation has been expended.

To date \$11 million has been spent on open cases from third party liability funding. This an additional \$25 million in third party liability funds that we recommend not be allocated for further cleanup activities.

Recommendation #3: Petroleum Fund should adopt internal controls by implementing an audit and site visit functions. Based on the \$230 million that has been spent by the Petroleum Fund to date, the division could recoup or recover \$2.3 million to \$11.5 million in misspent funds.

In 2015 the Petroleum Fund implemented a database system that automated much of what was a manual process prior. This new database would free up staff to conduct these site visits and audit activities. From 2001 to 2005, based on a previous audit recommendation, there were site visits conducted. After 2005 these site visits were discontinued due to a lack of resources.

From 2014 to 2016 the Petroleum Fund reported that there were three instances of alleged fraud. The only notation was that preliminary investigations were conducted and the notations in the files were that these certified or environmental managers should be watched closer in the future.

Recommendation #4: The Petroleum Fund should develop additional risk-based tools to reduce cleanup times. The Fund should develop additional tools to reduce the amount of cases that exceed 10 years. Risk-based tools use tested, scientific methods to clean up spills in an effective and efficient manner. These tools would ensure that remediation efforts were necessary and essential to close out a project.

Currently, 35 percent of the open cases are over 20 years old, with an additional 15 percent that are 10 to 19 years old; 50 percent of the open fund cases are over 10 years old. State surveys concluded that the average cleanup time was seven years.

The Fund has spent over \$63M on cases that were open prior to 1999. That amount includes 12 cases that were open prior to 1995 when the deductible was only \$10,000 as opposed to the \$100,000 that was implemented after 1995.

Recommendation #5: Revise the enrollment and reimbursement process. During the audit, 38 cases were reviewed. One case was found where the approval for the reimbursement was done despite not meeting reimbursement requirements. The recommendation is that the Fund reviews their current policy and develop additional controls to prevent this type of issue from reoccurring.

Based the audit's analysis and the statistical sample, there could be as many as 40 such cases that were enrolled improperly.

Secretary Cegavske asked when you refer to the small operators and the larger operators, can you tell me what you are referring to? Who are the small, who are the large? Ms. Isherwood explained that smaller operators would be independently owned gas stations or retail outlets usually owned by maybe a family or a small organization. A large operator on the list would be a large retail chain that operates many gas stations or retail outlets that provide gas, or larger petroleum businesses.

Treasure Conine asked about third party liability funds being used for clean-up activities when some businesses that are found not to be in compliance with the rules and as such have their corrective funds reduced are then able to tap into the third-party funds to fill that gap and to finish the corrective action. Isn't that effectively removing money that would be used to protect the public and giving it to people who are out of compliance?

Mr. Lovato said, they still have a co-pay, they are still paying 10 percent into that second million. So that is basically their incentive as well as whatever reduction they have received. So facilities are only accessing that second million if the extent of the release that occurred warrants it. One of the things that is required before the second million is accessed, is the Board requires pretty specific information on time to closure, what the plan to closure is before granting that second million so that the overall cleanup can proceed in a timely manner and actually be completed on time.

Treasurer Conine asked if the three certified environmental managers who were found to be committing fraud were still working with the state? Administrator Greg Lovato said they weren't able to verify fraud in any of these cases. At least two of these matters were dealt with in the Board hearings that took place in a public setting with everyone able to present sides. And the division realized after two of those that the best way to cure something was to prevent it from happening in the first place. So two resolutions were passed to really try to minimize if not eliminate potential fraud that was alleged in two of those instances. In terms of whether those individual CEMs were still working that were potentially accused or alleged of fraud, Mr. Lovato stated that he believed they were but that he would have to verify that information.

Secretary Cegavske asked if there are no audits or site visits at all, how do you know that the work's been done or who verifies it? There have been no site visits since 2005. So, how do you verify and pay somebody when nobody goes out to actually do a site visit to see that the work's been completed?

Mr. Lovato said when you talk about audits, it's important to note that every single reimbursement claim and every single invoice prior to payment is actually reviewed by two division employees before it's presented to the Board and recommended for payment.

During that initial process before the pay out, costs are commonly reduced. They've been able to look back over the past couple of years and have actually reduced costs at a rate of about 1.9 percent which falls within the 1 to 5 percent range that they talked about from the other states. In terms of the field investigation, there's a lot of other documentation that substantiates

all the work that's taken place, including the leak and tank investigation, the remedial equipment, all the analytical data that comes in, all of that basically substantiates the work that's occurring out in the field.

The Governor said he thought Mr. Lovato was misunderstanding the Secretary's question. The audit says that no site inspections have taken place in 14 years. How do you pay these if you don't go out and see that they did some work?

Mr. Lovato said he understood the question and they're agreeing to do that work in the future. They are going to start doing site visits.

Lieutenant Governor Marshall wanted to go back to the issue of the three individuals who were found to be committing fraud. She asked if they were still involved with the bid processes? Mr. Lovato said yes they were. She asked if Mr. Lovato thought that was advisable? Mr. Lovato said he thought they've done what they can to minimize the ability for this to happen in the future within the statutes and regulations that they have available to them now.

Lieutenant Governor Marshall said she would recommend they review whether it's advisable to keep someone in a bid process situation who may have been suspected of being cozy with a particular contractor or being susceptible to manipulating bid processes by working with particular contractors. They're setting themselves up and setting the taxpayers up.

Treasurer Conine said it seems like the best way to prevent these things from happening in the future is to not work with the people who have done them in the past. He wondered how many other state vendors they were currently working with might have defrauded them in the past? Could they take a look at that?

Governor Sisolak said he agreed. Were these prosecuted criminally? Submitting false invoices for reimbursement, inflating cleanup costs, manipulating bids, as the Lieutenant Governor said, are these not criminal activities? How are we not prosecuting him or continue to employ him? This is just simply not acceptable.

Mr. Lovato replied that he was not privy to the investigation but that he believed they were reviewed with the Attorney General's office and he did not know if the facts were adequate to prosecute or not.

Lieutenant Governor Marshall said going forward, the Governor and the Attorney General's Office could actually ask the federal government Antitrust Division to come in and do some training because once you start to see these patterns, you will see them again and again and again. They have software that can review and see if these patterns are sitting there underlying. See if they can get the Attorney General's Office and perhaps get the DOJ to come in and help look at this stuff, even if it was a few years ago.

Attorney General Ford said he was going to ask specifically about the two instances of alleged fraud and what the investigatory process was but they could do that offline. He'd like to know who these alleged perpetrators were so his office could take a look at that internally. He asked Mr. Lovato to contact his office to arrange a meeting.

The Attorney General asked how the Petroleum Fund believed that the intent of the statute was being fulfilled when only two percent of the petroleum and fund reimbursements have gone to small businesses. Mr. Lovato replied that's an artifact of the definition of small business and the market distribution of petroleum operators rather than how the Fund has been administered. A threshold of \$500,000 gross receipts per year for a gas station and convenience store is not realistic given today's gas prices. He stated that they would review and evaluate whether the threshold was still appropriate.

Governor Sisolak agreed and said he thought \$500,000 was a really, really low threshold for a small business. With the price of gas nowadays that's only 3,000 gallons of gas a week to move into the large category.

Attorney General Ford asked the Petroleum Fund to elaborate how the tank approval outlined in Recommendation Five was retroactively placed into the fund. Mr. Lovato responded that he would suggest that this tank, which was at a residence and probably wasn't necessarily someone who we had to reach out to in our literature or who would have enrolled. That's not typical of our tank population. We think that the releases that actually occurred at this site were pretty small. They're not indicative of a chronic high-volume release. This was a soil release that was cleaned up for \$19,000. Cases that end up in ground water up in Tahoe, you're talking easily several hundred thousand or a million. So, these aren't indicative of necessarily a high-volume release, but could even be small releases that occur from a tank system that operated in compliance with the physical leak prevention and testing regulations. However, Mr. Lovato stated that the Petroleum Fund has agreed to relook at how to prevent this situation from happening in the future.

The Governor asked if there were further questions regarding this audit and there were none.

6. Approval of the Division's Annual Audit Plan Pursuant to NRS 353A.038 (For Possible Action)

Administrator Warren Lowman stated there are two actions in this agenda item:

The first action is a request for committee approval for the division's audit plan for fiscal year 2020. That request is listed on page 1 of 3. Mr. Lowman said they would like to add to the list a recent request to include the Board of Pharmacy in the audit plan. That addition will adjust one date on the Wildlife Audit which they will push back a bit and get to the Board of Pharmacy and hopefully plan to report that audit to the Committee in October of 2020. Mr. Lowman discussed the second action to address former Governor Sandoval's direction that the new committee determine the need to continue special follow-ups on Rawson Neal doctor attendance and Department of Correction's doctor attendance. Mr. Lowman recommended continuing an annual follow-up on Rawson Neal doctor attendance and discontinuing the follow-up on the Department of Correction's doctor attendance. Governor Sisolak voiced support for the recommendation. Both actions were approved by the committee without objection.

Motion: Approve Division's Annual Audit Plan Pursuant to NRS 353A.038
By: Lieutenant Governor Marshall
Second: Attorney General Ford
Vote: Motion passed unanimously

7. Committee Member Comments

Mr. Lowman asked the Governor's permission to introduce the Internal Audit staff. He asked them to stand so that all could see who was out there doing the hard work, asking the hard questions, and committing every day to doing the best job they could for Nevadans.

8. Public Comment

Peter Kruger, representing the Nevada Petroleum Marketers Convenience Store Association, wanted to commend the Audit Committee for their hard work. There's a lot in here for them to work on but it's their members who are the recipient of the funds when there is a discharge. Nevada was one of the first states to step up and provide this kind of cleanup. The fund has done a fantastic job for the people and the environment in the State of Nevada. Finally he wanted to compliment the Governor about finally getting the word out about the \$500,000 threshold. It is woefully inadequate to have as a threshold.

Dr. Adrian Ruiz, a dentist from Nevada stated, without going into detail, that he was treated really badly by the Dental Board. He stated Ms. Chapman was wrong when she said that the Board won three lawsuits. The Board won one lawsuit. One was dismissed and one is still ongoing and about to enter mediation and under appeal. There's got to be some truth here, there's got to be some justice, some fairness for the healthcare providers of Nevada and also for the patients whose complaints are getting dismissed because they're friends with somebody with the Board. It's not right what's happening.

Attorney General Ford thanked Dr. Ruiz for his comments, and said he also wanted to acknowledge and highlight that there was plenty enough blame to go around. Some of the interactions directed toward the Board have also been inappropriate. So, his suggestion to all parties involved is that everyone look for an amicable solution and not look for opportunities to be controversial with one another.

Ms. Chapman, General Counsel for the Board of Dental Examiners, stated once again the audit very specifically stated that none of those findings were based on any finding of bias, favoritism, or preferential treatment.

The final speaker under Agenda Item No. 8 was Katie Capman, member of the public. She stated she attended the previous Dental Board meeting and was made to feel very uncomfortable. She thought she was treated very poorly and she felt unwelcome. They demanded she sign in despite her protests and the provisions of Open Meeting Law. Governor Sisolak apologized for the way she felt she was treated and pledged she would never be treated that way at any meeting that he conducted.

9. Adjournment (For Possible Action)

Motion: Adjourn the Meeting

By: Attorney General Ford

Second: Treasurer Conine

Vote: Motion passed unanimously

NOTE: Items may be considered out of order. The public body may combine two or more agenda items for consideration. The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time. The public body will limit public comments to three minutes per speaker and may place other reasonable restrictions on the time, place, and manner of public comments but may not restrict comments based upon viewpoint. We are pleased to make reasonable accommodations for members of the public who have disabilities and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify Dale Ann Luzzi at (775) 684-0223 as soon as possible and at least two days in advance of the meeting. If you wish, you may e-mail her at daluzzi@finance.nv.gov. Supporting materials for this meeting are available at: 209 E. Musser Street, Suite 200, Carson City, NV 89701 or by contacting Dale Ann Luzzi at (775) 684-0223 or by email at daluzzi@finance.nv.gov.

Agenda Posted at the Following Locations:

1. Blasdel Building, 209 E. Musser Street, Carson City, NV 89701
2. Capitol Building, 101 North Carson Street, Carson City, NV 89701
3. Legislative Building, 401 N. Carson Street, Carson City, NV 89701
4. Nevada State Library & Archives, 100 North Stewart Street, Carson City, NV 89701
5. Grant Sawyer Building, Capitol Police, 555 E. Washington, Las Vegas, NV 89101

Notice of this meeting was posted on the Internet: <http://budget.nv.gov/Meetings/> and <https://notice.nv.gov>