

**MEETING OF THE AUDIT SUBCOMMITTEE  
OF THE LEGISLATIVE COMMISSION  
Legislative Building – Room 1214  
Carson City, Nevada  
Grant Sawyer State Office Building – Room 4412E  
Las Vegas, Nevada  
Monday, May 4, 2015, 5:00 p.m.**



STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

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**MEETING NOTICE AND AGENDA**

Name of Organization: Legislative Commission's Audit Subcommittee  
Date and Time of Meeting: May 4, 2015 – 5:00 p.m.  
Place of Meeting: Legislative Building  
Room 1214  
401 S. Carson Street  
Carson City, Nevada

Note: A simultaneous videoconference will be conducted at the following location:

Grant Sawyer State Office Building  
Room 4412E  
555 East Washington Avenue  
Las Vegas, Nevada

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative website is <http://www.leg.state.nv.us>. Click on the link "Calendar of Meetings – View."

**AGENDA**

**Note: Items on this agenda may be taken in a different order than listed. Two or more agenda items may be combined for consideration. An item may be removed from this agenda or discussion relating to an item on this agenda may be delayed at any time.**

**1. Public Comment**

(Because of time considerations, speakers are urged to avoid repetition of comments made by previous speakers.)

For  
Possible  
Action

**2. Approval of Minutes From December 2, 2014**

For  
Possible  
Action

**3. Presentation of Audit Report (NRS 218G.240)**

– Paul V. Townsend, Legislative Auditor

- a. Department of Health and Human Services, Division of Health Care Financing and Policy  
– Lee Pierson, Deputy Legislative Auditor; Rocky J. Cooper, Audit Supervisor

**4. Public Comment**

(Because of time considerations, speakers are urged to avoid repetition of comments made by previous speakers.)

**Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Audit Division of the Legislative Counsel Bureau, in writing, at 401 S. Carson Street, Carson City, Nevada 89701-4747, or call Susie Young at (775) 684-6815, as soon as possible.**

**Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps; Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street.**

**Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway, and Grant Sawyer State Office Building, 555 E. Washington Avenue.**

**Notice of this meeting was posted on the Internet through the Nevada Legislature's website at [www.leg.state.nv.us](http://www.leg.state.nv.us).**

**Supporting public material provided to Subcommittee members for this meeting may be requested from the Audit Division of the Legislative Counsel Bureau at (775) 684-6815 and is/will be available at the following locations: Meeting locations and the Nevada Legislature's website at [www.leg.state.nv.us](http://www.leg.state.nv.us).**



MINUTES OF THE MEETING OF THE  
AUDIT SUBCOMMITTEE OF THE LEGISLATIVE COMMISSION  
DECEMBER 2, 2014

This is the fourth meeting of 2014.  
This is the fourth meeting of the 2013–2014 Interim.

A meeting of the Audit Subcommittee of the Legislative Commission (NRS 218E.240) was called to order by Assemblywoman Maggie Carlton, Chair, at 1:10 p.m., Tuesday December 2, 2014, in Room 4100 of the Legislative Building, Carson City, Nevada, with a simultaneous video conference to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada.

AUDIT SUBCOMMITTEE MEMBERS PRESENT:

Carson City:

Assemblywoman Maggie Carlton, Chair  
Assemblyman Michael C. Sprinkle  
Senator Ben Kieckhefer

Las Vegas:

Senator David R. Parks, Vice Chair  
Senator Moises (Mo) Denis

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Paul V. Townsend, Legislative Auditor  
Eugene Allara, Deputy Legislative Auditor  
Jennifer M. Brito, Deputy Legislative Auditor  
Rocky J. Cooper, Audit Supervisor  
Daniel M. Crossman, Deputy Legislative Auditor  
Yette M. De Luca, Deputy Legislative Auditor  
Diana Giovannoni, Deputy Legislative Auditor  
Tammy A. Goetze, Deputy Legislative Auditor  
Michael Herenick, Deputy Legislative Auditor  
Shawn P. Heusser, Deputy Legislative Auditor  
Dennis Klenczar, Deputy Legislative Auditor  
Richard A. Neil, Audit Supervisor  
S. Douglas Peterson, Information Systems Audit Supervisor  
Jeff S. Rauh, Deputy Legislative Auditor  
Shannon Ryan, Audit Supervisor  
David M. Steele, Deputy Legislative Auditor  
Tom Tittle, Deputy Legislative Auditor  
Jelena Williams, Deputy Legislative Auditor  
Deborah Anderson, Audit Secretary

The roll was taken. A quorum was present. Agenda items taken out of order have been placed in the proper agenda order in the minutes for purposes of continuity.

***Item 1 — Public Comment***

Chair Carlton called for public comment. There was none.

***Item 2 — Approval of minutes from October 6, 2014***

Chair Carlton called for a motion.

SENATOR KIECKHEFER MOVED TO APPROVE THE AUDIT SUBCOMMITTEE MINUTES OF OCTOBER 6, 2014. THE MOTION WAS SECONDED BY ASSEMBLYMAN SPRINKLE AND CARRIED UNANIMOUSLY.

***Item 3 — Presentation of audit reports (NRS 218G.240)***

**a. Report on Count of Money in State Treasury**

Jelena Williams, Deputy Legislative Auditor, stated in accordance with NRS 353.060, the auditors counted the money and securities in the State Treasury on Monday, June 30, 2014, and prepared Ex. A with supporting Schedules 1 through 3 in the report. The Money Count included actual physical examination, direct confirmation with financial institutions, and other procedures considered necessary to fulfill the statutory obligation.

Ms. Williams stated in accordance with NRS 353.075 the report was filed with the Secretary of State on November 21, 2014.

Ms. Williams stated the count of money and securities on June 30, 2014, showed \$147.4 million on deposit with financial institutions, \$2.7 billion in state-owned securities, and \$1 billion in securities held for safekeeping, for a grand total of \$3.8 billion. Details of the exhibit are shown on pages 3 through 18 of the report.

Ms. Williams concluded her presentation. She offered to answer questions from the Subcommittee.

Chair Carlton called for questions from the Committee and there were none. She called for a motion to accept the report on Count of Money in State Treasury.

ASSEMBLYMAN SPRINKLE MOVED TO ACCEPT THE REPORT ON COUNT OF MONEY IN STATE TREASURY. THE MOTION WAS SECONDED BY SENATOR KIECKHEFER AND CARRIED UNANIMOUSLY.

**b. Department of Transportation, Information Security**

Jeff S. Rauh, Deputy Legislative Auditor, began his presentation with a brief overview of the Department of Transportation. The mission of the Department is to provide a better transportation system for Nevada through unified and dedicated efforts. In fiscal year 2014, the Department employed 1,782 full-time employees and had expenditures in excess of \$616 million dollars.

Mr. Rauh reported the objective of the audit was to determine if the Department's information security controls were adequate to protect the confidentiality, integrity, and availability of sensitive information and information systems. In addition, auditors reviewed controls over the use of procurement cards within the Department.

Mr. Rauh continued his presentation with the audit findings. The first area is related to the Department's weaknesses in managing its computer network users. Auditors identified two areas for improvement. The first area involved not disabling former employee and contractor computer accounts. Auditors identified 34 former staff that still had enabled computer login credentials, and 16 of these employees had been gone from the Department for over one year.

Mr. Rauh reported the second area for improvement involved the Department not conducting criminal background checks on individuals with access to confidential information or access to important information systems. State Security Standards require criminal background checks be conducted on employees who will have access to confidential information or important information systems. The Department had only conducted one criminal background check in the past 4 years. This was primarily caused by the Department only identifying 16 positions that would require these criminal background checks amongst its almost 1,800 employees. During the audit, auditors identified at least 66 positions within the Department requiring criminal background checks. These positions were located primarily in the Information Technology Division. There may be more positions in other divisions requiring criminal background checks. Two recommendations were made to improve disabling computer accounts of former employees and contractors, as well as two recommendations to improve the conducting of criminal background checks.

Mr. Rauh addressed the protection of some of the computer and radio equipment rooms. Auditors found two computer server rooms did not have adequate temperature monitoring equipment. One location did not have this equipment installed, while at another location the equipment was not operational when examined by auditors. State Security Standards require computer equipment be operated in a temperature controlled environment to reduce the risk of equipment failure due to overheating. In addition, the automated temperature monitoring and alerting systems that were operational in other computer server rooms around the State were not configured to alert staff of overheating events after normal business hours.

Mr. Rauh stated auditors identified in the report two locations where rooms housing computer equipment should have increased restricted physical access to prevent accidental damage or intentional theft of the equipment. Three recommendations were made to improve the protection of these rooms.

Mr. Rauh discussed the Department's procurement card procedures. He stated procurement cards are the Department's credit cards used in areas such as the stock rooms. These cards facilitate the procurement of commonly used supplies throughout the Department's many statewide locations. Procurement card fraud was discovered by the Department in October 2013. During the audit, auditors reviewed the procurement

card controls to determine if the Department had addressed the weaknesses in the procurement card procedures that allowed that fraud to occur. Auditors found that the Department had identified several control weaknesses that contributed to the fraud. The Department had subsequently revised the procedures to strengthen them. However, as of October 2014, the revisions to the procurement card procedures had not been formally incorporated into the Department's procurement card policy, nor were the procedure revisions being followed by all procurement cardholders throughout the Department. One recommendation was made to improve the controls over the use of procurement cards.

Mr. Rauh concluded his presentation stating the report contains the audit methodology and the Department's response to the eight recommendations, which were fully accepted. The Department has begun to take actions to begin implementing most of the recommendations.

Chair Carlton opened the meeting for a response by the Department.

Rudy Malfabon, P.E., Director, Department of Transportation, stated the Department accepted all the recommendations from the audit and have taken steps to implement the changes to the policies and procedures to apply the recommendations. Five of the recommendations have been implemented and there are three remaining recommendations (Nos. 1, 3, and 4) that the Department is working on to have implemented by the end of the year.

Chair Carlton stated that she will be looking forward to hearing about the progression during the next session and at the six-month report. She opened the meeting for questions from the Subcommittee members.

Senator Denis referred to Recommendation No. 5 and queried if the temperature-sensing hardware has been installed or if it will be installed soon.

Mr. Malfabon replied that Recommendation No. 5 has been implemented. The temperature-sensing hardware has been corrected in the rooms containing servers. After-hours notifications are sent to the Department's Reno roads crew operation center where they work 24-hour 7 days per week. When an alert is received, the crew will notify IT staff to address it.

Senator Denis referred to Recommendation No. 7 where all telecommunications and radio rooms should have locked doors. He asked Mr. Malfabon if this was a common practice in the Department's offices.

Mr. Malfabon replied it was uncommon. The Department did address the problem with the locks that were not functioning to protect the equipment in those rooms.

Senator Parks referred to Recommendation No. 8. He asked if efforts have been taken to recover the \$250,000 in fraudulent purchases and if there were any other further incidences of fraud with use of the procurement cards.

Mr. Malfabon replied the subject involved in that case of fraud pled guilty. Part of his sentence was to pay restitution to the State. Mr. Malfabon was unaware of the amount

received, but was sure it will take time to repay the entire amount of restitution. The Department has not found any other cases of fraud related to the use of procurement cards. Currently, the Department has issued a request for proposal to outside auditing firms to audit the operational areas, including the use of procurement cards. The Department wants to have an outside audit conducted to ensure that the recommendations are followed and to enforce the standing procedures that were not being followed.

Mr. Malfabon stated the Department would like to examine an electronic approval process that can be used to monitor orders. He would also prefer to be able to allow the Districts to view the systems. District 2 (Reno) was not able to look into the system and see the fraudulent orders made out of the Fallon stockroom. Specific to the Fallon stockroom, there were changes to the chain of command where the control and authority has been returned to the District. The Department wants the Districts to have access to the system that is currently controlled by the equipment division to be able to review supply and equipment orders of its maintenance staff to make sure that nothing is out of the ordinary.

Chair Carlton asked if there were any further questions. There was none. She called for public comment on the report; however, no testimony was presented. She called for a motion to accept the report on the Department of Transportation, Information Security.

ASSEMBLYMAN SPRINKLE MOVED TO ACCEPT THE REPORT ON  
DEPARTMENT OF TRANSPORTATION, INFORMATION SECURITY.  
THE MOTION WAS SECONDED BY SENATOR DENIS AND CARRIED  
UNANIMOUSLY.

**c. Department of Public Safety, Office of Director**

Yette M. De Luca, Deputy Legislative Auditor, began her presentation of the audit report with background information on the Department of Public Safety (DPS), Office of the Director. The Director's Office provides leadership, establishes policy, and oversees eight divisions and three offices. The Office also administers the DPS' evidence vaults and forfeiture program.

Ms. De Luca stated the report contains information regarding the budget and staffing for the Office. The Office is primarily funded from cost allocation reimbursements from the eight divisions and forfeiture funds. During fiscal year 2014, cost allocation reimbursements totaled approximately \$4 million and forfeitures totaled approximately \$1.8 million. The 2013 Legislative-approved budget included 44 authorized full-time positions in the Office.

Ms. De Luca stated the audit objectives were: (1) to evaluate the accuracy of the evidence vault inventory and assess the adequacy of the inventory system access controls as of March 2014; and (2) to determine whether seized currency from fiscal years 2011 to 2013 was processed timely in accordance with DPS policy and state requirements.



Ms. De Luca reviewed the findings. She referred to the first objective, and stated the auditors found the Office made several improvements in recent years to ensure items submitted into the evidence vaults by enforcement officers are adequately tracked. Auditors traveled to Elko, Las Vegas, and Reno to verify the existence of items with a greater risk of theft. Testing verified adequate recordkeeping for 448 out of the 450 items selected. Only two items did not have complete information to verify the location or proper destruction. These items were relatively small quantities of drugs that apparently were checked out to a court in 2007.

Ms. De Luca stated that the Office does not have an adequate process to monitor changes made to the vault inventory system to reduce the risk of fraud or errors. Vault employees make frequent changes to the inventory system when evidence is received, moved, and destroyed. As of June 2014, 10 employees had the ability to modify fields within the inventory system and had access to items in the vault. Although it is common practice for vault employees to have access to both the inventory system and physical inventory, the Office should develop processes to improve vault oversight. Oversight can be accomplished by having reports to monitor changes to the inventory.

Ms. De Luca discussed the last finding related to the first objective. The Division needs to develop a plan to ensure all recommendations from an extensive evidence vault review are adequately addressed. In 2012, the Office hired a consultant for \$68,900 to identify areas of improvement in the vaults. In May 2013, the consultant made 147 recommendations to improve evidence vault controls and processes. However, the Office prepared written responses to only 40 of most critical recommendations identified by the consultant. When the auditors inquired about the recommendations that were not addressed, the Office had agreed with the majority of the recommendations. Examples of recommendations the Office agreed with, but did not include in their written response, are included in the report. For instance, consultants recommended standardizing the packaging of handguns at all three vaults and ensuring areas for storing flammable materials are inspected.

Ms. De Luca noted that several of the consultant's recommendations related to auditor testing of the vault inventory were not yet implemented. For example, the Office does not have the ability to monitor the total currency on hand at each vault, and the Office had not inventoried the keys to each vault. Without a plan to address the recommendations, it is unlikely the maximum benefit from the consultant's report will be realized.

Ms. De Luca continued her presentation with a review of the second objective related to seized currency, and stated the auditors found the Office needed to improve its efforts to timely process seized currency. Auditors reviewed 205 currency seizures and found that 124 or 60% were not deposited into the appropriate asset forfeiture account or remitted to a federal enforcement agency within 48 hours in accordance with DPS' policy. Timely processing is important, because currency is highly subject to theft. Examples of currency held for long periods before processing are contained in the report.

Ms. De Luca reported that three recommendations were made. The first recommendation is to establish controls to ensure modifications made to the vault inventory system are appropriate. The second recommendation is to develop a written plan that addresses all recommendations from the consultant's report and monitor the implementation progress. The third recommendation is to ensure seized currency is processed timely in accordance with the Department's policy.

Ms. De Luca concluded her presentation stating the report contains the audit methodology, and the Office's response indicating all three recommendations were accepted.

Chair Carlton invited James Wright, Director, DPS, to address the recommendations.

Mr. Wright thanked Paul V. Townsend, Legislative Auditor, and his staff for the assistance and information during the audit process.

Mr. Wright stated all three recommendations in the audit report have been accepted. The Office's response contained in the report indicated it has begun implementing the recommendations and is positive those recommendations will be fully implemented. He noted that the second recommendation pertaining to the 2012 consultant's evidence vault report was initiated by DPS to help with the evidence program when it was brought into the Director's Office to help develop a quality program to ensure all the evidentiary items contained in the vaults are properly stored, handled, and maintained. The Office acted upon the 40 areas identified as priority. The remaining suggestions were helpful and will be implemented when a plan has been developed.

Mr. Wright introduced Sheri Brueggemann, Administrative Services Officer IV, DPS, who has oversight of the evidence vault program.

Ms. Brueggemann stated working with the Audit Division staff was beneficial. The Office is working on the audit plan that was in place. She noted the Office expects the 147 noted items, which were mostly procedural, would be in place by January 2015. The Office is certain they are moving in the right direction and the audit report supports that idea. Furthermore, she stated it was a good that nothing was missing out of approximately 28,000 items checked.

Assemblyman Sprinkle stated he did have some questions regarding the audit; however, the questions were answered by the Office. He appreciated the Office's efforts to implement the recommendations, considering the almost \$70,000 that was spent. He asked for confirmation if there is a spreadsheet is being used to track of all the recommendations.

Ms. Brueggemann affirmed that a spreadsheet is being used.

Assemblyman Sprinkle referred to the inventory for hard keys versus electronic key cards. He asked why hard keys are still being used if the Office is not able to track who is utilizing the hard keys. He opined that anyone would potentially have access to the inventory and could make changes. He further noted that it would appear to be more beneficial for the Office to use an electronic key card where the Office can keep track of

who is entering and exiting and could then compare that to when changes have been made. He asked if something like his suggestion was a consideration.

Ms. Brueggemann replied the Office still uses both in certain cases. The hard keys are generally a double safe that is used to get into the main door and an access code is used to enter the vault. Depending on the age of the building, within the vault are key locked doors, whereas there is electronic key card access in the newer facilities.

Assemblyman Sprinkle asked again for confirmation if the Office is able to track who is going in and out of the vaults and who is making changes.

Ms. Brueggemann confirmed that this is tracked. When an employee is terminated or resigns, the locks and keys on the employee's last day are automatically replaced to maintain control.

Chair Carlton asked if there were any further questions. There was none.

Chair Carlton stated that she looks forward to following up with the Office during the 2015 Session and receiving the six-month report. She pointed out that if the Office is doing as well with the recommendations as suggested, the discussion to ensure all of the recommendations have been implemented could occur during the 2015 Session.

Chair Carlton called for public comment on the report of the Department of Public Safety, Office of Director; however, no testimony was presented. She called for a motion to accept the report on the Department of Public Safety, Office of the Director.

SENATOR PARKS MOVED TO ACCEPT THE REPORT ON THE  
DEPARTMENT OF PUBLIC SAFETY, OFFICE OF DIRECTOR. THE  
MOTION WAS SECONDED BY ASSEMBLYMAN SPRINKLE AND  
CARRIED UNANIMOUSLY.

#### **d. Department of Education**

Dennis Klenczar, Deputy Legislative Auditor, began his report presentation with background information on Nevada's Department of Education (NDE). Mr. Klenczar explained that the mission of NDE is to improve student achievement and educator effectiveness by ensuring opportunities, facilitating learning, and promoting excellence. In 2014, the Department's total funding was approximately \$1.9 billion. Much of the Department's funding passes through the Distributive School Account to the school districts. Operating expenditures for NDE was approximately \$25 million in fiscal year 2014. The report shows an overview of the Office of Educator Licensure (Office), which is responsible for the issuance and renewal of educator licenses. The Department is also responsible for administering the Class-Size Reduction (CSR) program, which was designed to reduce pupil-teacher ratios in early grades. Funding for the CSR program was about \$177 million in fiscal year 2014.

Mr. Klenczar stated the audit objectives were to evaluate the operational processes of the Office and evaluate controls over the CSR program. The scope of the audit focused on activities from July 2012 through March 2014.

Mr. Klenczar reported the Office and the school districts play a critical role in ensuring teachers and other educators in Nevada schools are qualified. Auditors found the Office needed to strengthen its processes for revoking licenses, issuing provisional licenses, and reviewing criminal history reports. Improvements to these processes will help ensure timely action is taken against licensees convicted of crimes. Ex. 1 details the concerns found as related to the revocation of licenses. The Department was not aware nor was notified in a timely manner of arrests by local school districts and licenses were not revoked in a timely manner upon conviction. The report identifies five licensees arrested for sex-related crimes in which the Office did not have a case file to track those licensees. All five licensees were employed by school districts at the time of their arrest. Although the school districts took action to remove all five licensees from the classroom, the school districts did not notify the Office for four out of the five arrests.

Mr. Klenczar stated that state law added in 2007 requires NDE to adopt regulations that establish procedures for notification, tracking, and monitoring of the status of criminal cases involving licensees. During the audit, the Department began the process for adopting such regulations. The process was later approved by the Legislative Commission after the audit was completed.

Mr. Klenczar conveyed that the provisional licenses were not being properly issued. State law authorizes the Department to issue a provisional license to an applicant if the applicant meets all other qualifications, pending receipt of the criminal history report. During the audit, it was the Office's practice to issue a provisional license for 1 year, even though 120 days is the maximum period allowed by state regulation. A shorter provisional license period reduces the time that a teacher with a criminal history could be improperly employed by a school district. The Office changed its policy to align with state regulations and indicated in its response that a provisional license will only be issued in rare circumstances.

Mr. Klenczar reported the Office did not have reliable information for management to monitor the status of an applicant's criminal history report. The Office used a spreadsheet to track key dates in the criminal history review process, such as when an applicant's criminal history report was received and when it was reviewed. The report showed that 26% of the applicants' dates in the spreadsheet had errors and other discrepancies. Unreliable data increases the risk the Office will not review criminal history reports in a timely manner.

Mr. Klenczar stated the report showed the Office's practice during the audit was to invalidate a provisional license after learning a licensee has been convicted of a felony. However, state law also authorizes the Office to take licensing action against persons convicted of a non-felony involving moral turpitude. Nevertheless, the Office had not developed a list of non-felonies involving moral turpitude for use by staff when reviewing criminal history reports. Ex. 2 in the report illustrates several examples of non-felony crimes that could be considered crimes involving moral turpitude. The Department's response indicated it had since developed a matrix to guide staff during licensure disqualification for crimes involving moral turpitude.

Mr. Klenczar reported the Office had taken steps to address concerns expressed by the Legislature regarding customer service, document security, and other operational issues. Ex. 3 in the report lists the areas of concern and the corresponding corrective action taken by the Office. Nine recommendations were made to improve the operational processes in the Office of Educator Licensure.

Mr. Klenczar stated the Department's oversight of CSR plans could be enhanced. State law requires each school district to develop a plan to reduce the district's pupil-teacher ratio in certain grades and submit the plan to the State Board of Education (Board). Auditors found NDE did not receive sufficient information from the school districts regarding their CSR plans. Further, NDE did not require districts to provide plans, which included certain items set forth by *Nevada Revised Statutes* (NRS). For example, school districts are required to establish a plan to reduce pupil-teacher ratios, as permitted due to available funding; however, this was not demonstrated in the information provided to NDE. The Department has the ability to provide additional guidance on certain elements included in the plan to assist school districts in improving their CSR plans. The report list examples of elements in other states' plans that warrant consideration by the Department, such as strategies for achieving required pupil-teacher ratios in schools where a school district has requested a variance.

Mr. Klenczar expressed the Department did not effectively monitor quarterly CSR reports and variance requests submitted by school districts. The Board of Trustees of each school district is required to report certain CSR information quarterly to NDE and make the report available to the public on the school district's website. Each school district with one or more elementary school that exceeds the authorized pupil-teacher ratio during any quarter is to request a variance from the Board. These reports and variance requests are important to aid NDE in overseeing the CSR program. The Department's staff did summarize this information and submitted it to the Board and to the Interim Finance Committee. Nonetheless, auditors found instances where reports contained errors and did not contain all required information. This resulted in underreporting of exceeded authorized maximums of pupil-teacher ratios.

Mr. Klenczar stated the final section of the report notes the Department is responsible for distributing \$381 million in CSR funds during fiscal years 2014 and 2015. Determining the amount distributed to each school district involves a large number of complex calculations and data from many different sources. The Department has not developed written policies and procedures for how to distribute these funds. The Department did not communicate with the school districts regarding its funding expectations, such as the minimum number of teachers expected to be employed with CSR funds. Ex. 4 in the report shows the amount distributed in fiscal year 2014 to each school district and the minimum number of teacher positions to be funded. Nine recommendations were made to enhance controls over the CSR program.

Mr. Klenczar concluded his presentation stating the end of the report contains a flowchart of the criminal history background check process, the audit methodology, and the Department's response indicating acceptance of all 18 recommendations. He offered to answer questions from the Committee.

Chair Carlton invited Mr. Erquiaga, the Department's representative, forward to respond to the licensure issue.

Dale Erquiaga, Superintendent of Public Instruction, NDE, thanked the audit staff for their professionalism and helpfulness during the audit process. He noted that he was pleased the audit occurred early in his appointment as Superintendent so the recommendations could be accepted.

Mr. Erquiaga stated during the 2013 Session, the Legislature expressed deep concerns regarding the Office of Educator Licensure's customer service, records keeping, and its timely deposits. Subsequently, the audit found the same concerns. An outside analysis was conducted approximately 16 months prior by WestEd regarding customer service and processes. Since then, there has been a change to management through attrition, which includes a new division administrator and a program officer. Policies and procedures for the collection, safeguarding, and depositing of license fees have been or are in the process of being changed; therefore, turnaround time has been decreased and deposits are being made as required.

Mr. Erquiaga discussed provisional licenses. He opined the Office has historically viewed its primary customer in this area as the school district, and not the licensee nor the children. Previously, the licenses were processed at the request of the school districts with certain methods that were not always in compliance with state law. He noted that a 1-year provisional license is an example of the noncompliance. There was pressure from the school districts to have teachers placed in the classrooms. As stated in the audit, that type of provisional license can be inappropriate if it could put children at risk. Those processes have since been changed. An opinion issued by the Office of the Attorney General at the request of NDE clarified the difference between provisional and conditional licenses, and when those licenses should and should not be issued. These processes too have been modified. He expressed when future updates are presented to the Subcommittee, they will continue to see improvements.

Mr. Erquiaga referred to the regulation concerning criminal records, the repository, fingerprinting exchange, and the reporting that should have been adopted after 2007; however, it never was. The Department and licensing staff received information about arrests in various ways, including reports from the media. Nevada's school districts have almost always been attentive to instances of teachers' misbehavior as reported in the media, which allowed for swift removal of the individuals from the classrooms. Nevertheless, that lack of information was unacceptable. Regulations have been adopted and the proper processes are now in place.

Mr. Erquiaga stated one of the most challenging issues to the Office has been to define what constitutes and what process should be used to determine what should be a "crime of moral turpitude." For years, the Office has not used a checklist nor had a screening process in place for this. The Superintendent, as defined by NRS, has the authority to decide what constitutes a "crime of moral turpitude." The decision and the process to issue licenses in the past varied from person to person within the Office. One of the most challenging issues as Superintendent regarding licensure, has been

reviewing a list of crimes in meetings with members of the Board to decide who will and who will not be granted a license. He noted the guidance the Office has received from the Audit Division and the Office of the Attorney General has been very helpful. There has been discussion among some legislators regarding possible changes to NRS so those decisions are not left solely to the discretion of the Superintendent. All of the recommendations for the Office have been accepted, which has contributed to positive improvements in the Office. Updates of all developments will be provided in an ongoing basis.

Senator Denis mentioned the issues the Office has had with issuing licenses in a timely manner. He queried as to the Office's ability to handle any future concerns with issuing new licenses in general.

Mr. Erquiaga replied that the amount of time to process licenses has decreased significantly. He further noted that staff has been rebalanced between the offices in northern and southern Nevada to address complaints and concerns about customer service that were received during the 2013 Session from northern Nevada constituents. In anticipation of the expected caseload growth, the Office has a request pending with the Office of the Governor to fund an additional licensure analyst position. Of note, the Office is up-to-date with processing the current volume of new and renewal licenses.

Assemblyman Sprinkle asked for confirmation that after July 1, 2015, licenses would not be issued until the complete criminal history report had been received by the Office. He had asked for clarification about what would constitute a "rare circumstance" for a 120-day provisional license to be issued.

Mr. Erquiaga confirmed that the licenses would not be issued until criminal background reports had been received. He noted that the policy before was to issue the license and then backtrack to finish the criminal history report. The Office has changed its policy to wait for the criminal background report to arrive before a license is issued. To provide clarification, Mr. Erquiaga stated that a "rare circumstance" might be considered to meet a high critical need such as class-size reduction or for a person who has renewed a license, but that license had lapsed and the Office is waiting for the background check to be completed. Any "rare circumstances" are handled on a one-on-one basis by management to arrive at a decision ahead of the licensure analyst. He noted the Office is current with the criminal repository information on file.

Assemblyman Sprinkle asked if the growth seen, especially in Clark County, was of concern for completing the background checks.

Mr. Erquiaga replied this can be a concern and a challenge during the high volume periods in June, July, and August. The Office will continue to work with the Department of Public Safety to automate the process; however, not all districts use an electronic fingerprinting system. There will always be a challenge in Clark County to keep up with the high volume due to the approximate 2,000 teachers hired at a time. The Office has an active list that keeps track of where the individual applicants are in the multi-step hiring process. If need be, this allows an applicant to be moved to the front of the line if requested.

Assemblyman Sprinkle pointed out that beyond the initial hiring stage, the biggest concern was the reporting of incidences after a teacher was fully licensed and in the system. He asked for a description of the new procedure that is in place.

Responding to Assemblyman Sprinkle's request, Mr. Erquiaga replied that prior to the audit, the regulation established to notify the Office was never adopted and the Office had to pursue those individuals. With the new regulation in place, the school district is notified immediately as the employer of record, and they must notify the Office. Then, a file is opened to monitor the individual's case. For example, one may be accused of a crime but not convicted. Now, there is a notification of arrest process where before the Office had to wait until a disposition in a court of law. Once there is a conviction, revocation proceedings began. A new process is in place with the Office of the Attorney General. Prior to Mr. Erquiaga's appointment as Superintendent, no revocations had been completed for some time. In the past year, there have been a number of revocations finalized. The new established revocation process is to conduct a formal hearing. The individual is called to appear at the hearing, though many are in jail and do not attend. The Office had one request from an individual for a public hearing in front of a hearing officer. This is a public proceeding conducted in the presence of the Board. It is a quasi-judicial action, where the Superintendent acts as the prosecution, the Attorney General presents the case, and the Board makes a ruling. The new regulations have expedited the processing and monitoring of the files for the Office staff and staff in the Attorney General's Office.

Assemblyman Sprinkle asked if the teachers' unions and labor groups had expressed any opinions regarding the expedited process, and if there could be potential for conflict with contractual agreements.

Mr. Erquiaga replied he was of the understanding there have not been any complaints or concerns from the teachers' or administrator unions regarding the criminal complaint process, because the individuals involved with the criminal complaint process have committed a crime. The Office has not revoked a license for unprofessional conduct, even though the Superintendent is allowed to revoke a license for unprofessional conduct. Questions have arisen from a particular union over admonition, but the questions are not related to the criminal background checks.

Chair Carlton commented on Recommendation No. 7 in the audit report. She noted the Legislature has tried to address moral turpitude with other boards over the last decade and it has been difficult. She advised Mr. Erquiaga to be cautious when the list is created, because if something is not included on the list it could put him in a difficult position. It is important to keep in mind that Nevada is a unique State with respect to certain professions.

Chair Carlton asked Mr. Erquiaga to address class-size-reduction (CSR) issues.

Before addressing CSR, Mr. Erquiaga introduced Mindy Martini, Deputy Superintendent, Business and Support Services.



He then expressed that all of the recommendations concerning CSR were accepted. He noted that Recommendation No. 12 in the audit was the biggest source of error for the Department with the CSR programs. The Department and the State never determined the specific data to be used in monitoring and measuring the effectiveness of CSR. The statute regarding CSR is an old statute. Each time questions have been asked about dealing with CSR, it quickly becomes a heated political issue. Without that data, the Department has had difficulty building the increasing number of required plans. In the current biennium, there is approximately \$400 million that has to be monitored. However, this is also money that parents and grandparents tend to appreciate, because the immediate impact is understood. Whereas, the implications of funding spent by NDE in other areas is not always understood. CSR is a popular program that has been difficult to monitor by the Legislative body and previous Superintendents, but it still needs to be monitored. He stated that Ms. Martini has begun collecting the data that will be used and will be presented at the upcoming Board meeting. There is an agenda item on CSR where a public conversation will take place. From that, she will compile the data to depict the components for a CSR plan for the Board. Mr. Erquiaga complimented the Audit Division staff on identifying components of a CSR plan for the Department.

Mr. Erquiaga continued his testimony and noted the Legislature increased the reporting requirements in 2013. During the recent recession, the Department began to be more flexible with the ratios and where the funding could be used. With the increased flexibility, NDE needs to track where the money is being spent. Since the money has been available for more than 20 years, the school districts have become accustomed to being flexible with spending and have not always provided data on the spending to NDE. It should be noted that the Department never asked for the data either. The Department is designing new reports, as directed by Audit Division staff, so the information can be collected in a more concise manner, while maintaining appropriate flexibility, meeting CSR program needs, and stopping the money from reverting to the school districts' general fund.

Another challenge with this program is the means of the Superintendent's control. If it is determined that a school district is not using the money effectively, the Superintendent can discontinue the distribution of that money to the school district. Mr. Erquiaga was of the opinion that no state Superintendent would be fond of the idea to discontinue the funding that could require almost 2,000 teachers to be laid off. The recommendations are very solid and will assist the Department in obtaining the required information from the school districts to allow the Legislature to make informed decisions with uses of this money. This reporting will not be easy to enforce. When the recent economic downturn began, the Department fell into a routine where all variance requests received were approved due to the large volume. Mr. Erquiaga conceded that NDE had become lax in monitoring and verifying where money was being spent for the reduction of class size by the hiring of an educator. Employee associations and districts have commented and have expressed concerns in this area. He reiterated that all of the recommendations have been accepted. The Department is trying to build upon collecting and agreeing on improved measurable data as a performance measure for CSR. Therefore, this would

require the districts to relay better information. When variances need to be approved, the Board can make an informed decision utilizing the data and not just because a request was submitted.

Senator Kieckhefer asked if Mr. Erquiaga's intended purpose of the CSR program is to determine the effectiveness of reducing class sizes or to determine if children are more effectively educated.

Mr. Erquiaga responded that since the inception of the program, the goal has been to reduce class size, and the evidence of that is in the hiring of teachers. The reports that have been generated have indicated that the class size has somewhat fluctuated, and there was an increase in the fluctuation as the Department experimented with flexibility. The average class size varies from 21 to 30 students. The number that is reported and the number of teachers hired has been the measure. The efficacy issue has never been linked. When the issue has been raised, it has often been the "third rail" in the Legislative Building. Mr. Erquiaga was of the opinion that the two issues need to be joined. Class sizes are being reduced for a reason, which is to improve student achievement. Particularly at grade levels K through 3 where the funding is applied, teachers and students both benefit from smaller class sizes. Measures need to be created that would indicate and explain why reduced class sizes are effective. The issue of efficacy will always be a question, which will make the data discussion on Recommendation No. 12 interesting.

Senator Kieckhefer stated that the money spent on CSR has been beneficial. The State has spent \$177 million this year, which created 2,400 classrooms for students and teachers. He posed the question to Mr. Erquiaga, if the Department is spending \$400 million over the biennium, is this the most effective use of the money? He surmised that it could be more beneficial to have a larger class size with an effective teacher rather than having a child in a smaller class size with a minimally effective teacher.

Senator Denis posed the question to Mr. Erquiaga if he thought obtaining the necessary information regarding the monitoring and measuring the effectiveness of CSR by each school district was possible.

Mr. Erquiaga replied that he is bound by statute to measure and monitor CSR effectiveness. It is difficult to determine whether everyone agrees with the decisions made; however, it is important to have these conversations. The topic of CSR can be difficult. Information will be gathered by the Department, but there is no way to foresee if all involved will be in agreement.

Senator Kieckhefer stated his frustration with the CSR program is that it is measured on a district-wide average, which could potentially be misleading to parents. He asked Mr. Erquiaga if he knew how many additional classrooms would need to be built to have a stable class size in every school. Senator Kieckhefer noted that families relate easier when given information such as no more than 25 students per 1 teacher in a classroom.

Mr. Erquiaga replied that he does not know the actual classroom number. He opined that since the data is being gathered school by school, the Department will have a more

accurate of picture of the schools and of the State, and possibly could derive the actual number.

Chair Carlton stated that the legislative money committees need to discuss how CSR funding compares with dollars provided for the entire system. She referenced the cost of portable temporary classrooms. She shared she finds it very frustrating to continue to see for over 15 years temporary buildings outside the elementary school her daughters attended. In the mid to late 1990s, the elementary classrooms built in Las Vegas were designed to hold approximately 18 children. Any more children than that would not fit in those classrooms. She was pleased to see the Department obtaining the data that is needed to address some of the anecdotal issues that are prevalent every session.

Assemblyman Sprinkle remarked that when the statute was set in place to fund CSR, the funding began in 1991 for \$16 million. He then restated that CSR funding is approximately \$400 million in the current biennium. He inquired if the data had not been collected since the inception of funding CSR and if the Legislature had continued to allocate this money to the Department without the parameters being met as set forth in NRS.

Mr. Erquiaga stated that data has been collected in aggregate district-wide numbers. Over the recent years, the legislative money committees have required more information to handle this complicated issue. Originally, the law required each district to be treated the same. The Department experimented with the "Elko model" where certain rural school districts were allowed more flexibility. The number has not been adjusted. He further stated that the number is set in the law, which he did not believe has been met. He clarified that the Department had been collecting data, but the CSR program just grew. The Legislature and past four governors have made the best-case effort to allocate funding responsibly, and the Legislature has continued to increase its requests for more information from the school districts to ensure the funding was applied to the classrooms as intended. The audit report revealed that the Department has not always effectively delivered the information to the Legislature as requested. He suggested that it is the responsibility of the Department to deliver that information so better decisions can be made in this tough policy area.

Assemblyman Sprinkle appreciated Mr. Erquiaga's response and surmised that the response will validate the earlier questions posed by Senator Kieckhefer. He stated it is easier for the Legislature to answer questions when they have the necessary information.

Chair Carlton stated that the discussions can be lengthy when the Legislature has K-12 budget hearings. Class-size reduction is always a large part of those discussions.

Chair Carlton for called public comment on the report of the Department of Education; however, no testimony was presented. She called for a motion to accept the report on the Department of Education.

SENATOR KIECKHEFER MOVED TO ACCEPT THE PERFORMANCE AUDIT ON THE DEPARTMENT OF EDUCATION. THE MOTION WAS SECONDED BY ASSEMBLYMAN SPRINKLE AND CARRIED UNANIMOUSLY.

**e. Fiscal Costs of the Death Penalty (A.B. 444)**

Paul V. Townsend, Legislative Auditor, stated this audit is different from the audits normally presented. This audit was required by Assembly Bill 444 of the 2013 Legislative Session. The primary objective was to determine the fiscal costs of prosecuting and adjudicating the death penalty as compared to non-death penalty cases. This audit is not of a single agency; therefore, there was no agency findings, recommendations, corrective action, response, or testimony. The auditors worked with approximately 27 state and local entities ranging from law enforcement, courts, district attorneys, public defenders, detention centers, and the Department of Corrections who provided a great amount of assistance. Auditors were required to use professional judgment, make certain assumptions, and to develop reasonable estimates. Every effort was made throughout the audit to be objective and obtain the most accurate information possible.

Mr. Townsend introduced Daniel L. Crossman, Deputy Legislative Auditor, who was the auditor in charge to present the report and Shannon Ryan, Audit Supervisor.

Mr. Crossman stated he would be presenting a summary of the results of the audit pursuant to A.B. 444. He started with background information on the death penalty in the United States, highlighted the Supreme Court of the United States' rulings that placed a moratorium on the death penalty in 1972, and the 1976 decision which upheld newly crafted statutes to ensure the process of imposing a death sentence was rational and objectively reviewable. Laws in 32 states, including Nevada, currently allow a person to be sentenced to death, although two of these states' governors have issued moratoriums on executions.

Mr. Crossman noted the report provides Nevada-specific historical information regarding executions starting in 1863 and he discussed the changes in NRS that brought Nevada's laws into compliance with the Supreme Court's guidelines. These statutory changes detail the circumstances under which the death penalty can be imposed for first-degree murder, including aggravating and mitigating circumstances that must be considered.

Mr. Crossman stated Ex. 1 in the report describes the aggravating circumstances, at least one of which must be applicable in a case to qualify a defendant for the death penalty, and the mitigating circumstances that the jury in a death penalty sentencing hearing must consider and weigh against the aggravators when making the sentencing decision.

Mr. Crossman further described Ex. 2 that shows the number of death penalty sentences in the State since 1977. The status of death penalty sentences as of December 31, 2013, shows 153 inmates have been sentenced to death and 83 inmates

remained on death row. Inmates sentenced to death are typically housed in the Ely State Prison. The last execution in the State was in 2006. Of the 12 executed since 1977, 11 were executed having ceased pursuing additional appeals that may have been available to them, while 1 death row inmate effectively exhausted his appeals and was executed.

Mr. Crossman stated the report summarizes the legal process related to death penalty cases. Auditors have highlighted some of the differences between death penalty and non-death penalty cases, including longer jury selections, separate trials for determination of guilt and sentencing, and a more involved appeals process. Death penalty cases also require the defendant to be represented by two attorneys. There are further details in the report regarding the general process of a case from the filing of the notice of intent to seek the death penalty by the county prosecutor to the appeals process in State and federal courts.

Mr. Crossman stated the objectives of the audit in accordance with the requirements of A.B. 444, were to determine the cost of prosecuting and adjudicating death penalty cases compared to non-death penalty cases and potential cost savings of the death penalty through plea bargaining and strategic litigation choices.

Mr. Crossman reported there were limitations the auditors encountered throughout the course of the audit, which are detailed in the audit methodology. It is important to understand some of the limitations on the information available to the auditors and the assumptions made. Many agencies with significant roles in the death penalty process could not provide actual staff time or related costs attributable to specific cases and were hesitant to provide estimates. Some estimates provided could not be verified due to a lack of underlying records. Finally, certain limitations existed in the data auditors obtained. Though procedures were performed on data to determine its reasonableness, in some cases auditors could not reasonably assert that all relevant data was received.

Mr. Crossman continued with the overall cost summary section and stated auditors found that the process of adjudicating death penalty cases takes more time and resources than compared to murder cases where the death penalty is not pursued. Based on the 28 cases selected for the trial and appeals phase and the costs of incarceration, auditors were able to accumulate and estimate a death penalty case costs about \$532,000 more than a non-death penalty case.

Mr. Crossman stated that 28 cases were selected from murder case information provided by the judicial district courts in Clark and Washoe Counties between January 2000 and December 2012. Auditors selected the cases from three case types: (1) death penalty sought and sentenced; (2) death penalty sought, but not sentenced; and (3) death penalty not sought. Fifteen cases were used to determine the average trial costs and 13 cases were used for the appeals phase.

Mr. Crossman reported the estimated incarceration and medical costs were determined through analysis of information provided by the Department of Corrections. These costs were determined using the median age of intake and the anticipated age at which the first-degree murder inmates would be expected to exit the system through natural

death, execution, or parole. These costs were combined with the trial and appeal costs to arrive at the total costs as shown in Ex. 4 of the report.

Mr. Crossman explained that the first two columns of Ex. 4 represent the cases where the death penalty was sought and sentenced. The first column shows the anticipated cost if the inmate dies a natural death based on the median age of death penalty inmates. The second column shows the cost assuming the inmate is executed, and is based on the one inmate that has been executed since 1977, having exhausted his available appeals after 11 years on death row. The third column represents cases where the death penalty was sought, but not sentenced and differs from the first column based primarily on lower appeals costs. Finally, the fourth column represents cases where the death penalty was not sought. Trial and appeal costs are significantly lower, as are incarceration costs.

Mr. Crossman noted that the trial and appeal costs included in the analysis are incomplete, because certain court and prosecution costs could not be obtained or reasonably estimated. Further, the appeal costs are not complete because of the ongoing nature of the appeals process. If actual costs were to be obtained, costs would be higher.

Mr. Crossman explained that Ex. 5 displays the cost estimate breakdown of the auditor-selected cases from the three case types by trial and appeal phases. Ex. 6 shows that death penalty cases typically require more time to complete, driven by additional procedural requirements. While costs of the appeals phase could not be definitively determined, the information does provide perspective on how much the death penalty costs impact the State and local governments.

Mr. Crossman stated the report also describes the costs of incarceration, medical care, and executions. Death penalty inmates are housed in one of the most expensive facilities in the State, and executions are extremely infrequent resulting in long periods of incarceration. Compared to those sentenced to life without the possibility of parole, death penalty costs are similar based on the anticipated length of time of incarceration until death by natural causes. If executions are conducted, costs are lower as the period of incarceration would be less.

Mr. Crossman noted that potential cost savings due to the existence of the death penalty could not be quantified. Prosecutors strongly suggested that the death penalty is not used as a strategic litigation choice to avoid a trial and its associated costs through plea-bargaining. Auditors found that plea bargains did occur in death penalty cases, but at a lower frequency than in non-death penalty cases. Plea bargains negotiated during the early part of the pretrial segment realize the most savings.

Mr. Crossman stated the report also contains a detailed analysis of costs broken into three primary sections. These sections address: (1) case costs for trials and appeals; (2) incarceration and medical costs; and (3) potential cost savings associated with the death penalty. He briefly touched on the highlights from these sections of the report. Auditors found case costs, including the trial and appeal phases, averaged about three times more resources for death penalty cases when compared to non-death penalty

cases. Ex. 8 provides an overview of these costs by case type. While trial costs are similar in the first two columns, the appeals costs are higher for those cases where the death penalty was sentenced. When the death penalty is not sought, trial costs decrease significantly.

Mr. Crossman continued by stating the report includes a summary of the cost centers segregated by the pretrial, trial, and penalty segments as well as the direct appeal, state post-conviction and federal post-conviction segments. These cost centers include average costs for the defense, prosecution, and courts. Auditors accumulated other costs incurred from arrest and sentencing, including detention, forensic laboratory, and transportation costs in the analysis.

Mr. Crossman stated auditors found the death penalty is the most expensive sentence for those convicted of first-degree murder based on median age of intake and natural death ages, but only slightly more expensive than those sentenced to life without parole.

Mr. Crossman stated the report shows in Ex. 33 the incarceration and medical costs for five scenarios. This exhibit shows the similarities in costs between the death penalty and life without the possibility of parole in the first and third columns and contrasts that with the cost of the death penalty when an execution is completed in the second column. The last two columns show the costs of life with the possibility of parole and contrast the differences in costs based on the timing of the sentence pursuant to changes in sentencing requirements in 1995.

Mr. Crossman continued with the final section of the report and stated auditors found the potential costs savings associated with the death penalty could not be quantified. Prosecutors strongly suggested the death penalty is not used as a strategic litigation choice to reduce or avoid a trial and its associated cost through plea-bargaining. Nevertheless, plea bargains are made with defendants who are facing the possibility of death; however, they occur less often than in non-death penalty cases. Savings generated from plea-bargaining are dependent upon when in the pretrial or trial phase the plea bargain is finalized, since any savings that may be realized is largely due to trial and appeal costs.

Mr. Crossman concluded his presentation stating the report includes multiple appendices, which includes a list of individuals with death sentences as of September 2014, a list of the exhibits with report page reference, audit methodology, a list of the entities with who discussions were held, and requested information from the analysis.

Chair Carlton thanked the auditors for the detailed report. She asked Mr. Townsend to clarify if the information would still be useful to frame the discussion around the death penalty not only in the 2015 Session, but also in sessions to come.

Mr. Townsend was of the opinion the report will have a lengthy shelf life. When reviewing reports in other states similar to this one, many reports dated back a decade or more. Much of the information in the report is historical information and auditors incorporated inflation factors regarding the costs of incarceration. For the most part, this will be a valid report and will be easy to make adjustments to extend its useful life.

Chair Carlton thanked Mr. Townsend and stated that she hoped the Committees on Legislative Operations and Elections and the Committees on Judiciary find this information helpful in the discussions regarding this issue.

Assemblyman Sprinkle reiterated what an outstanding job that was done by the auditors on the report. The information will be valuable for years to come. He stated he noticed multiple times throughout the report, some cost could not be accumulated because entities were hesitant to provide estimates and actual time records were not maintained. He asked for further clarification regarding why some of the information was not attainable. He also asked for clarification as to why some of the numbers might actually be higher than what is in the report.

Mr. Crossman replied to Assemblyman Sprinkle that there are multiple instances in the report where those issues arose, and part of that is because auditors delineated the information into segments. For example, auditors were not able to obtain records related to prosecution costs to identify the amount of time spent on cases. Regarding the records, auditors met with representatives from the District Attorney's Office in Clark and Washoe Counties. It was explained to the auditors that records are not maintained on a case-by-case basis. The amount of time spent on a specific case is not recorded. Auditors were not provided estimates pursuant to that.

Mr. Sprinkle surmised when reviewing the information contained in the report and applying it to the policy-related aspects, one could assume the numbers in the report are lower than the actual numbers.

Mr. Crossman confirmed that there is potential for the costs to be higher if all the costs were obtained. The information, for example, obtained from the prosecutors may not result in significant differences between these types of cases. However, they cannot be sure without having that information.

Chair Carlton stated she has the same concerns as Mr. Sprinkle. She opined that the law profession utilizes billable hours. Everything tracked to the minute, and it would seem as though there should be a better accounting of how their time is spent. It was disconcerting to Chair Carlton that there was not a greater sharing of the resources. She noted there would be future discussions as the issue evolves and this audit report will be very helpful.

Chair Carlton called for public comment on the report of the Fiscal Costs of the Death Penalty (A.B. 444).

Pricilla Maloney, representative, Nevada Women's Lobby, commented she had been a public defender in the State of Oregon and her husband was on the death penalty team for that state; however, he currently works for the office of the Federal Public Defender of Nevada. She is a proud new member of the State Bar of Nevada. She stated she would like to respond to some of the previous concerns about capturing the real costs as related to the death penalty after reading a prepared statement, on behalf of Pam Roberts, Nevada Women's Lobby.



Ms. Maloney began by opining the Nevada Women's Lobby believes in the principle that the lives of all people inherently are valuable and worthy of respect and dignity. The Lobby believes the results of the cost audit of Nevada's death penalty are very important, because from numerous other state cost studies, the death penalty is extremely costly to maintain. With so many vital programs in Nevada facing funding challenges such as education, childcare, social services, veterans' services, the Lobby was of the opinion it was time to replace Nevada's expensive death penalty option with life in prison without parole as a potential sentence, a penalty already available in Nevada.

Ms. Maloney stated the Lobby was of the understanding that the death penalty is sought far more often than it is actually imposed. When it is imposed, the sentence is rarely carried out. It would be better to replace such a costly and ineffective system with life without parole, to focus on far more meaningful public safety measure that will improve communities, help victims of crime, and make Nevada a more just state.

After Ms. Maloney finished reading the statement, she offered comments on the audit report. With respect to Assemblyman Sprinkle's concerns, she spoke to page 73 and page 74 of the report where there is a discussion that the prosecution community was reached out to during this process; however, she opined, it is not clear how much of the discussion was related to the public defense community. From her own experience, most death penalty cases are served by indigent services, such as a nonprofit corporation, a county, or a state entity. There are organizations that monitor indigent defense costs nationwide, one being [deathpenaltyinformationcenter.org](http://deathpenaltyinformationcenter.org). As example, she pointed out that the State of Oregon had an indigent defense services commission, which could give its legislature an accurate representation of what actual cost were to both litigate and handle the appeals. For someone who is incarcerated without the possibility of parole, the question needs to be answered of what are the projected costs to house the inmate for the rest of his life versus the cost of litigating a death penalty case.

Ms. Maloney further commented on a section on page 51 of the report, "Federal Defense Counsel and Courts." She was of the opinion that the reference is to the process where a person qualifies for federal habeas corpus review of his death penalty sentence. There is potential for additional costs that may not be captured in the report. Nevada does not pay that cost; however, the cost is paid by the federal defense system, which is funded by the U.S. Congress. She surmised, as Chair Carlton and Assemblyman had also voiced concerns over, that the costs are actually higher than reported in the audit.

Ms. Carlton thanked Ms. Maloney for her testimony.

Rita Sloan, Coordinator for the Life, Peace, and Justice Commission for the Catholic Diocese of Reno, Nevada, noted that she would read a statement on behalf of the Catholic Conference of Nevada, which is comprised of Bishop Joseph Pepe, Diocese of Las Vegas, and Bishop Randolph Calvo, Diocese of Reno. She preempted reading the statement, by opining that the statement was prepared in anticipation of the analysis on

a very serious subject that has more facets to it than money.

Ms. Sloan began reading the statement. The Nevada Catholic Conference is representing Bishops Joseph Pepe and Randolph Calvo. The Catholic church believes that all life is sacred. The Nevada Catholic Conference is on record as being opposed to and calling for the abolishment of the death penalty. We reiterate the call for an end to the death penalty.

Ms. Sloan continued reading. The Nevada Catholic Conference also believes that examination of the audit report will show that by replacing the death penalty with life in prison without the possibility of parole, significant funds can be made available for programs which benefit the neediest of Nevada's citizens; particularly, in the context within the criminal justice system. Such a determination would be further confirmation that the death penalty is bad public policy.

Ms. Sloan finished her statement and said the fiscal savings from abolishment or further limitation of the death penalty could improve the life of Nevada's citizens. That should in and of itself compel the Nevada Legislature to closely scrutinize the audit, and examine whether the expense of imposing the death penalty, rather than life in prison without the possibility of parole, can be justified. The Committee was encouraged to recommend such scrutiny.

Chair Carlton thanked Ms. Sloan for her comments. She asked that the Committees on Legislative Operations and Elections, who originally requested this report under A.B. 444, and the Chairs of the two Committees on Judiciary for the 2015 Session receive a copy of the report.

She called for a motion to accept the report on the Fiscal Costs of the Death Penalty.

ASSEMBLYMAN SPRINKLE MOVED TO ACCEPT THE REPORT ON THE FISCAL COSTS OF THE DEATH PENALTY (A.B. 444). THE MOTION WAS SECONDED BY SENATOR PARKS AND CARRIED UNANIMOUSLY.

#### ***Item 4 — Presentation of Six-Month Reports (NRS 218G.270)***

##### **a. Department of Business and Industry, Nevada Transportation Authority**

Doug Peterson, Information Systems Audit Supervisor, stated in January of 2014, a report was issued on the Department of Business and Industry, Nevada Transportation Authority. The Authority filed its corrective action plan in April 2014. Pursuant to NRS, the Department of Administration must prepare a report within six-months after the plan of correction action is due outlining the implementation status. Based on the review by the Audit Division of the six-month report, all seven recommendations have been fully implemented. Therefore, there are no questions for agency officials, and noted that there was a representative from the agency present at the meeting.

Chair Carlton asked if there further questions and there were none. She called for a motion to accept the six-month report on the Department of Business and Industry, Nevada Transportation Authority.

SENATOR PARKS MOVED TO ACCEPT THE SIX-MONTH REPORT ON THE DEPARTMENT OF BUSINESS AND INDUSTRY, NEVADA TRANSPORTATION AUTHORITY. THE MOTION WAS SECONDED BY ASSEMBLYMAN SPRINKLE AND CARRIED UNANIMOUSLY.

**b. Department of Administration, Nevada State Library and Archives – Mail Services**

Shannon Ryan, Audit Supervisor, stated in January 2014 auditors issued an audit report on the Nevada State Library and Archives, Mail Services Division. The report contained two recommendations to improve oversight and control activities related to billing State agencies for mail service. The six-month report issued by the Department of Administration indicated that both recommendations were partially implemented.

The Department of Administration noted the Division has modified and developed policies and procedures related to its billing process. The Division stated it is performing the reviews as noted in the recommendations; however, the Department of Administration could not see whether reviews were actually occurring because of lack of documentation.

Ms. Ryan stated she had one question for the Division. She asked if the Division had implemented a process where reviews of the billing function and manually inputted data are documented to insure they are performed timely and in accordance with stated policies and procedures.

Daphne DeLeon, Administrator, Division of State Library and Archives, replied unfortunately, when the Division focused on trying to make adjustments to the procedures it overlooked the part of documenting the periodic reviews process. That has since been addressed. Every time management does a periodic review, roughly weekly, the bottom of the Microsoft Excel spreadsheet is now signed and dated.

Chair Carlton asked Ms. Ryan if the response was sufficient and Ms. Ryan confirmed that it was.

Chair Carlton asked for further questions. None being made, she called for a motion.

SENATOR PARKS MOVED TO ACCEPT THE SIX-MONTH REPORT ON THE DEPARTMENT OF ADMINISTRATION, NEVADA STATE LIBRARY AND ARCHIVES – MAIL SERVICES. THE MOTION WAS SECONDED BY ASSEMBLYMAN SPRINKLE AND CARRIED UNANIMOUSLY.

**c. Department of Public Safety, State Fire Marshal Division**

Rocky J. Cooper, Audit Supervisor, stated in January 2014 an audit report was issued on the Department of Public Safety, State Fire Marshal Division. The audit report contained three recommendations to improve the hazardous materials program and internal controls over revenues. The six-month report prepared by the Department of Administration indicated as of October 3, 2014, the three recommendations were partially implemented. In November 2014, auditors met with the Division and reviewed documentation showing that two recommendations were fully implemented.

The remaining partially implemented recommendation relates to the hazardous materials permit website. Recommendation No. 2 was to update the Division's website to provide a more comprehensive and user-friendly guidance on the hazardous materials permit requirements. The Department of Administration's six-month report indicated the Division is in the process of implementing a new permit system, which will assist and provide information that is more comprehensive and user-friendly guidance on hazardous materials permit requirements. The Division anticipates full implementation of this recommendation by January 31, 2015. Mr. Cooper had a question for the Division regarding if the Division is still on track to have the permit system updated by January 31, 2015.

Peter J. Mulvihill, P.E., Chief, State Fire Marshal Division, DPS, affirmed that the Division is on track to meet the deadline. He noted the vendor had a new version of the permit software program that went live in the past month. There were initial bugs that have been worked out and clean-up items are currently underway; however, the software is up and working. The Division is building the user manual to accompany the screens and is looking forward to more structured screens, making it easier to use for the average person.

Mr. Sprinkle addressed Mr. Mulvihill and noted that in January 2014 he was critical of some of the findings and actions in the audit report. In relation to Recommendation No. 2, which had to do with individual vendors not understanding what is and is not considered hazardous material, he queried if the new website will be easier to use and be understood by the vendors.

Mr. Mulvihill replied vendors would still need to have some understanding of chemical hazardous materials in order to navigate the system. There are several documents on the Division's website that better explain the reportable threshold quantities. He noted the Division's Helpdesk phone number is posted on the website that one can call during business hours. If the public has questions regarding chemicals, the classification or category of chemicals, or whether a permit is needed to carry the chemicals, they are encouraged to call the helpline. The Division staff member who answers the phone will walk the person through the process, logon to the permit software, and help with any issues. Knowing that some people will have technical challenges or lack of knowledge of a specialized nature, the Division has the helpline to aid people with the process.

Mr. Sprinkle stated even though Recommendation No. 1 was fully implemented, there was a lot of discussion regarding State jurisdiction versus county jurisdiction and where the responsibility lies. He asked if those communication lines between the State and counties have improved to lessen any previous concerns.

Mr. Mulvihill replied that the Division has good open lines of communication with the fire marshals in three counties where there is no enforcement authority by statute. Communication takes place on a regular basis and information is shared back and forth. He was of the opinion that the working relationship is good with the Carson City, Clark County, and Washoe County agencies.

Mr. Sprinkle referred to the initial report in January where there was an initial audit conducted in 2007. According to that audit, the response to the recommendation the Division had developed policies and procedures in February 2008; however, those were not currently in use. He asked for assurance that the recommendations implemented in this audit were going to continue.

Mr. Mulvihill confirmed that the Division would continue to follow the recommendations. The Division will review the policies and procedures on a regular basis and update as necessary and conduct appropriate staff review.

Mr. Sprinkle again acknowledged he had been critical of the Division in the past, but was pleased to receive this six-month report.

Chair Carlton asked for further questions and there were none. She called for a motion to accept the six-month report on the Department of Public Safety, State Fire Marshal Division.

SENATOR DENIS MOVED TO ACCEPT THE SIX-MONTH REPORT ON THE DEPARTMENT OF PUBLIC SAFETY, STATE FIRE MARSHAL DIVISION. THE MOTION WAS SECONDED BY ASSEMBLYMAN SPRINKLE AND CARRIED UNANIMOUSLY.

Mr. Cooper stated with the implementation of the final recommendation, the Audit Division will follow-up and report to the money committees during Session.

**d. Commission on Mineral Resources, Division of Minerals**

Rick Neil, Audit Supervisor, stated in January 2014 an audit report was issued on the Commission on Minerals, Division of Minerals. The six-month report was prepared by that Department of Administration on the status of the four recommendations contained in the audit report. As of October 3, 2014, the Department of Administration indicated the one recommendation was fully implemented and three recommendations were partially implemented.

Mr. Neil continued with discussing the partially implemented recommendations. He stated the first partially implemented recommendation concerned inspections of oil, gas, and geothermal operations. The audit found the Division could enhance the monitoring of oil, gas, and geothermal operations in Nevada. Specifically, by performing periodic inspections of operations, it can obtain greater assurance that these operations are complying with regulatory requirements. The regulations are intended to ensure safety, protect the environment, and minimize the waste of natural resources.

Mr. Neil stated that Recommendation No. 1 concerned developing a risk-based inspection approach, was deemed partially implemented by the Department of Administration since there was limited data on the Division's new risk matrix. Mr. Neil noted the audit follow-up found the Division subsequently added data on the various risk factors developed by the Division on each of the operations needing inspection. These risk factors were then scored and operations were grouped into high, medium, and low risk categories. Depending on the category, operations were being inspected every one

year, three years, or five years. Therefore, this recommendation is considered fully implemented.

Mr. Neil continued with Recommendation No. 2, which related to improving the documentation when inspections were performed. This recommendation is considered to be fully implemented because the Division is documenting the inspection results, corrective action needed, and communicating this information to well operators.

Mr. Neil stated the next area of concern for needed follow-up was when parties failed to secure abandoned mine hazards. The audit found recent efforts by the Division to secure abandoned mines by notifying responsible parties had been effective. Based on auditor testing of Division records, responsible parties secured 642 hazards in the previous 3 years after the parties were notified of their responsibility. However, the Division did not provide sufficient follow-up when responsible parties failed to respond after being notified.

He stated Recommendation No. 4 related to establishing a follow-up process in these instances. The Department of Administration considered this recommendation partially implemented because the Division had not yet sent notification letters to county officials for possible enforcement action. The Division subsequently sent these letters late in October 2014, and therefore, this recommendation is now considered fully implemented.

In summary, the Audit Division considers all recommendations to be fully implemented and did not have any questions for the Division officials.

Chair Carlton recalled the discussions regarding if the inspections were actual physical inspections or just readings. She asked Mr. Neil to provide an update.

Mr. Neil replied the Division was working towards obtaining additional information. In the meantime, the Division was considering changing the regulations so they were not required to be present for physical inspections, knowing that there were technological solutions to eliminate being present for a physical inspection. The Division did promise that until the regulations are adopted they would be conducting physical inspections.

Chair Carlton surmised that this will require follow-up, especially with the new exploration occurring in the northeast corner of Nevada.

Richard Perry, Administrator, Division of Minerals, commented the audit process with the auditors was very good. The Division appreciates the time dedicated to this follow-up. He further commented on the physical inspections and noted all physical inspections of the wells have been completed. In the last year, 430 geothermal wells and 120 oil wells were inspected. He commented on the reference to physical inspection of blowout prevention equipment. This is something the Division was working on to develop a technological solution that would allow staff to login and view the numbers. The blowouts usually happen all of a sudden in the middle of the night and the Division wanted to resolve that problem with technological change. To clarify the issue of physical inspection, Mr. Perry stated that the inspections is a field operation and the inspectors are in the field all of the time. All of these inspections based on the

risk matrix have been physical inspections.

Chair Carlton thanked him for his clarification. She stated when the regulation is presented; it can be compared with what needs to take place.

Chair Carlton asked for further questions. None being made, she called for a motion.

SENATOR PARKS MOVED TO ACCEPT THE SIX-MONTH REPORT ON THE COMMISSION ON MINERAL RESOURCES, DIVISION OF MINERALS. THE MOTION WAS SECONDED BY ASSEMBLYMAN SPRINKLE AND CARRIED UNANIMOUSLY.

**e. Department of Public Safety, Division of Emergency Management**

Mr. Neil stated in January 2014 an audit report was issued on the Department of Public Safety, Division of Emergency Management. The report contained eight recommendations. As of October 3, 2014, the Department of Administration indicated two recommendations were fully implemented and six recommendations were partially implemented.

Mr. Neil continued with discussions on the partially implemented recommendations. He stated the first partially implemented recommendation had to do with disposition of equipment. The audit found the Division did not submit property disposition reports to the Purchasing Division when it transferred equipment to other State agencies. The six-month report indicated the Division of Emergency Management strengthened controls over the timely disposition of equipment. Nevertheless, the recommendation was considered partially implemented because the Division still had access to equipment in its warehouse and was currently working on its disposal. He posed the question to the Division regarding when it expected to dispose of the equipment in its warehouse that is no longer needed.

Justin Luna, Administrative Services Officer, Division of Emergency Management, stated he appreciated the audit staff's assistance. Regarding the question of property disposition, the Division has submitted several property disposal requests (PDRs) that have been approved through State Purchasing. Since May, 79 computers have been disposed of that were no longer usable due to the operating system. Another PDR has been submitted for donated miscellaneous video projector equipment. There is a PDR in the process for 46 computers to be donated to State Purchasing.

Mr. Neil requested an estimated timeframe for when the PDR will be processed and an estimate on completion to assist with audit follow-up.

Mr. Luna replied the Division hoped to have the PDR submitted to State Purchasing by the end of the year and pending approval, the equipment will be donated.

Mr. Neil pointed out the next area where there is a question concerns the scheduling of visits of subgrantees. The Division is required to perform onsite visits of subgrantees to help ensure compliance with all programmatic and financial grant requirements. The auditors found that the Division methodology of scheduling onsite visits of subgrantees had weaknesses. The six-month report indicated the Division has made sufficient revisions to its approach for scheduling onsite visits, but has not yet conducted any

onsite visits in the current fiscal year. Therefore, the recommendation was deemed partially implemented. The second question posed for the Division was if it had since conducted any onsite visits of subgrantees in the fiscal year and what had caused the delay for conducting the visits.

Mr. Luna replied the Compliance Officer position had been vacant from April 2014 to October 2014, which limited the Division's ability to perform onsite compliance visits. The position has since been filled and the onsite visits have begun. Scheduled compliance visits took place that week in southern Nevada and other compliance visits will be scheduled for the remainder of the fiscal year.

Mr. Neil said that there was a partially implemented recommendation pertaining to the testing of equipment for onsite visits. The auditors found with additional follow-up that Recommendation Nos. 5 and 6 were considered fully implemented.

Mr. Neil continued stating the third area where there is a question is in the need to have stronger controls to help reduce the risk of theft or loss of equipment. The recommendation in particular related to enhancing controls over high-risk items costing less than the \$5,000 threshold covered by federal regulations. The Division has modified its agreement with subgrantees to address these items. This recommendation is considered fully implemented, even though onsite visits have not yet been conducted.

Recommendation No. 8 relates to enhancing controls of subgrantees. Although the six-month report indicates the Division has revised its procedures to address the first part of the recommendation, there are two other parts of the recommendation that the Division thought would be addressed during onsite visits. The third question posed was if the Division considered revising its written procedures or agreements with the subgrantees to address all of the areas covered in Recommendation No. 8.

Mr. Luna replied the Division has revised procedures as recommended in the report. In addition, with the Compliance Officer resuming onsite visits, the Division will be able to monitor the inventory for the subgrantees and identify any areas that need to be addressed.

Mr. Neil suggested, even though it was not mentioned in the recommendations, it might be a good idea to have those particular points that were brought up in parts b and c of the six-month report to be covered in future agreements that they have with their subgrantees. This would help ensure that all parties are clear on their responsibilities.

Mr. Luna stated those recommendations have been included in the Division's agreements with the subgrantees and the Division has received plans from each of the subgrantees, except one which the Division is currently working with, to make sure all the recommendations are in place.

Mr. Neil stated the auditors will follow-up on the remainder of the partially implemented recommendations and communicate the results during Session to the money committees.



Mr. Sprinkle followed up on Recommendation Nos. 5, 6, and 7. He pointed out that even though those recommendations are now considered to be fully implemented, the onsite inspections are only now being accomplished by the newly hired compliance officer.

Mr. Luna replied yes. The new Compliance Officer has started completing all the onsite visits for the subgrantees.

Mr. Sprinkle responded positively and asked that the Audit Division follow-up on this with Mr. Luna so confirmation can be provided to the Subcommittee.

Chair Carlton asked for further questions. None being made, she called for a motion.

ASSEMBLYMAN SPRINKLE MOVED TO ACCEPT THE SIX-MONTH  
REPORT ON THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF  
EMERGENCY MANAGEMENT. THE MOTION WAS SECONDED BY  
SENATOR PARKS AND CARRIED UNANIMOUSLY.

***Item 5 — Public Comment***

Chair Carlton called for public comment. There was none.

Chair Carlton thanked the Committee and the staff for their hard work.

Chair Carlton adjourned the meeting at 3:21 p.m.

Respectfully submitted,

Deborah Anderson, Audit Secretary

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Assemblywoman Maggie Carlton  
Chair of the Audit Subcommittee  
of the Legislative Commission

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Paul V. Townsend, Legislative Auditor  
and Secretary to the Audit Subcommittee  
of the Legislative Commission