

Minutes of the
LEGISLATIVE COMMISSION
Nevada Legislative Counsel Bureau (LCB)
May 31, 2007

The second meeting in 2007 of the Legislative Commission, created pursuant to Nevada Revised Statutes (NRS) 218.660, was held on Thursday, May 31, 2007, commencing at 8:00 a.m., in Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada with a simultaneous video conference to Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada.

COMMISSION MEMBERS PRESENT IN CARSON CITY:

Assemblywoman Barbara E. Buckley, Outgoing Chair
Assemblyman John Ocegüera, Outgoing Vice Chair
Senator Warren Hardy
Senator Mike McGinness
Senator Dina Titus
Senator Randolph J. Townsend
Senator Valerie Wiener
Assemblyman Bernie Anderson
Assemblyman Pete Goicoechea
Assemblyman John C. Carpenter
Assemblyman Garn Mabey

COMMISSION MEMBER ABSENT:

Senator Terry Care

LCB STAFF PRESENT IN CARSON CITY:

Lorne J. Malkiewich, Director
Paul V. Townsend, Legislative Auditor
Donald O. Williams, Research Director
Risa B. Lang, Chief Deputy Legislative Counsel
Marilyn K. White, Executive Assistant

The agenda is attached as Exhibit A. A packet containing materials for the meeting was provided to commission members and available to the public in attendance. Attendance records are attached as Exhibit B. The meeting was called to order by Vice Chair Ocegüera.

Items were taken out of agenda order but discussion is placed in agenda order for purposes of continuity.

Item I--Legislative Auditor:

A. Summary of Audit Reports presented to Legislative Commission's Audit Subcommittee (NRS 218.6823)--Paul V. Townsend, Legislative Auditor.

Mr. Townsend directed attention to the meeting packet which contained two letters from the chair of the audit subcommittee summarizing the audits that were presented at two previous meetings.

The first letter was on the meeting of December 14, 2006, where there were six reports presented to the audit subcommittee. The reports have been discussed throughout the legislative session so he will just make some brief comments about them. The first was on the Department of Motor Vehicles (DMV) Information Technology Security. It was found that DMV did have controls in place to protect the systems and data, however, some improvements were needed such as applying critical security updates and installing and updating anti-virus protection and enforcing password standards. The next several pages of the letter detail some of the individual findings and on page three there are 13 recommendations all of which were accepted by the DMV.

The next audit was of the Department of Wildlife and auditors were looking to see if the department had properly maximized federal funds and controlled their expenditures. It was found that it could have collected approximately \$1.6 million in additional federal receipts during fiscal years 2004 and 2005 if they had properly assessed indirect costs. It was also found that their controls did not ensure that expenditures funded with restricted revenues were in accordance with state law. Since fiscal year 2000, auditors found expenditures totaling approximately \$800,000 had been inappropriately funded with restricted revenues. Individual findings were detailed on the next few pages. On page six of the letter, it notes that nine recommendations were accepted by the agency.

Further, beginning on page six of the first letter, it describes three audits that were performed on the Department of Corrections. The first was on the offender trust accounts, also referred to as inmate banking, and it was found that the department did accurately account for their trust account transactions during the period. However, it could do a better job on reconciliations to make sure that if there are any errors or problems they are detected in a timely manner. It was also found that it had recovered the appropriate amounts from trust accounts as required by statutes and regulations where the accounts are assessed for medical and other assessments authorized by the various laws. Six recommendations were made on that audit and all were accepted. On page seven, auditors reviewed Department of Corrections Administration and a number of areas were looked at. Auditors found that the department generally complied with laws, regulations, policies and procedures but it noted some problems related to payroll where there was about a 7.5 percent error rate in making sure people were paid correctly. In personnel requirements, it was found that frequently performance evaluations were not done timely for employees and they also needed to improve their accountability over property and equipment by doing appropriate counts of their

inventory. There were nine recommendations in that area and all were accepted. The next audit was on inmate medical services and it focused on the pharmacy. Auditors found significant weaknesses in the pharmacy operations that involved key functions over controlling drug inventories, distributing drugs to the various institutions' medication rooms and monitoring operations. He recalled that late last year there was a situation where there were key documents used in controlling the inventory, particularly of a controlled substance, and the department had been unable to locate about 40 forms that were key in controlling those. It amounted to about 1,000 doses of phenobarbital at the Southern Nevada Women's Correctional Center. As a result, there was an investigation and along the way, they were able to locate the forms which had been misfiled. The investigation indicated that there was no criminal activity, however, they did have some very serious weaknesses and they are working to correct those. As shown on page 11, 16 recommendations were made regarding inmate medical services and were accepted by the department.

The final audit presented in December was of the Board of Homeopathic Medical Examiners. Auditors found that the board had not implemented adequate controls over financial management and procedural controls to ensure compliance with laws, regulations and sound financial practices. It was also found that the board had violations of the open meeting law. Additionally, taking over responsibilities to supervise the Nevada Institutional Review Board resulted in quite a bit of dissension among board members and ultimately reduced the board's ability to function efficiently and effectively. Nine recommendations were made to the board and all were accepted and they are working on them.

Continuing, Mr. Townsend said that the next page of the material is a separate letter for an audit that was released the previous week on May 21, 2007. It was an audit of the Office of the State Treasurer Nevada College Savings Program. As background information, it is a program that has achieved extraordinary success in helping families to save for college. It was created in 2001 and has experienced tremendous growth since that time. As of December 31, 2006, there were over 320,000 accounts and people participating from around the country. Total assets of \$3.28 billion are in the account. He said that almost every state has a college savings plan and Nevada ranks as the seventh largest plan in the country. He said it is important to note that auditors looked at the participant investments, which make up the \$3.3 billion handled by large national firms. It was found that the participant investments were properly handled and accounted for. The issues in the audit report relate to the handling and accounting of the fees that went to the state. He noted that although participant money in the College Savings Program was properly handled and accounted for, money earned by the state was not. Auditors found more than \$6 million of state funds was held outside the state system and used to pay program expenses. Of \$11.2 million in funding that has been available to the state since the program began, more than \$6 million was not deposited in the State Treasury. This was pursuant to instructions from officials in the State Treasurer's Office where they instructed the program manager to hold a portion of the state's funds rather than remitting them for deposit to the State Treasury. The program

manager is a company under contract that handles the day to day operations of the program and that included fund management and marketing, administration of a comprehensive investment plan and selection of the various investment managers. On page two, the report goes into more detail on how the \$6 million was spent. More than \$3.4 million was paid by the program manager to the state's plan advisor. The plan advisor is another company under contract that provides advisory services for program development and implementation, monitoring of vendors and other assistance necessary to maintain a quality program. The plan advisor has been with the program since its inception. Additionally, \$1.5 million was paid for marketing and advertising services, \$985,000 for legal services and \$45,000 for other various expenses. Again, the payments were made by the program manager as directed by officials within the State Treasurer's Office. Since the payments were not processed through the state's accounting system, they were never charged against the program's legislatively approved budget. As a result, administrative and marketing expenses for the program have exceeded the legislatively approved budget each year the program has been in operation. Additionally, accounting issues noted were the financial transactions of the College Savings Program have not been accounted for in the trust fund that was established by the Legislature when the program was created. Auditors will be working with the State Treasurer and State Controller on helping to get that account set up. An effect of that is that the State Treasurer's Office has not ever prepared financial statements for the trust fund since the program began and one never has a comprehensive look at all the elements of the trust fund, the various fees that are coming in and how the monies have been spent.

Continuing, Mr. Townsend said contractual issues are noted on page three such as a law firm was paid nearly \$985,000 for legal services since the inception of the program, however, the law firm never had a contract with the Board of Trustees and instead used an existing contract where the law firm was providing bond counsel service to the State Treasurer's Office. There was never a contract that delineated the services that were provided for the College Savings Program. That may have resulted in some other issues where the hourly rate in 2002 for that existing contract was \$225 an hour, however, the law firm charged over \$400 an hour resulting in \$96,000 in overpayments. It was also found with the law firm billings, the average time submitted for billings was one year and a couple of billings covered 21 months each. Billings should be submitted monthly so they can be reviewed while it is fresh in everyone's mind to ensure that the appropriate services have been provided. It was also noted that the Treasurer's Office made payments to the plan advisor which were not always properly supported or did not adhere to the terms of the contract. A payment of \$141,000 for reimbursement of expenses was made without sufficient documentation to support the out-of-pocket expenses. There were charges for legal services in the amount of \$26,000, consulting services for \$80,000, travel for over \$32,000, none of which was supported. The Treasurer's Office made payments to a marketing firm in excess of the \$185,000 maximum allowed each year under the contract. Payments made in fiscal year 2005 exceeded the contract maximum by \$450,000 and in fiscal year 2006 by \$878,000. The last item on the page indicates that officials in the Treasurer's Office did not provide

adequate oversight of contractors to ensure key program information was provided to the board. The contracts required specific information be submitted, such as investment performance reports, performance measures related to customer service, proposed marketing plans and budgets from the program manager, and comparisons between the Nevada College Savings Program and other states' programs. Without obtaining the information and providing it to the Board of Trustees it perhaps hindered its ability to make important decisions. Finally, it was noted that the Treasurer's Office had not established internal control procedures to help guide staff in carrying out their responsibilities over the program. Thirteen recommendations were made and they were all accepted by the State Treasurer. In hearing the report, the audit subcommittee directed the Legislative Auditor to contact the Office of the Attorney General regarding issues that had been raised in the audit. The chair of the audit subcommittee recommends that the Legislative Commission accept the reports outlined in the two letters.

Mr. Anderson inquired if the new State Treasurer has already implemented proper controls so that these kind of expenditures and the information going to the board is going to be sufficient to ensure the situation does not happen again. Mr. Townsend replied that things have been moving quickly as the audit was done in a very short period of time but discussions with the State Treasurer's Office indicate that they have accepted and are working as quickly as they can to get appropriate controls in place. They do have a 60-day plan of corrective action that will be submitted to the auditors by August 15, 2007, and are working to correct the issues much quicker than that. Everything he has heard from that office indicates that they want to correct things as quickly as possible.

Mr. Anderson said that he wished to be reassured again even though he heard the report at the audit subcommittee meeting and wanted it to be part of the record that the investors' funds have not been in any way damaged or lost to our knowledge by the process and that the only dollars that have been misdirected are those of the state funds that were to help support the program. Mr. Townsend said that he would like to confirm that. Auditors did review that and there is a lot of money and the program has been tremendously successful and it does involve national firms. Vanguard is the largest firm and it has audits done on its individual plans. The LCB auditors have reviewed those and traced through some individual participant accounts to get some comfort with the accuracy of those and they have a great deal of confidence that the participant money has been handled appropriately. The fees that have been earned off of the investments that are due to the state is where auditors had issues. Auditors saw nothing to indicate that there were any problems whatsoever with participant investments.

Mr. Anderson asked if the attractiveness of the investment would be damaged and would there still be confidence in investments. Mr. Townsend said the issue coming up and being public has not helped but he believes it is a very competitive market and Nevada has risen to where it is the seventh largest plan in the country and has been very

successful. The names of the national firms such as Vanguard are very positive aspects of it and, hopefully, the plan will continue to prosper and be successful.

Senator Wiener inquired about the DMV Information Technology Security audit and the issue of people having access to databases long after they are no longer employed by the agency. She referred to page three concerning the personal identifying information where part of an old system would be integrated and replaced with a new system with an ending date of 2006 and assurance that the database would be encrypted. She asked if Mr. Townsend knows if that has occurred and that information on people who hold licenses is protected. Mr. Townsend replied in that particular issue there was a database of credit card transactions that had personal identifying information in it. The DMV, after the audit came out, decided that rather than wait and try to encrypt the data and put it on a new system encrypted, it would just delete the credit card information as the benefits of maintaining the information were not worth the risk. He thought it was even a better solution to the problem.

Chair Buckley thanked Mr. Townsend for all the work that was done on the audits. She referred to the State Treasurer's Office and asked if there is any money that was wrongly re-directed that could be returned to the state. Mr. Townsend said that in the areas where auditors identified overpayments, it is his understanding that the State Treasurer can request to get the money back. There are overpayments to the law firm of about \$96,000 and what auditors identified as an overpayment to a plan advisor of \$300,000 where auditors felt it was not necessary to make that payment pursuant to the terms of the contract. He believes the State Treasurer is going to look into that as well. A lot of the other payments were made for services provided, such as the payments to the marketing firm in excess of the \$185,000 contract. There could be some legal issues there but perhaps the treasurer could look into that to see if there is any way to recover any funds there as well.

The chair asked about balances in any of those accounts. Mr. Townsend said that at the end of last year there were some revisions made to the contracts where all balances were transferred to the State Treasurer's Office so it has "pretty much" been resolved at this point as far as the outstanding balances.

Further, Chair Buckley asked about the contract that appeared to have no value to the state and if the office is trying to renegotiate that and what is the status. She said that while that might be a question to be directed to the Treasurer's Office she wondered if there was a status indicated on that in the audit. Mr. Townsend said that he is assuming the chair is referring to the contract that was re-negotiated at the end of the year and there were some questions on whether that had been a good deal for the state. In looking at the matter, auditors found that it is a very competitive environment and increasingly competitive as the large companies are reducing their fees to attract more participants. He believes the Treasurer's Office would be the best source to comment on that question.

Renee Parker, Chief of Staff for State Treasurer Kate Marshall, appeared before the commission in Carson City and stated that they are looking into the contract amendment and have informed the program manager that it is the State Treasurer's intent to attempt to re-negotiate the contract and they are planning on entering into those discussions. Ms. Parker said that there is a board meeting this day where the audit is being presented to the board and some of Mr. Anderson's concerns are also going to be addressed with some of the changes that have already been made to ensure that no money is spent outside of the system. With respect to the other question about balances, there is no money left as \$6 million was already paid and there is no way to recoup it although the Legislature did approve in the budget going forward, there is now a substantial reserve, about \$3 million over the biennium, that is going to pay back the General Fund loan that has been outstanding. There is about a \$3.4 million balance on that and it will be paid with the funds that are now in the state.

Mr. Carpenter asked in regard to the Department of Corrections where some of the employees were underpaid if there was a way for them to be paid correctly and if there is a procedure for correcting that situation. Mr. Townsend responded that when the matter was brought to the department's attention, it went back and made the corrections to ensure the employees are paid correctly. He said that even more important, is making sure they get some new procedures in place and implement a more thorough review to make sure that errors do not occur in the first place. It is a complex payroll system because there are 24-hour employees, on-call employees and varying rates of pay. As part of the audit, one of the recommendations was to strengthen controls over payroll.

SENATOR TOWNSEND MOVED APPROVAL OF THE REPORTS FROM THE AUDIT SUBCOMMITTEE. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

Item II--Progress Reports and Appointments:

A. Litigation currently in progress--Brenda J. Erdoes, Legislative Counsel.

Mr. Malkiewich announced that there is no litigation currently in progress so there would be no discussion on this agenda item.

Item III--Legislative Commission Policy:

A. Resolution acknowledging service of Caren Jenkins as Chair of Commission on Ethics--Lorne J. Malkiewich, Director.

Mr. Malkiewich called attention to a handout of the draft resolution provided to members. A copy is attached as Exhibit C. He indicate that he was contacted by a representative of the Commission on Ethics who indicated that Ms. Jenkins was ending her service as Chair of the Commission on Ethics and wondered if the Legislative

Commission would be interested in doing a resolution. Mr. Malkiewich noted that Ms. Jenkins is a former employee of the LCB and a long time friend.

SENATOR TOWNSEND MOVED APPROVAL AND TRANSMITTAL OF THE RESOLUTION. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED.

B. Approval to transfer appropriated sums from year to year and among Legislative Commission and various divisions of Legislative Counsel Bureau--Lorne J. Malkiewich, Director.

Mr. Malkiewich said that this item is a technical measure. In the General Appropriations Act, which members will be considering soon, there is a provision that allows the LCB upon request by the director and approval of the commission to move money between divisions at the end of the year. He said that he has checked with the Chief Accountant and it appears that all the divisions and the commission will be under budget for this year but if they are not, it would be discovered after the commission has met. Therefore, he would like approval to transfer money and if it ends up that money is transferred, he would advise the commission at its next meeting. He said, "I don't anticipate that it will be necessary but just in case, I would like that authority."

SENATOR TOWNSEND MOVED APPROVAL OF THE REQUEST. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED.

C. Review of administrative regulations--Brenda J. Erdoes, Legislative Counsel.

Risa B. Lang, Chief Deputy Legislative Counsel, called attention to a packet containing a regulation provided to members (copy attached as Exhibit D).

1. Temporary regulations submitted pursuant to NRS 233B.0633. There was nothing under this item.

2. Permanent regulations submitted pursuant to NRS 233B.067.

Ms. Lang stated that there is only one regulation to be considered this day and it is R096-06 which was adopted by the State Board of Agriculture. The Legal Division has reviewed the regulation and it did not appear to exceed statutory authority and they recommend approval of the regulation unless the commission determines that it fails to carry out legislative intent or conflicts with the statutes. She thought representatives of the board were available to answer any questions.

Mr. Carpenter inquired what the agent will be doing and how it "fits into the mix of things." No representative of the board appeared at the witness table to answer the

question. Ms. Lang said that she believed the agents are employees and it appears that the definition of an agent is a person who solicits business on behalf of a custom pest control licensee.

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R096-06. MOTION SECONDED BY SENATOR HARDY AND CARRIED.

3. Regulations resubmitted pursuant to NRS 233B.0675. There was nothing under this item.

Item IV--Election of Chair and Vice Chair of the Legislative Commission.

SENATOR MCGINNESS NOMINATED SENATOR TOWNSEND FOR CHAIR OF THE LEGISLATIVE COMMISSION. MOTION SECONDED BY ASSEMBLYWOMAN BUCKLEY AND CARRIED.

SENATOR TOWNSEND NOMINATED SENATOR MCGINNESS FOR VICE CHAIR OF THE LEGISLATIVE COMMISSION. MOTION SECONDED BY SENATOR HARDY AND CARRIED.

Item V--Informational Items:

A. Legislative Committee Reports.

B. Legislators' Travel Reports.

C. Quarterly Reports on Disciplinary Action from the following Boards or Agencies:

1. Board of Dispensing Opticians.
2. Board of Examiners for Alcohol, Drug and Gambling Counselors.
3. Board of Examiners for Long Term Care Administrators.
4. Board of Examiners for Social Workers.
5. Board of Marriage and Family Therapist Examiners.
6. Board of Occupational Therapy.
7. Board of Psychological Examiners.
8. Board of Registered Environmental Health Specialists.
9. Board of Veterinary Medical Examiners.
10. Chiropractic Physicians' Board of Nevada.
11. Health Division, Department of Health and Human Services.
12. Nevada Certified Court Reporters Board.
13. Nevada State Barber's Health and Sanitation Board.
14. Nevada State Board of Accountancy.
15. Nevada State Board of Architecture, Interior Design and Residential

Design.

16. Nevada State Board of Athletic Trainers.
17. Nevada State Board of Dental Examiners.
18. Nevada State Board of Hearing Aid Specialists.
19. Nevada State Board of Landscape Architecture.
20. Nevada State Board of Medical Examiners.
21. Nevada State Board of Nursing.
22. Nevada State Board of Optometry.
23. Nevada State Board of Pharmacy.
24. Nevada State Board of Physical Therapy Examiners.
25. Nevada State Board of Podiatric Medical Examiners.
26. Nevada State Contractors Board.
27. Private Investigators' Licensing Board.
28. Real Estate Division, Department of Business and Industry.
29. State Board of Cosmetology.
30. State Board of Oriental Medicine.
31. State Board of Professional Engineers and Land Surveyors.

D. Miscellaneous Reports from State Agencies and Others:

1. Annual Report from Las Vegas Office.
2. Report on consumer sessions from Public Utilities Commission of Nevada.
3. Reports from Nevada State Board of Medical Examiners.

Item VI--Public Comment:

There being no comments from the public, the meeting was adjourned.

Respectfully submitted,

Marilyn K. White
Executive Assistant

Assemblywoman Barbara E. Buckley, Outgoing Chair
Nevada Legislative Commission