

MINUTES OF THE MEETING OF THE
AUDIT SUBCOMMITTEE OF THE LEGISLATIVE COMMISSION
Legislative Building
401 South Carson Street, Room 4100
December 8, 2010

This is the third meeting of 2010.
This is the fourth meeting of the 2009-2010 Interim.

A meeting of the Audit Subcommittee of the Legislative Commission (NRS 218E.240) was called to order by Senator Sheila Leslie, Chair, at 9:38 a.m., Wednesday, December 8, 2010, 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:

Senator Sheila Leslie, Chair
Assemblyman Tom Grady
Assemblyman Kelvin Atkinson

Las Vegas:

Senator Dean Rhoads
Assemblyman Joseph Hogan

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Paul Townsend, Legislative Auditor
Donna Wynott, Office Manager
Eugene Allara, Deputy Legislative Auditor
Jane Bailey, Audit Supervisor
Rocky Cooper, Audit Supervisor
Daniel Crossman, Deputy Legislative Auditor
Diana Giovannoni, Deputy Legislative Auditor
Mike Herenick, Deputy Legislative Auditor
Dennis Klenczar, Deputy Legislative Auditor
Sandra McGuirk, Deputy Legislative Auditor
Rick Neil, Audit Supervisor
Doug Peterson, Information Systems Audit Supervisor
Lee Pierson, Deputy Legislative Auditor
Jeff Rauh, Deputy Legislative Auditor
Shannon Ryan, Audit Supervisor

Chair Leslie welcomed the new members to the Committee. She stated Senator Rhoads is a returning member, Assemblyman Hogan is new to the Committee,

Assemblyman Grady is a returning member, and Assemblyman Kelvin Atkinson, is a substitute for a new member to the Committee, Assemblyman Marcus Conklin. The roll was taken. A quorum was present. Chair Leslie noted that Assemblyman Atkinson was expected to attend the meeting and would be marked present upon his arrival.

Chair Leslie began the meeting with agenda item number one.

Item 1— Approval of minutes of the meeting held on September 29, 2010

Chair Leslie called for a motion.

ASSEMBLYMAN GRADY MOVED TO APPROVE THE AUDIT SUBCOMMITTEE MINUTES OF SEPTEMBER 29, 2010. THE MOTION WAS SECONDED BY SENATOR RHOADS AND CARRIED UNANIMOUSLY.

Item 2— Presentation of audit reports (NRS 218G.240) – Paul Townsend, Legislative Auditor

A. Secretary of State

Mr. Townsend introduced Lee Pierson, Deputy Legislative Auditor; and Doug Peterson, Information Systems Audit Supervisor, to present the report.

Assemblyman Atkinson was noted in attendance at the meeting.

Mr. Pierson began the presentation with background information. The Office of Secretary of State was established in 1864. The Office is organized into five divisions: Commercial Recordings, Securities, Elections, Notary, and Operations. In fiscal year 2010, the Office had 131 positions with revenues of about \$132 million. Most revenues collected are deposited directly to the General Fund. In fiscal year 2010, the Office deposited about \$128 million directly to the General Fund from revenues collected for various corporate and business filings and licenses, and fines for violations of securities and notary laws and regulations.

Exhibit 1 shows revenues collected by division and program from fiscal years 2007 through 2010.

Mr. Pierson reported the objectives of the audit were to determine if cash handling practices result in timely deposits, adequately safeguard revenues, and protect customer information; to evaluate performance measures including the reliability of reported results; and to determine if policies, procedures, and computer access controls are adequate.

Mr. Pierson began the findings and recommendations section of the report.

Several improvements are needed to reduce delays in depositing checks and ensure customer information is safeguarded. Auditors found bank deposits were not made timely. Auditors reviewed 120 bank deposits made between July 1, 2008, and June 30, 2010, by the Commercial Recordings Division's Carson City office. Mr. Pierson

reported all 120 deposits were not made timely. Exhibit 2 shows the average number of working days that the 120 deposits were not made timely. The exhibit shows deposits were made on average from 2 to 15 working days late. However, in September 2010, the Office reported deposit timeliness had improved to 1 to 5 days late.

NRS 353.250 requires that if on any given day the money accumulated for deposit is \$10,000 or more, the deposit must be made the next working day. The Carson City office receives on average about \$100,000 daily in cash and checks as shown in Exhibit 3. Therefore, cash and checks received on a given day should be deposited the following day.

Mr. Pierson stated auditors found that checks were not endorsed timely. Auditors examined 120 checks received between July 2008 and June 2010, and found checks were restrictively endorsed on average six days after receipt. State policy requires agencies endorse checks as soon as possible, but no later than at the end of the working day. Between July 2008 and June 2010, the Office received on average about \$100,000 daily in checks at the Carson City office. As a result many unendorsed checks are maintained in the Carson City mailroom. These checks are at greater risk of misuse.

Mr. Pierson reported that customer information is not always secured. The Office stores records, including payment forms with customer credit card and bank account numbers in the Commercial Recordings Carson City office. These records were stored for up to two years and not adequately secured. Additionally, the Office has not established policies and procedures addressing the storage and retention of customer information.

Mr. Pierson stated the Office shredded some records during the audit. On June 29, 2010, records processed between May 2008 and January 2010 were shredded.

Commercial Recordings staff indicated payment forms are stored because a paper copy is needed if customers dispute charges. However, Office accounting staff indicated they rely on scanned electronic copies of payment forms in e-SOS when customers dispute charges. Therefore, the Office could destroy payment forms after the transaction is processed.

Three recommendations were made to address delays in depositing checks and safeguarding customer information.

Mr. Pierson stated performance measures need improvement. Auditors found performance measures do not address all key activities. For example, most Office goals lack a corresponding performance measure. Without corresponding performance measures the Office cannot effectively measure progress towards achieving its goals. Auditors also found performance measures have not been developed for some key functions such as elections.

Mr. Pierson reported results for five of six performance measures were not always reliable because inconsistent information was reported from one year to the next, inaccurate information was reported, and math errors were made when computing results. Additionally, supporting documentation was not always retained to verify the reliability of results.

Performance measures can be improved by focusing on outcome based measures; maintaining supporting documentation; and by preparing written policies and procedures for developing, tracking, computing, and reporting results.

Four recommendations were made to improve performance measures.

Policies and procedures can be improved. Specifically, the Office needs to develop additional policies and procedures in some areas, update some existing procedures, and ensure procedures are made available to all staff. Additionally, policies and procedures should include effective dates, and clearly identify which staff positions are responsible for performing specific tasks.

Three recommendations were made to improve policies and procedures.

Mr. Pierson stated the final section of the report was in regard to password controls. Auditors found two key Office information systems, e-SOS, and the accounting system, Great Plains, lack adequate password controls. E-SOS does not require a password to access the system and Great Plains does not require users to periodically change their passwords or require complex passwords. Weak password controls increase the risk from hackers outside the agency or employees accessing information under another employee's account. However, employees are required to log into the network before accessing these two systems. Although logging in provides some control over employee access, additional controls are needed.

Two recommendations were made to strengthen password controls.

Mr. Pierson reported the agency accepted all 12 recommendations. He offered to answer questions from the Committee.

Chair Leslie called for questions from the Committee.

Senator Rhoads asked if auditors had noticed that agencies were experiencing problems, such as making deposits in a timely manner, that were due to personnel cuts. He added agencies have been cut so deep that they cannot manage their responsibilities properly.

Chair Leslie stated that was a good point. She added the audit presentation today and other audits have noted that problem. She asked Mr. Townsend to address the issue. She asked if the auditors were seeing this as a theme in their audit investigations.

Mr. Townsend stated auditors are aware of the issue and the difficulties that agencies are experiencing. He stated the Secretary of State faced another issue and that was

that the Office had taken on the additional responsibility of the business tax, which resulted in a spike in the delayed deposits. He added since the 2010 Special Legislative Session, the Office had been approved additional staff, which resulted in the delay being reduced to one to five days. He added this improvement had been noted.

Chair Leslie stated that the issue was one that the Audit Subcommittee needed to be mindful of, although the work has to be done. She noted that Nevada was 51st in the country for the number of state employees per capita. She added it was possible the Committee would see more of this type of issue.

Chair Leslie called for additional questions from the Committee.

Chair Leslie called for agency personnel to testify.

Ms. Nicole Lamboley, Chief Deputy Secretary of State, stated the Office accepted all of the audit recommendations. She thanked the audit staff for their work in the Office. Ms. Lamboley reported that some of the recommendations have already been implemented or are in the process of being implemented. She stated the next report from the Office would note progress.

Ms. Lamboley stated in response to Senator Rhoad's question, the Office had experienced a backlog due to additional duties as well as the furloughs, and staff reductions the Office experienced about 1 ½ years ago. She stated as the Office sees more services going online, fewer checks will be coming in through the traditional mailroom process. She added at the end of the month the Office sees approximately 30,000 to 40,000 pieces of mail to be processed and hand sorted. She assured the Committee that the Office was working on the issue and looked forward to reporting progress in the near future.

Chair Leslie asked if the business portal was helping to streamline the payment process.

Ms. Lamboley replied it should because it will be an online service, where people can pay with a credit card or electronic means as opposed to a paper check that has to be endorsed and deposited.

Assemblyman Grady knew the business portal had caused concerns which may have been part of the reason for the spike in dropped calls to the Office. He asked if the issue had been addressed and corrected.

Ms. Lamboley replied the issue had been addressed. She added that hold times averaged from about 24 to 30 minutes depending on the time of the month the call is received. The Office had made changes to the phone system to forward calls in a more efficient manner.

Chair Leslie called for additional questions from the Committee. She looked forward to receiving a more detailed response to the audit recommendations during the audit follow-up period. She commended the Office for their work to implement the recommendations.

Chair Leslie called for a motion.

ASSEMBLYMAN HOGAN MOVED TO ACCEPT THE REPORT ON THE SECRETARY OF STATE. THE MOTION WAS SECONDED BY ASSEMBLYMAN ATKINSON AND CARRIED UNANIMOUSLY.

B. Report on Count of Money in State Treasury

Mr. Townsend introduced Eugene Allara, Deputy Legislative Auditor; and Shannon Ryan, Audit Supervisor, to present the report.

Mr. Allara stated in accordance with the provisions of NRS 353.060, the money and securities in the State Treasury were counted on Wednesday, June 30, 2010. The count included physical examination, direct confirmation with financial institutions, and other procedures considered necessary to fulfill statutory obligations. In accordance with NRS 353.075, this report was filed with the Secretary of State on November 23, 2010.

On June 30, 2010, there was zero cash on hand, \$400 million on deposit with financial institutions, \$2.2 billion of state-owned securities, and \$1.1 billion of securities held for safekeeping, for a grand total of \$3.7 billion.

Mr. Allara concluded the presentation and offered to answer questions from the Committee.

Chair Leslie called for discussion from the Committee.

Assemblyman Grady asked about the amount of securities required for deposits.

Mr. Allara replied deposits are required to be secured at 103% per statute.

Chair Leslie called for a motion.

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

C. Contracts with Consultants (A.B. 463)

Mr. Townsend introduced Dennis Klenczar, Deputy Legislative Auditor; and Rocky Cooper, Audit Supervisor, to present the report.

Mr. Klenczar began the presentation with background information. During the 2009 Legislative Session, legislators expressed concerns regarding the State's use of consultant contracts. As a result, Assembly Bill 463 was passed. The bill included provisions to strengthen controls over consultant contracts. For example, section 1 of the bill requires the Interim Finance Committee (IFC) approval before an agency can contract with a consultant if one of four conditions exists. These conditions are: 1) if the person is a current employee of the State, 2) the person is a former employee and less than 1 year has expired since their employment ended, 3) the term of the contract is for

more than 2 years, or 4) the person is employed by NDOT for a federally funded project that is more than 4 years. The overall intent of AB 463 was to strengthen controls over the contract approval process and provide transparency by requiring various entities to report consultant contracts to the IFC.

Mr. Klenczar stated the audit included an analysis of payments to current and former employees for a variety of services. This included, but was not limited to, consultants. Exhibit 1 identifies 250 current and former employees that received contract payments during fiscal years 2008 and 2009. These 250 employees were paid about \$11.6 million during that 2-year period.

Mr. Klenczar explained the scope of the audit was to review professional service contracts with Executive Branch agencies in effect during fiscal years 2008 and 2009. The audit objective was to analyze the use of consultant and other professional service contracts with current and former state employees.

Mr. Klenczar reported that better oversight is needed for contracts with current and former state employees. Auditors found that contracts with current employees can provide an opportunity for abuse. The State does not have adequate controls to prevent current employees from performing contractor activities during their state work hours. Auditors tested 23 contracted employees and found 8 employees either performed contractor activities during their state work hours or did not provide documentation to verify they performed contractor activities on their own time. Exhibit 2 provides examples of time discrepancies for the current employees tested. For instance, 1 employee was paid for 25 hours in 1 day. This included 10 hours of contract services, a regular 10-hour shift, plus 5 hours of overtime. Mr. Klenczar stated another employee took 8 hours of family sick on a day he provided contract services between 9:00 a.m. and 11:30 a.m. at a rate of \$250 per hour. Mr. Klenczar reported for most contracts that auditors identified with time discrepancies, agency management was not aware that the employee had a contract with another agency.

Mr. Klenczar reported controls for contracts with current employees should include: 1) a monitoring process that ensures employees render contract services on their own time, 2) statements that are signed by the employee acknowledging services must be rendered on their own time, 3) invoices that indicate the times services were performed, and 4) timesheets that include a detailed accounting of hours worked. The report summarizes test results for these four areas. For example, all 12 of the agencies auditors contacted did not have a monitoring process. Because state employees are allowed to contract with agencies, controls should be established to ensure all contractual obligations are properly disclosed and performed on the employee's own time.

Mr. Klenczar stated the next section of the report addressed employees that provide services without a contract. Auditors identified 111 current and former employees and found that 28 were paid for services without a contract. When there is no contract, state requirements for contract approvals are bypassed, monitoring of costs and services is diminished, and various insurance requirements are not met. The audit report provides

examples of instances when services were provided for an extended period of time without a contract and individuals were paid a significant amount while concurrently working for the State.

Mr. Klenczar reported the next section of the report addressed employees performing similar duties as contractors. A significant number of current and former employees performed contract services similar to their state job duties. Mr. Klenczar stated 51 of 111 individuals were paid for similar duties. Exhibit 3 shows the number of current and former employees that performed similar duties. About \$2.3 million was paid to these 51 individuals during fiscal years 2008 and 2009. Exhibit 4 shows a detailed breakdown of the amount paid by each state agency to these 51 individuals. Mr. Klenczar reported 18 of 50 current employees performed similar duties. He explained the 18 current employees included 8 psychologists employed by one agency that were also paid for contract services by another agency. These psychologists were paid about \$246,000 during fiscal years 2008 and 2009. Auditors acknowledge there may be situations when a contract with a current employee is necessary and benefits the State. However, contracts for similar services should be properly disclosed to those with approval authority.

Mr. Klenczar stated auditors found 33 of 61 former employees performed similar duties. As a result, there is an increased risk the State is paying a former employee for services a current employee could perform. Test results revealed 23 of the 33 former employees provided services to the same agency that previously employed them.

Mr. Klenczar reported contract pay rates were not always comparable to the employee hourly rate for similar duties. The report provides examples of when a significantly higher hourly rate was paid to former employees. This included one former employee who was paid \$350 per hour vs. \$65 an hour cost to the State as an employee, and another former employee was paid \$150 an hour compared to \$71 an hour cost to the State. Auditors also found instances when contracts with former employees benefitted the State as noted in the report.

Mr. Klenczar stated auditors found contract summary forms were not properly utilized for contracts with current and former employees. The contract summary form is a critical document in the state's contracting process. When properly completed, it contains important information that is not in the contract. For example, the form includes a section for agencies to disclose if the contractor is a current or former employee. Auditors tested 40 contracts for current employees and found only 10 instances when a contract summary was submitted and properly identified the contractor as a current employee.

Mr. Klenczar reported the next section of the report states that former employee use of temporary employment services is extensive. Executive Branch agencies paid \$23.2 million to temporary employment services during fiscal years 2008 and 2009. This includes payments to a number of former state employees, many of which returned to the same agency. Information provided by the three major temporary employment services identified 112 current or former employees. Auditor analysis found about \$2.2

million was paid to these 112 individuals, 60 of these individuals were retirees, approximately 60% of former employees returned to the same state agency, and 9 individuals worked concurrently as a state employee and through a temporary employment service. Auditor analysis also found pay rates to former employees were not always reasonable. Exhibit 5 shows examples of excessive and reasonable pay rates. For instance, one individual was paid \$121 an hour compared to \$60 an hour cost to the State as an Administrative Services Officer. This individual retired, returned to the same agency, and was paid \$117,500 during a 2-year period. Mr. Klenczar stated former employees hired through a temporary employment service should be paid an hourly rate that is comparable to their prior rate or to a current employee performing similar duties. Mr. Klenczar reported the State Administrative Manual does not include a section that establishes a policy regarding pay rates for individuals hired through a temporary employment service.

Six recommendations were made to improve controls over service contracts with current and former employees and for employees hired through a temporary employment service.

Mr. Klenczar continued. The next section reported consultant contract information was not always provided to the IFC. The 2009 Legislature passed AB 463 to provide better oversight of state contracts with consultants. This includes requirements that information be provided to the IFC regarding contracts with current and former employees. However, the IFC has received very little information regarding consultant contracts entered into by state agencies. Shortly after enactment of AB 463, the Department of Administration narrowly defined the term consultant to exclude individuals that provide any type of work product. Therefore, only under rare circumstances would a contractor be deemed a consultant and reported to the IFC. In contrast, boards, school districts, and Nevada State Higher Education (NSHE) used a broad definition of consultant and reported many contracts to the IFC.

Mr. Klenczar reported according to Department of Administration staff, the Attorney General's Office provided a verbal opinion that the term consultant does not include an individual that provides a work product, such as a written report. Therefore, this narrow definition of consultant has limited the number of contracts submitted to the IFC for approval. Exhibit 6 shows examples of contracts deemed not a consultant. For instance, one contractor is named AON Consulting and another is JNA Consulting Group. These contracts would require IFC approval if they were deemed consultants. Auditors believe it is common practice for consultants to perform or produce work related to their service. Consultants often collect, analyze, and present data in the form of written reports.

The next section of the report addressed contracts not submitted to the IFC for approval for more than 1 year. The Department of Administration did not provide any consultant contracts to the IFC for review and approval from July 2009 through July 2010. Mr. Klenczar explained the report provides an example of when an agency entered into a consultant contract with a retired employee. He stated when the contract was extended

in August 2009, the agency indicated the contractor was a consultant on the contract summary form. However, the Department changed the form to indicate the contractor was not a consultant. In December 2009, a new contract was entered into for similar services for a term of over 3 years. Had the Department considered this contractor a consultant, IFC approval would have been required for both the August 2009 extension and the new contract in December 2009.

Since enactment of AB 463, state agencies have not reported former state employees that are consultants to the IFC as required by NRS. Because former employees often provide services to the State, a process needs to be established to report all consultant contracts with former employees, including employment through a temporary employment service.

Mr. Klenczar reported the final section of the audit included reporting requirements for boards, school districts, and NSHE. Although these entities are not required to obtain approval from the IFC when employing a consultant, they must submit a report to the IFC every 6 months regarding consultant contracts. Exhibit 7 shows these entities reported 1,314 consultants to the IFC in February 2010. Although certain entities reported consultant information to the IFC, the overall intent of AB 463 has not been achieved, especially for providing legislative oversight of contracts with current and former state employees. Because a narrow definition of consultant was adopted, the IFC is unlikely to receive information regarding contracts with current or former employees until the term consultant is clarified. Therefore, auditors recommend the Legislature consider enacting legislation to clarify the term consultant for purposes of providing information to the Interim Finance Committee.

The Department of Administration accepted all seven recommendations.

Mr. Klenczar concluded the presentation. He offered to answer questions from the Committee.

Chair Leslie stated this audit validates legislator concerns from the 2009 Legislative Session. She noted that Assemblywoman Smith would be very interested in this report, adding that the Assemblywoman has a bill draft in for the 2011 Legislative Session in regard to this issue.

Chair Leslie stated she was disturbed not only with the abuses that the auditors had documented that obviously need to be addressed but also that it almost looks like there are some state agencies who were using a work-around. She was not sure why. She asked if it seemed that the use of consultants was out of proportion to what auditors would expect to see. She asked Mr. Klenczar if this had occurred because some agencies could not hire staff due to the hiring freeze. She asked if the audit work revealed what was happening in these agencies.

Mr. Klenczar asked if Chair Leslie was referring to the work-around in regard to instances when there was no contract.

Chair Leslie stated yes, adding it seemed like the agencies are using consultants instead of hiring employees. She stated a retired employee leaves and the agency

hires that person back to do the same work at a much higher pay rate. She asked if it was nefarious or was there a reason that this was happening to such an extent.

Mr. Klenczar replied it was difficult to comprehend why a current employee would be hired by a different agency to basically perform the same duties. However, in the interest of fairness every contract has its own set of circumstances surrounding it, which makes it difficult to provide a one size fits all answer to the question asked by Chair Leslie. He added in most cases the payments were properly approved by management at the agency that decided there was a valid reason for it. However, Mr. Klenczar agreed that the issue warranted a closer look to see if it really needs to be to this extent.

Chair Leslie stated a centralized view of how contracts should be entered into is missing. She stated the contract summary form is not filled out consistently or accurately and it seems like agencies are utilizing a wide range of policies.

Mr. Klenczar replied the audit emphasizes the point of adequate disclosure. If all of these instances were properly disclosed to those with approval authority, and if they also came before the IFC, a well informed decision could be made.

Chair Leslie stated the audit suggested to her that in at least a couple of instances there might be criminal activity involved. She asked if the issue would be referred to the Attorney General's Office for further review.

Mr. Townsend replied it would be a good action for the Subcommittee to take to direct the Legislative Auditor to turn that information over to and consult with the Attorney General's Office.

Chair Leslie stated that would be discussed further following Committee questions to decide if the referral would be included in the motion to accept the report. She added that would be her choice.

Chair Leslie called for additional questions from the Committee. She called for an agency representative to testify.

Chair Leslie specifically requested a response on why the Department of Administration narrowed the definition of consultant. It suggested to her that the intent was not to report to the IFC when clearly the legislative intent was to have agencies report to the IFC. She asked for comments on the issue.

Mr. Andrew Clinger, Director, Department of Administration, thanked the audit staff for the report. He stated the report does identify areas of weakness in their current controls that can be improved. He pointed out to the Committee that the Department does have controls currently in the State Administrative Manual (SAM), adding it was obvious the report identified areas that need to be strengthened in regard to former and current employees' contracting. He stated the recommendations have been accepted. He appreciated the auditors efforts and would implement controls to correct the issues.

Mr. Clinger stated in response to the narrow definition of the term consultant, the Department, in discussion with the Attorney General's Office, had determined that having the Interim Finance Committee (IFC) approve Executive Branch contracts

violated the separation of powers doctrine. He added, the intent was to limit the definition of consultant to avoid a conflict with that separation of powers.

Chair Leslie asked if that was the Department of Administration's intent, not the Legislature's intent.

Mr. Clinger replied that was correct. He added this was based on consultation with the Attorney General's Office. He did believe there was a place to report these contracts to the IFC but to have the IFC approve Executive Branch contracts does not seem appropriate given the separation of powers.

Senator Leslie pointed out the Department had accept the recommendations of the auditors to put in statute a specific definition of consultant.

Mr. Clinger replied that was correct. He hoped to have an opportunity to testify on that legislation, that the Department of Administration has an Executive Branch board in place that approves contracts. He thought it was appropriate that the board approved contracts and then perhaps report those consultant type contracts to the IFC, but not ask that the IFC approve those contracts.

Chair Leslie stated she understood Mr. Clinger's point. She stated this audit lays out a lot of abuses that have been going on. She was aware there were, as in the Department of Health and Human Services, some valid instances where a former employee or a consultant would be used as a contractor. However, she asked if this issue was out of hand.

Mr. Clinger agreed completely and believed it was appropriate that the Executive Branch report to the IFC. He reiterated that in consultation with the Attorney General's Office he thought it violated the separation of powers to have the Legislature approve Executive Branch contracts and he agreed with that.

Mr. Clinger then referred to Exhibit 4 of the report that Chair Leslie had asked why agencies contract with consultants. He asked to provide additional information on the issue. He stated Mike Willden, Director, Department of Health and Human Services, was in attendance and could provide detailed information also.

Mr. Clinger pointed out the first agency listed in Exhibit 4 that had the highest amount was the Division of Mental Health and Developmental Services. He stated it was related to health related positions and the fact that the State does not pay a salary sufficient enough to attract the type of professionals that are needed. He stated they end up contracting out. Mr. Clinger pointed out that Chair Leslie, as a member of the IFC, was well aware that at almost every meeting the Department asks to move money from Personnel Services to Contract Services because they cannot hire the staff they need. He offered that was part of the reason for the use of consultants with former and current employees.

Chair Leslie was aware of these facts. She asked how Mr. Clinger would explain contract pay rates where someone worked for the state for \$65 an hour and then the State contracted back with them at \$350 an hour when they were no longer a state

employee. Chair Leslie asked how it could happen that no one was paying attention to that issue. She asked if it was justified.

Mr. Clinger agreed that was not justified. He believed this occurred due to the lack of specific controls to address the issue. He stated, based on the auditor recommendations, the Department will put controls in place to try to eliminate this type of abuse. He added a requirement would be put in place so that if a contract amount is over a certain threshold compared to state employee pay, that it would require a higher level of approval. He added those controls do not currently exist.

Chair Leslie agreed with the statement and was encouraged that Mr. Clinger called the issue abuse because it is abuse. She asked why controls were not already in place and asked for Mr. Clinger to comment on the future. She asked if there would be a contract compliance unit in the Department and asked how he would implement these types of controls that apparently do not exist.

Mr. Clinger replied his intent, since this is a statewide issue, is to address the items in the audit by developing a task force. He wanted to include Mike Willden, Director from the Department of Health and Human Services because the department is heavily involved in contracting, and Bill Chisel, Director from the Internal Audit Division, as well as Director Terry Thienhaus from the Department of Personnel, and possibly others to identify what is needed to implement controls to prevent this in the future.

Chair Leslie asked if Mr. Clinger agreed that it would be located in the Department of Administration with input from other directors.

Mr. Clinger agreed, adding the Department had a good process in place through the contract summary form, through the review in the Department of Administration, and through the review by the Board of Examiners. He believed that controls put in place would enhance the process that the Department of Administration already has in place.

Chair Leslie called for questions from the Committee.

Assemblyman Grady asked what oversight could be developed to cover the schools, cities, and counties that are having the same problems.

Mr. Clinger replied oversight over the schools and local government would come from the Legislative Branch, which was not a function performed within the Executive Branch except perhaps through the Department of Taxation through the local government finance section.

Assemblyman Atkinson asked how many employees had left state employment and then began doing contract work for the state.

Mr. Klenczar replied 183 former employees were identified, of which 103 were employed through a temporary employment service.

Assemblyman Atkinson was aware the State did not have this cooling off period so these individuals can leave state employment and immediately begin contract work with

the state and in some cases at a much higher rate of pay than they were making while working for the State.

Mr. Klenczar replied the report noted that 28 of the 61 former employees returned in less than one year.

Assemblyman Atkinson stated there is no cooling off period.

Mr. Klenczar stated not for those individuals.

Assemblyman Atkinson asked if there was now a cooling off period and asked how these individuals missed this stipulation.

Chair Leslie asked if there is a cooling off period for certain state employees or is there no cooling off period at all.

Mr. Klenczar replied there is a 1-year cooling off period.

Chair Leslie asked how these people return prior to the 1-year cooling off period of time.

Mr. Klenczar replied some of the examples in the report occurred prior to the effective date of the bill.

Chair Leslie stated she still had a conceptual problem with what is really happening in state government. She asked if it would be better to hire new people to do the work rather than to use temporary employment agencies. She noted the state was paying temporary agencies and also paying a higher rate. Chair Leslie asked if it was because even with paying the temporary agencies and paying the higher rate it is more cost effective than adding the employee - or was it because agencies do not want to add employees. She asked for clarification of why the state was operating in such a manner.

Mr. Clinger replied it depends on the situation and every situation is different.

Chair Leslie interjected she was aware of the Department of Health and Human Services situation and she was not as concerned with this agency as she understood the reasons for the Department's hiring practices. She asked for clarification of other areas.

Mr. Clinger replied he thought it is, while you may pay a higher rate, less expensive when long-term costs of benefits are factored in. In addition to that, hiring a temporary employee gives an agency more flexibility. It is easier to terminate a contract with a temporary employment agency and much more difficult to lay off a state employee. He reiterated it just depends on the situation. He stated in the Department of Administration they rarely use contracts, mostly because they can find employees with the skill set that is needed at the wages that they offer which is definitely not the case in some areas such as those in the Department of Health and Human Services.

Chair Leslie asked that when the controls are implemented they would have to provide information such as wages, flexibility, and the reason for hiring.

Chair Leslie stated the perception from the public and from reading some of the abuses that the auditors found is that people are just retiring and then they come back as a contract employee. She wondered if that was the case the majority of the time.

Mr. Clinger responded that the Department does ask on the current contract summary form for a description of why a state employee could not perform the function. He offered that the Department needed to do a better job of enforcing that section of the contract summary form.

Chair Leslie stated the forms have not been consistently implemented. She offered when the Department tightens up these controls this could be addressed. She stated the Legislature would like to have this information in regard to if the state wages are too low and is the cost of laying off an employee really the issue.

Mr. Clinger offered to provide the information to the Committee.

Chair Leslie recognized Assemblyman Atkinson.

Assemblyman Atkinson asked for an example of someone that is a state employee that is also doing contract work for the state. He asked if they were being paid by the state and the contract at the same time. He also asked if the hours were the same.

Mr. Klenczar replied one example was that people in the medical profession, such as psychologists and psychiatrists, are working for one agency and contracting with another agency.

Assemblyman Atkinson asked if these employees were differentiating their hours.

Mr. Klenczar replied part of the problem was that they were not. He explained there was a combination that the time the services were performed was not indicated on the invoices and the timesheets do not indicate when they worked on a particular day. This created a problem as far as verifying if services were or were not performed on their own time.

Chair Leslie agreed except in the case of the person who put down 25 hours in one day. She stated it was clear that the state has been lax in implementing the contracts.

Chair Leslie stated auditors found enough information in regard to the lack of controls.

Mr. Clinger commented the Department has rejected contracts from state employees performing a similar function for the same agency. Part of the problem is the proper disclosure on the contract summary form. He added, when an individual is using an LLC or a DBA it is difficult to make that connection unless they are properly disclosing that they are a state employee and that they perform similar functions. He stated while the Department can tighten some of that up, part of it is the reliance on those putting the contracts together and part of it has to be improved training for the contract monitors to ensure that as the individuals are filling out the contracts that proper disclosures are made.

Chair Leslie stated that was a good point. She suggested implementing a penalty for improperly disclosing information.

Chair Leslie asked if Mr. Mike Willden, Director, Department of Health and Human Services, wanted to testify.

Mr. Mike Willden agreed that additional internal controls are appropriate. He stated his Department reviews all temporary employee requests in the Director's office and includes a salary check. He stated the Department also employs contract workers that are current state employees. He gave examples of why this was appropriate for his Department. Mr. Willden referred to a section in the report which related to current or former employees. He noted that his Department represented six or seven of the examples listed. He explained that six of seven of these contracts reviewed by auditors are specialized psychologists, psychiatrists, physicians who work for one state agency full time and contract out to another state agency part time to do very similar work that they are doing for the other agency. For example a physician who specialized in disability adjudication does it full time for one agency and contracts with the Department on a part time basis. Mr. Willden admitted there were accountability problems but no fraud had occurred. He stated the Department would be making changes in this area. He stated some psychiatrists that work full time in an urban area, contract with rural clinics on weekends.

Mr. Willden commented on the use of temporary agencies. He stated the Department represented most of the dollars spent and specifically it is generally not a wage issue as to why the Department hires a temporary employee, it is generally the fact that the Department gets several hundred federal grants that have 18 months to 2 year timeframes on them. He stated the Department used temps for those grants rather than going through the state employee process. He added the Department at any given time may have up to 200 temps working in the area of public health on short term contracts. Mr. Willden stated those contracts are actually more cost effective than hiring a state employee because they have the + or – 10% rule, do not pay fringe benefits, and only pay approximately 7% premium to the temp agency to be the employer of record. He stated that was a cost effective way of delivering time limited grant services.

Senator Leslie agreed those were good examples. She asked about the percentage of contracts that are for special circumstances. Chair Leslie stated back to the example of the psychiatrist or a specialist working in several agencies. She asked if accountability mechanisms were in place to track how much time these contractors are spending in one agency versus another agency. She asked if there was a process in place to catch that between departments.

Mr. Willden replied no, the Department did not have adequate controls in place in the cases reviewed. He added that recommendations to Director Clinger would be for more detailed invoices. The time of day that the service was provided would have to be provided. He stated the Department would receive invoices with a time provided but not the am or pm to distinguish the time to know if the times overlapped regular working hours. The other issue noted by the auditors pertained to unclassified employees and the variable work-week employees. He stated there has to be stricter accounting of their time and how they spend their variable week.

Mr. Willden recounted that some specialized individuals did work for one agency on a Friday afternoon and they could not tell from the timesheet whether they were flexed time on or off so that they could be off that Friday afternoon. He stated those internal controls have been tightened.

Chair Leslie asked about the wages issue especially with the professionals that are in short supply such as psychiatrists. She asked if Mr. Willden felt that if the state offered more competitive wages for some of these positions that the state would be able to attract the staff the Department needs. She asked if they should take a hard look at the issue rather than relying on temporary staffing of psychiatrists.

Mr. Willden agreed, adding the problem existed for the Department. Physicians, psychiatrists, psychologists, nurses, and probably the majority of people who file requests to hold second jobs or to work as a temp falls under the healthcare field. He stated they hear that complaint a lot that the wages are not adequate so they take on contract work for another agency or out in the private sector.

Chair Leslie asked how much that was costing the state and if it would be better to provide higher wages and get the stability and the quality of workers.

Mr. Willden replied either that or contract out entirely to a medical service management company which provides the stability. He stated the Department employs 50 individuals in a variety of service areas just to get the hours needed to provide the services to their clientele. It is a constant shuffle to get enough specialized medical hours to provide that service.

Chair Leslie called for additional questions from the Committee.

Assemblyman Hogan encouraged a timely implementation of changes in view of the upcoming legislative session and the challenges the legislators will face and the need to have a favorable view from the public on our efforts and our stewardship of funds. He noted that some of the issues presented are shocking and need to be corrected.

Chair Leslie agreed. She added that the 2011 Legislature would include legislation. She stated Mr. Willden would be asked for his input. She asked about follow-up information, noting the Committee would like to see a report back at an appropriate time from the Department of Administration about the structure and the controls that would be put in place. She asked if the Department would be willing to do that.

Mr. Clinger replied he would put together the task force and have the task force provide a report to the Legislature.

Chair Leslie agreed. She asked Mr. Townsend if the Committee could request that information from the Department.

Mr. Townsend replied yes, adding it could be included in the motion to accept the report. He added that the normal process included the 60 day plan of corrective action due March 8, 2011. Mr. Townsend offered to forward that plan to the money committees where all of the Audit Subcommittee members sit.

Chair Leslie agreed.

Chair Leslie called for a motion to include a report from the task force about the structure that would be put in place and also wanted the motion to include the direction to the auditor to turn over their findings to the Attorney General's Office for review. She added that perhaps there was not criminal activity involved but stated that was a call the Attorney General Office should make.

ASSEMBLYMAN GRADY MOVED TO ACCEPT THE REPORT ON THE CONTRACTS WITH CONSULTANTS (A.B. 463), TO INCLUDE THAT ANY FINDINGS NECESSARY FROM THE AUDIT REPORT WOULD BE TURNED OVER TO THE ATTORNEY GENERAL'S OFFICE, THAT THE COMMITTEE ACCEPTS MR. CLINGER'S PROPOSAL THAT HE WOULD PROVIDE A COPY OF HIS TASK FORCE REPORT TO THE AUDIT DIVISION AND TO THE MONEY COMMITTEES, AND THAT THE COMMITTEE RECEIVE A REPORT BACK FROM MR. CLINGER IN REGARD TO THE TASK FORCE. THE MOTION WAS SECONDED BY ASSEMBLYMAN ATKINSON AND CARRIED UNANIMOUSLY.

D. Board of Parole Commissioners

Mr. Townsend introduced Diana Giovannoni, Deputy Legislative Auditor; and Rick Neil, Audit Supervisor, to present the report.

Ms. Giovannoni began the presentation with background information. The Board of Parole Commissioners' mission is to conduct prompt, fair, and impartial hearings on parole applications and parole violation matters and take appropriate action. With the exception of mandatory parole hearings, all parole hearings are considered discretionary. Mandatory parole hearings are statutorily required for certain inmates 12 months before the end of their maximum sentence, as reduced by any credits earned. Inmates are eligible for discretionary parole hearings when they have served their minimum sentence, less any credits earned.

The Board was authorized 28 positions for fiscal year 2010, including the chair and six commissioners. As of October 2010, three positions were vacant. The Board has one budget account funded by General Fund appropriations. Exhibit 1 shows expenditures were about \$2.5 million in fiscal year 2010.

Ms. Giovannoni stated the audit focused on parole hearings conducted in fiscal year 2010, and included activities through October 2010 for certain areas. The objective was to evaluate whether the Board of Parole Commissioners conducted parole hearings in accordance with state laws, regulations, policies, and procedures. She explained the Nevada Department of Corrections (NDOC) is statutorily responsible for determining when an inmate is eligible for parole based on specific rules and factors.

Ms. Giovannoni reported the audit finding and recommendation. Auditors found the Board properly conducted parole hearings in fiscal year 2010. The Board notified victims and law enforcement agencies of inmates scheduled for hearings, and

conducted hearings timely upon notice from NDOC that inmates were eligible for parole consideration. In addition, the Board properly assessed inmates' parole risk, made hearing decisions according to established guidelines, ensured sex offenders were certified by a psychological review panel before release, and notified victims of hearing decisions. However, auditors found a problem with parole eligibility dates that is not within the Board's control, but can impact the Board's ability to conduct prompt parole hearings.

Ms. Giovannoni explained parole eligibility dates provided by NDOC to the Board were incorrect for some inmates. The errors occurred when NDOC's computer system was not correctly modified to reflect changes to state laws in 2007 regarding when inmates become eligible for discretionary parole hearings. As a result, certain inmates granted parole based on incorrect eligibility dates were released from prison later than their actual parole eligibility dates.

Ms. Giovannoni noted Assembly Bill 510 increased credits inmates earned for good behavior, work, education, and meritorious service effective July 1, 2007. The bill also required certain credits earned by inmates convicted of specific felonies to be deducted from the minimum sentence when determining eligibility for discretionary parole hearings. Prior to this, credits were deducted only from an inmate's maximum sentence.

With passage of AB 510, NDOC had to make numerous changes to its computer system that calculates parole eligibility dates. Although some changes were properly made, NDOC's computer system was not modified to deduct work and merit credits from an inmate's minimum sentence, when required by law. As noted, of 25 hearings tested, 3 inmates had incorrect parole eligibility dates because they earned, but did not receive, work and merit credit reductions to their minimum sentences. Of these, two inmates were housed longer than necessary, for 11 and 104 days, because the Board granted them parole based upon incorrect eligibility dates.

After errors with parole eligibility dates were discovered in the sample, auditors met with NDOC personnel and analyzed data from their computer system to determine the number of inmates affected, the average delay, and to estimate the potential cost of delayed parole releases. Discretionary parole hearings were delayed for about 750 inmates because their minimum sentences were not reduced for work and merit credits. The average delay was 24 days. Exhibit 2 shows the number of inmates that were affected and the number of days parole eligibility dates changed.

Ms. Giovannoni explained that determining the fiscal impact of delayed parole releases depends upon the assumptions made about which costs could have been reduced if the inmates had received timely parole releases. According to NDOC, the average cost of housing an inmate was about \$58 per day in fiscal year 2010. However, using NDOC's estimated incremental daily cost of \$6.64 for food and medical costs, auditors estimate expenditures of about \$71,000 could have been avoided.

Although NDOC informed auditors the problem with parole eligibility dates was corrected in October 2010, statutory changes that affect parole eligibility dates may occur in the future. Therefore, it is important for the Board and NDOC to work together to ensure inmates' parole eligibility dates are correct. Auditors recommend the Board, in conjunction with NDOC, develop a process to help ensure future law changes affecting parole eligibility are properly implemented.

Ms. Giovannoni concluded the presentation. The Board accepted the audit recommendation. She offered to answer questions from the Committee.

Chair Leslie stated considering all the details involved in this type of work it is a credit to the Parole Board that they did so well, adding that this was an unusually good audit. She thanked the Board.

Chair Leslie called for questions from the Committee. She then called for an agency representative to testify.

Chair Leslie congratulated the Board on the quality of the work being done. She commented this was good to see. She asked to hear from the Chairman about the audit recommendation made in regard to how the Board can work with the Nevada Department of Corrections (NDOC) when the Legislature makes a major policy change to be sure that the computer system changes are made so that the policy change can be implemented properly.

Ms. Connie Bisbee, Chairman, Nevada Board of Parole Commissioners, thanked the auditors for their work. The Board was very proud to show off their program and she wanted to publicly say that she was very pleased to lead an organization that has such good board members and staff. She stated it was very easy to be the chairman of such a board. As far as the recommendation, it had always been the policy of the Board to work with NDOC or the Division of Parole and Probation if they recognized there was an error or concern. She stated the Board had recognized there was a problem with the parole eligibility dates and notified and worked with NDOC to make the necessary changes.

Chair Leslie appreciated the comments but noted that the audit recommendation requested that the Board be proactive when a problem is noticed. She stated it would have been better if the issue could have been resolved quicker to save the state money by discharging inmates at the proper time. She stated the recommendation was just an extra reminder that we are one state that has to work together across departments. Chair Leslie reiterated this was not a reflection on the Board's work.

Ms. Bisbee stated that AB 510 involved an interpretation of the law. She stated the Board and NDOC realized the error at the same time and worked on correcting the issue.

Chair Leslie called for questions from the Committee.

Mr. Paul Townsend, Legislative Auditor, commented that auditors would like to see documentation of the process which would provide direction for the future. He stated

that might help the Parole Board in responding to the 60-day plan to provide a response that included more structure.

Chair Leslie agreed. She asked if the Board meets with NDOC to discuss issues.

Ms. Bisbee indicated that they do and further replied they were working on the 60-day plan and would have it completed before the deadline.

Chair Leslie asked whether the Board would have something in writing.

Ms. Bisbee agreed. She stated the Board is proactive in working with the Division of Parole and Probation and NDOC. The procedures would be put in writing.

Chair Leslie stated the Committee would like to see the framework of how the Board intended to carry this out.

Chair Leslie called for questions from the Committee.

Chair Leslie called for a motion.

ASSEMBLYMAN GRADY MOVED TO ACCEPT THE REPORT ON THE BOARD OF PAROLE COMMISSIONERS. THE MOTION WAS SECONDED BY ASSEMBLYMAN ATKINSON AND CARRIED UNANIMOUSLY.

E. Department of Business and Industry, Information Technology Security

Mr. Townsend introduced Jeff Rauh, Deputy Legislative Auditor; and Doug Peterson, Information Systems Audit Supervisor, to present the report.

Mr. Rauh began the presentation with an overview of the Department of Business and Industry. The Department is composed of a Director's Office and 14 subdivisions. In fiscal year 2010, the Department was authorized 673 full time employees and had authorized expenditures of about \$144 million dollars.

Mr. Rauh stated the audit objective was to determine if the Department's information security controls were adequate to protect the confidentiality, integrity, and availability of the Department's sensitive information and information systems.

Mr. Rauh reported the audit findings. The first item involved computers storing unencrypted sensitive personal information such as social security numbers. In six cases, agency databases included these unencrypted records. In addition, auditors found similar records on other computers including agency file servers as well as on individual desktop computers.

By collecting and storing such information without encryption, there is an increased risk that the information may be unintentionally released or accessed by hackers. If that happens, the affected persons must be contacted which is a time consuming and costly process. In addition, the affected persons run the risk that information could be used for identity theft.

Three recommendations were made to help lessen this risk, noting that the Department has already taken action to implement these recommendations.

Mr. Rauh addressed two items related to routine network maintenance. Auditors examined computers at 26 of the Department's offices throughout the state. Numerous instances (15% of sample) were found where virus protection was inadequate due to old virus definitions or missing antivirus software. In addition, auditors found computers missing Windows security updates but to a lesser degree.

Two recommendations were made in regard to network maintenance.

Mr. Rauh discussed two weaknesses with managing network users. Auditors identified five former employees with current network access. Also, the Department was not conducting background investigations on employees with access to sensitive personal information.

Two recommendations were made related to these exceptions.

Mr. Rauh continued the report presentation. He stated three divisions did not conduct annual security awareness training for employees. Mr. Rauh noted that during the audit a Department wide security awareness training program had been implemented.

Some network servers were not adequately protected. For example, auditors found doors to rooms containing sensitive computer equipment were not locked or network servers were located in rooms where daily business or public meetings were normally conducted. In another instance auditors found a wireless network that was not properly secured. This wireless network was secured prior to the completion of the audit.

Three web servers contained vulnerabilities. Two of three web servers with vulnerabilities were corrected prior to completion of the audit.

The Department accepted the recommendations related to these issues.

Mr. Rauh concluded the report presentation. The Department accepted all ten audit recommendations.

Mr. Rauh offered to answer questions from the Committee.

Chair Leslie stated the report indicated that some agency staff were unaware of the requirement to encrypt sensitive information. She asked if an issue like this would be included in the audit recommendation for security awareness training.

Mr. Rauh replied part of the security awareness training program would address the issue.

Chair Leslie asked for comments about the server room with the leaky roof that resulted in water damaged computer equipment.

Mr. Rauh replied the issue was on-going as there had been additional flooding since auditors had first identified the problem. As a result the Department had moved their servers to another room that was not being flooded. He was unaware if that was a permanent or a temporary move.

Chair Leslie stated the agency would be asked to provide additional information on the issue.

Chair Leslie called for questions from the Committee. She called for an agency representative to testify.

Assemblyman Atkinson asked if there were instances where the entire social security number was still used.

Mr. Rauh replied there are instances where databases have been constructed using social security numbers as the key relational database factor that links all of the tables together. He stated deleting those social security numbers would cause the database to malfunction. Mr. Rauh explained some agencies need to collect the full social security numbers due to child support enforcement laws. Mr. Rauh gave an example of ensuring that someone requesting a real estate license was not in arrears on child support payments. He stated whether that number needs to be recorded in a database is a different issue.

Chair Leslie recognized the agency representatives.

Todd Rich, Deputy Director, introduced Grant Reynolds, Senior IT Manager, Department of Business and Industry. He thanked the audit staff for the recommendations. He offered to answer questions from the Committee, adding that Mr. Reynolds would respond to any technical questions.

Chair Leslie asked for comments about the leaky roof situation. She asked if it had been fully resolved.

Mr. Reynolds replied that had occurred at the Industrial Relations Division. They moved the computer server to another room that does not have a flooding issue. He stated one of the recommendations was to put together a plan to address the physical security of servers that are not in a secured room.

Chair Leslie stated it sounded like they were going to a systematic review of all of their servers to ensure that the physical environment is appropriate.

Mr. Reynolds replied yes.

Chair Leslie called for questions from the Committee. She stated the agency response was good. She looked forward to receiving the report on their corrective action plan.

Chair Leslie called for a motion.

ASSEMBLYMAN ATKINSON MOVED TO ACCEPT THE REPORT ON
THE DEPARTMENT OF BUSINESS AND INDUSTRY, INFORMATION
TECHNOLOGY SECURITY. THE MOTION WAS SECONDED BY
ASSEMBLYMAN GRADY AND CARRIED UNANIMOUSLY.

F. Department of Taxation, Insurance Premium Tax

Mr. Townsend commented that the Department of Taxation had been audited in 2006 which addressed the Insurance Premium Tax. He recognized the difficulties

encountered when two agencies are involved, the Department of Taxation administers the tax and the Division of Insurance is the regulator. He stated as a result of the last audit the Department entered into a cooperative agreement with the Division of Insurance which clarified many shared responsibilities. Mr. Townsend noted this was an improvement from prior to 2006 when communication was very limited.

Mr. Townsend explained the audit today contains a fairly detailed and technical discussion of issues that auditors have with the tax, adding that some of the issues were complicated. He recognized that the Department of Taxation is not always going to have the insurance expertise to deal with them. However, auditors believe the Department can perform a basic review of the returns for accuracy, completeness, and reasonableness, which would help to determine underpayments and also to communicate those to the Division of Insurance. The Division of Insurance is set up to do desk audits, however, there are 1,400 insurers and they are looking back seven years, which entails a tremendous volume of work. Mr. Townsend stated communication from the Department of Taxation to the Division of Insurance on questionable returns would assist the Division in the review of these returns. He noted that is the emphasis of the audit recommendations today. He pointed out that the Division of Insurance was included in the auditors audit plan for the near future, which would include a follow up on these issues.

Mr. Townsend introduced Daniel Crossman, Deputy Legislative Auditor; and Shannon Ryan, Audit Supervisor, to present the report.

Mr. Crossman began the presentation with background information on the Department of Taxation and the Insurance Premium Tax. The Insurance Premium Tax was enacted in 1933 and is assessed on insurers transacting business in the State. Taxes are assessed on the net direct insurance premiums and annuity considerations collected by the insurers at a rate of 3.5%.

Exhibit 1 shows that the Insurance Premium Tax (IPT) is the third largest tax collected by the Department. Exhibit 2 shows the collection trend for fiscal years 2002 to 2010. Revenues increased by more than 65% from 2002 to 2007 but decreased by about 10% from the 2007 to 2010. Exhibit 3 shows the number of insurers by type that are actively licensed with the Division of Insurance and subject to the insurance premium tax.

Mr. Crossman stated the report described the cooperative agreement entered into between the Department of Taxation and the Division of Insurance providing a framework for their roles with respect to the insurance premium tax. He stated a copy of the most recent agreement was included in the audit as Appendix B.

Mr. Crossman reported the scope of the audit included a review of the insurance premium tax and related activities and focused on returns submitted for calendar year 2009 and prior years in some cases.

The objective of the audit was to determine if the administration of the insurance premium tax was performed accurately, equitably, and in accordance with applicable laws and regulations.

Mr. Crossman reported auditors found the current processes and controls utilized by the Department of Taxation for the administration of the insurance premium tax are not sufficient to ensure that all taxes are collected. He added that insurers did not always report and account for dividends properly.

Auditors found 15 of 16 insurers did not properly account for a certain type of dividend known as a paid up addition. These dividends are taxable according to Department of Taxation tax return forms and multiple opinions from the Attorney General. However, 15 insurers did not pay tax on the paid up addition dividends resulting in more than \$5 million in taxes being uncollected for 2007 to 2009. The Department did not adequately review the returns to identify the reporting errors.

Exhibit 4 shows the 16 insurers who had paid up additions totaling \$151 million in premiums, but only one insurer properly taxed the paid up additions for \$22 thousand, while the remaining \$5.2 million went uncollected.

Auditors found that companies that elect to pay tax on annuity considerations on the back end, when the annuity payments begin to be made back to the policy holder, are deferring significant amounts of considerations but are rarely paying tax on these amounts. Annuities are agreements whereby an individual is guaranteed to receive a series of stipulated amounts commencing either immediately or at some future date. The 15 insurers selected who elected to pay tax on the back end deferred about \$7.5 million in taxes in 2009. Only 6 of the 15 insurers paid any tax on annuitizations.

Exhibit 5 shows the 15 back end insurers reviewed and the amount of taxes they paid in 2009 on annuitizations. In 2009, these insurers deferred tax on a significant amount of considerations but paid tax of only \$322 thousand. The National Association of Insurance Commissioners (NAIC) Report referenced in this exhibit is part of a set of standardized reports required to be completed by each insurer and submitted to the NAIC. The information from the NAIC reports is used to populate the Nevada premium tax returns.

Exhibit 6 highlights one insurer who over a 3-year period deferred tax on 99.6% of reported annuity considerations even though it has been a back end reporter since 1976.

Mr. Crossman reported current tax return forms and instructions are confusing and do not provide for a precise accounting of annuity activities. Additionally, the Department does not review returns for reasonableness.

Monitoring annuity reporting continues to be a challenge. Auditors found the Department's annuity log was inadequate to make certain insurers were reporting and paying taxes on annuities consistent with their election method approved by the Insurance Commissioner. Additionally, the 2009 election log did not agree with the returns in 4 of the 25 insurers. Furthermore, auditors identified inconsistencies between the Department of Taxation's and the Division of Insurance's records in 8 of 25 insurers.

Auditors also found the annuity schedule used to document and calculate taxable and deferred annuity considerations was inaccurate or not properly used in 14 of 25 returns.

For example, deposit type contracts, which are not taxable according to an Attorney General opinion, were taxed by 4 of 7 insurers who included them in their IPT returns. These errors occurred because forms and instructions were inadequate and the Department's review of returns is not sufficient to identify reporting errors.

Certain insurance products reported on standardized reports to the NAIC used to support the tax returns, were not always reported or taxed consistently. Eight insurers showed "other considerations" on the NAIC reports; five reported these as annuity products in the insurance premium tax return while the remaining three did not include them in the return.

Because other considerations can be a significant portion of the total premiums and considerations for an insurer, it is important to determine their taxability. For example, one insurer reported total premiums and considerations of \$479 million for 2007 to 2009, 77% of which was "other considerations". The insurer did not report these products on its return. Confusion is caused by a lack of instructions regarding these products.

Although "other considerations" may be non-taxable or could be deferred as an annuity type product, if subjected to taxation, as much as \$32 million could potentially be due the state from the 8 insurers tested for tax years 2007 to 2009. More needs to be done to identify insurers with significant amounts of other considerations and investigate the taxability on a case-by-case basis.

Mr. Crossman stated auditors also identified other instances where insurers were allowed to take unsupported deductions without scrutiny by the Department. Ten of the 25 insurers claimed what may be legitimate deductions, but did not identify the nature of the deductions they were taking. Additionally, 7 of the 25 returns included amounts in returns that did not agree with the amounts reported in the NAIC reports.

The current tax forms and instructions for insurance premium tax are complex, insufficient, and contributed to many of the reporting errors identified in this report. The report highlights a few of the many inadequacies in the current forms and instructions. For example, individual lines on schedules are not clearly noted as being additions to or deductions from gross premiums. Additionally, instructions do not provide clear guidance on how to complete some sections of the return or how to account for varied insurance products with separate tax implications. Significant changes to the forms and instructions should contribute to more accurate returns and facilitate the review process. This needs to be a collaborative effort between the Department of Taxation and the Division of Insurance based upon the Division's expertise in this area.

Eleven recommendations were made to improve the overall insurance premium tax process with focus on actions the Department can take to enhance IPT collections.

The Department accepted all 11 recommendations.

Mr. Crossman concluded the report presentation. He offered to answer questions from the Committee.

Chair Leslie asked about the scope of the audit. Auditors tested 16 insurers with paid up additions, noting that 15 had problems. She asked how many insurers there were. She stated the report estimated that the misreporting was about \$5 million in taxes. She asked for a percentage of the whole, and for comments on the scope of the problem.

Mr. Crossman replied the insurers who have annuities are considered life and health insurers. He stated Exhibit 3 identified that 491 were registered. Auditors selected 25 insurers with annuities and the 15 noted in the report with paid up addition dividend issues were out of those 25.

Chair Leslie remarked about the amount of money the State should be collecting.

Mr. Crossman stated that testing was done on some of the largest returns.

Chair Leslie stated that information helped her to understand the issue. She stated that is the reason the legislature has had them doing desk audits because there is a lot of money out there in premium tax that is not being collected for various reasons. She asked if that was the general idea of the issue.

Mr. Crossman replied yes.

Chair Leslie stated the recommendations address what the Department of Taxation can do in conjunction with the Division of Insurance so the end result is that the state can collect the taxes they are owed.

Mr. Crossman agreed that was a fair assessment of the issue.

Chair Leslie called for agency staff to testify.

Mr. Dino DiCianno, Director, Department of Taxation, thanked the audit staff for their professionalism. The Department accepted and agreed with the audit recommendations. He understood that when the transfer from the Division of Insurance took place in 1993 that the Department's responsibility was for the gathering of the reports, processing of returns, depositing the money, and distributing that money to the General Fund. There was no transfer of knowledge or auditors from the Division of Insurance at that time. He stated the Department of Taxation needs to enhance communication with the Division of Insurance which they have attempted to do. He realized the Division of Insurance is constrained just as the Department is. Mr. DiCianno reported the Department has one individual that does this on an annual basis and to expect this one individual to do the desk audits will not happen unless there is some sort of budgetary change. Mr. DiCianno stated his goal is to do the best they can given the circumstances that we are in and that is to provide information to the Division of Insurance. He stated the Division of Insurance has the expertise and a longer period of time to conduct audits where the Department of Taxation does not. He thought this was important. Mr. DiCianno stated there was no question that monies owed the state should be paid. His concern was that he was unsure of what the true impact is until he gets that information from the Division of Insurance. He stated the Department would do everything they can to do make this work.

Chair Leslie stated the recommendations address developing a process to facilitate better communication. She understood that the Department of Taxation serves as a check and balance of the system.

Mr. DiCianno stated the whole idea is to enhance the communication with the Division of Insurance. He was going to rely on their expertise in the review of the returns and the reports. He stated the Department would provide an educational process for the insurance companies so they report and pay properly. He emphasized that would take a coordinated effort between the Department of Taxation and the Division of Insurance.

Chair Leslie agreed. She stated the audit was not laying blame on the Department. She stated it would make sense to add resources to collect these fees.

Mr. DiCianno understood that the Division of Insurance was required to put together an audit program which he believed was in place. He pointed out the Department had already begun the process based upon the audit recommendations. He was aware there was an attempt to redefine the Attorney General opinion with respect to certain specific issues. He realized he was not an expert on the insurance premium tax. It was not something the Department dealt with on a day-to-day basis. The Department relies on the Division of Insurance's expertise to assist the Department in that manner.

Chair Leslie appreciated the testimony presented by Mr. DiCianno.

Chair Leslie recognized Assemblyman Hogan.

Assemblyman Hogan stated in reading through the discussion of the problems identified there was a pattern of things not adequately defined in terms of the deductibility of certain types of specialized items, whether certain other things are taxable, etc. He stated the definitions needed to be clearer.

Chair Leslie asked for response from Mr. DiCianno.

Mr. DiCianno replied that was part of the reason the Department was requesting additional clarification from the Attorney General's Office. He believed that statutes are clear and that the definitions exist. He stated they are dealing with insurance companies that are very sophisticated taxpayers. He stated that was why it was important that the Department of Taxation in conjunction with the Division of Insurance solidify the returns, provide the educational process that is necessary to make sure that they do report and pay properly. That should be the focus. He did not believe that there was a need for additional legislation. He thought it was a matter of clarification, which could be accomplished at an administrative level.

Chair Leslie called for questions from the Committee.

Chair Leslie called for a motion. She noted that Assemblyman Atkinson was not present but that there was a quorum.

ASSEMBLYMAN GRADY MOVED TO ACCEPT THE REPORT ON THE DEPARTMENT OF TAXATION, INSURANCE PREMIUM TAX. THE MOTION WAS SECONDED BY ASSEMBLYMAN HOGAN AND CARRIED UNANIMOUSLY.

G. Presentation of Review of Governmental and Private Facilities for Children (A.B. 103)

Mr. Townsend stated this report was the result of a statutory requirement that the Audit Division perform these reviews. He introduced Jane Bailey, Audit Supervisor; Mike Herenick, Deputy Legislative Auditor; and Sandra McGuirk, Deputy Legislative Auditor. Ms. Bailey began the report presentation.

Ms. Bailey stated this report included the results of work as required by Nevada Revised Statutes 218G.570 through 218G.585. The report included the results of reviews of 6 children's facilities, unannounced site visits to 6 facilities, and surveys of 57 facilities.

Statutes require the Legislative Auditor to conduct reviews, audits, and unannounced site visits of governmental and private facilities for children. Auditors identified a total of 57 governmental and private facilities in Nevada that meet the requirements NRS 218G. This includes 21 governmental and 36 private facilities. Exhibit 1 shows the types of facilities in Nevada, their maximum capacity and average population, and their staffing levels for fiscal year 2010. In addition, 121 Nevada children were placed in 25 facilities in 12 different states outside of Nevada as of June 30, 2010. Exhibit 2 shows the number of children placed in out-of-state facilities and the placing entities.

NRS 218G requires facilities to forward to the Legislative Auditor copies of any complaint filed by a child under their custody or by any other person on behalf of such a child concerning the health, safety, welfare, and civil and other rights of the child. During the period from July 1, 2009, through June 30, 2010, auditors received 868 complaints from Nevada facilities.

Ms. Bailey stated the scope, objective, and methodology are noted in the report. As reviews are not audits, the audit work was not conducted in accordance with generally accepted government auditing standards.

Ms. Bailey stated one of the most common problems found at the six facilities reviewed was medication management. For example, auditors noted at least one type of medication management error at each of the facilities. Errors included not following physicians' orders, missing or incomplete medication documentation, and youths not receiving medications timely. Although facility employees receive training on the administration of medication, the delivery of instruction needs strengthening.

Generally, medication training includes the administration of medication to youths and identifying the signs and symptoms of illnesses. However, facilities should consider training to include medication management and handling medication errors. For example, facilities should document medications missed and the reason why, and medication errors, like incorrect dosage.

Statutes require employees of residential facilities for groups who assist residents with their medications to complete training and pass an examination approved by the Health Division of the Department of Health and Human Services. These facilities include those that provide services to persons with physical or mental disabilities or persons who are aged or infirm. Most of the children's facilities included in the reviews are not required to receive this training. However, this type of training may help reduce the number of medication errors and improve the facilities' responses to errors that do occur.

The Bureau of Health Care Quality and Compliance maintains a list of approved medication training programs on its website. As of September 2010, there were 10 programs on this list. Auditors contacted eight of these training providers. Six provided medication management training to persons outside their organizations and they provided auditors with information on the topics covered in the training. While some of the topics are not applicable to children's facilities, since they deal with elderly populations, most of the topics addressed common problems at children's facilities. For example, some of the topics included dispensing, storage and handling of medications, over the counter medications, documenting medication errors, and disposing of discontinued and expired medications. This training is available at a cost ranging from \$70 to \$100 for a full day class.

Auditors made one recommendation to all 57 facilities in Nevada. It was recommended that all facilities strengthen medication management training by having key medication management staff participate in training conducted by an agency independent of the facility. This training should include the administration of medication, documentation of administration and medical orders, and minimizing and handling medication errors. The Audit Subcommittee may wish to direct the Legislative Auditor to send a letter to all 57 Nevada facilities informing them of this recommendation.

Ms. Bailey concluded this portion of the presentation and offered to answer questions from the Committee in regard to this section of the report. She stated Ms. Sandra McGuirk would continue with additional information about the report.

Chair Leslie commented about the medication issue. Every single report has had this included as a major area of concern and every site visit performed by the auditors found this recurring problem. She stated auditors would be asked to forward a letter to all the facilities in the State informing them of this report and the recommendation. Chair Leslie added this would be included in the motion to accept the report.

Chair Leslie asked for comments on NRS 449.037(6)(e) where auditors make the point that this does not apply to some facilities. She stated that the Committee may want to add these facilities to this section of the law since the medication issue has been such an ongoing problem and the risk of harm is so great. She asked why these facilities were not included in that requirement.

Ms. Bailey replied there is a requirement in the statutes for training for certain children's facilities, however it is not as specific as NRS 449. She noted the Health Division has

enacted regulations related to NRS 449 which allows them to expand upon the law itself. She offered this was perhaps an option although some of these children's facilities are not licensed, such as detention facilities, and other facilities are licensed by different groups depending on whether they are mental health or group foster homes. She was not sure of the best way in which to organize that if it was something that could be done in one place in the statutes or if it would affect several statutes.

Chair Leslie stated that could be discussed later. She was willing to pursue the issue herself because she was concerned that every single report on these agencies always acknowledges they are not doing it correctly. She stated it is still a problem and it has been several years now.

Chair Leslie asked for comments on the number of kids placed out-of-state. This current report states 121 youth were placed in 25 different facilities in 12 different states. She asked what the trend was and if the numbers had increased from the last report.

Ms. Bailey replied she believed the number in the last report was higher and included different states. Although the numbers had gone down since the last report, recently auditors had noted a slight increase, adding the numbers fluctuate depending on what time period they are looking at the issue.

Chair Leslie called for questions from the Committee. She asked for the presentation to continue.

Ms. McGuirk stated during the course of the auditor reviews, policies and procedures, youth files, and management information were examined. Auditors also discussed related issues and observed related processes in place at the facilities.

Based on the procedures performed and except as otherwise noted, the policies, procedures, and processes in place at the facilities reviewed provide reasonable assurance that they adequately protect the health, safety, and welfare of the youths at the facilities, and they respect the civil and other rights of youths in their care. In addition, during the six unannounced visits conducted, auditors did not note anything that caused them to question the health, safety, welfare, or protection of the children in the facilities.

The report discussed a review of policies and procedures. Auditors noted policies were either not developed or needed to be updated at all six facilities. The types of policies and procedures that were missing, unclear, or outdated ranged from mandatory reporting of child abuse and neglect, to off campus activities.

The review of youth files included medication administered, evidence of a youth's right to file a complaint, treatment plans, and emergency contacts.

Ms. McGuirk noted that medication administration processes and procedures need improvement at all six facilities. The medication administration process includes documentation of medications administered to youths, controls over prescribed medications, and the process used to ensure the accuracy of medical files and records.

Youth medical files did not contain complete or clear documentation of dispensed, prescribed medication at five of six facilities. For example, at one facility 14 of 20 youth files reviewed were missing documentation or documentation was incomplete. Some youths' files were missing evidence of physicians' orders, while others were missing medication administration records. In addition, youths did not always receive medications timely at two of six facilities. For example, at one of the facilities 6 of 10 medication files indicated youths did not receive prescribed medication for up to 31 days.

Medication administration procedures include procedures used to ensure youths take medications administered. For example, auditors noted staff did not check to ensure youths did not conceal medication administered at four of six facilities. In addition, an approved, non-prescription medication list needs to be developed or updated at four of six facilities.

Ms. McGuirk stated complaint processes need improvement. For example, youth files did not always contain evidence of a youth's acknowledgement of his right to file a complaint at three of the six facilities.

This report also contains an update on the Nevada Youth Training Center (NYTC). Auditors completed an unannounced site visit to the facility in April 2010. The focus of the visit was to review actions taken by the facility to address supervision, the complaint process, and contraband. It was found that NYTC had made improvements in all of these areas. In addition, auditors reviewed required and recommended training of staff that have direct contact with youths. For example, auditors reviewed Use of Force and Handle with Care training. Based on testing, it was noted that staff did not always receive required and recommended training. Facility management stated that, while training is ongoing, NYTC has developed a corrective action plan to ensure that all mandatory training is completed. Also employees did not always receive annual evaluations. Completing timely annual evaluations may identify training deficiencies. According to facility management, annual evaluations were to be completed by August 2010.

Exhibit 3 includes a map of the six facilities reviewed. The report includes details on issues noted at each facility, as well as each facility's response. For example, the report discussed Horizon Academy beginning with background information, followed by the purpose of the review, results in brief, observations, and the facility's response to each observation. Some of the areas noted for improvement at Horizon included medication administration processes and procedures, and strengthening its supervision of youths. Auditors observed eight instances of unsupervised youths and youths supervising other youths.

Ms. McGuirk concluded the presentation. She offered to answer questions from the Committee.

Chair Leslie thanked the audit staff for the work performed in this review. She was disturbed at some of the training issues noted in the report. For example on the issue of

mandatory reporting of child abuse she was surprised that these reports were not being completed, that some agencies that are providing services to kids do not understand or do not adequately train their staff.

Ms. McGuirk stated it is not that the facilities do not have policies, it is that on mandatory child abuse and neglect some of the policies need to be updated. She stated confusion is created because some of the staff members are not identified as mandatory reporters when in fact almost all of the staff would be mandatory reporters. Also the other common issue auditors see is that the chain of command in a facility may create additional confusion. Sometimes the training manual and the policies and procedures require different persons to report.

Chair Leslie had seen the discrepancies in a couple of places. She stated the facilities seem receptive when the auditors point out the issues and in their response they all said the right things. However, when the auditors are actually out at the facilities she asked if they had received the response that the policies conflict and that staff may be confused about who they are suppose to report to. She noted several instances where auditors actually found concrete evidence that something had not been reported when it should have been. She asked what was the general response when these issues were uncovered.

Ms. McGuirk stated it depends on the management of the facility. She stated in some cases auditors have had a situation where the acts were consensual and the staff had interpreted the law incorrectly. They felt they did not have to report the information, when in fact the law is fairly clear. She stated management needs to ensure that all staff are completely aware of their responsibilities in reporting these events. Without the facilities' help, Child Protective Services (CPS) and law enforcement cannot complete their part in all of this. She added it is critical that each key person in each facility be aware that they are mandatory reporters and must comply with the requirements of the statute.

Chair Leslie stated that was a great example of why it is so important that the auditors do this work to point out these issues. She was also disturbed about the update on the review of NYTC. Chair Leslie reported this facility is the whole reason for this report requirement because of the federal investigation of civil rights at this facility, which is a state facility. She took particular interest in this facility because it is a state facility and that the CRIPPA report included issues on physical abuse and staff issues. She reported she had been told for years that NYTC had increased their training and taken care of those issues by adding additional mental health staff and by the addition of a nurse. She reiterated the training of staff was a critical problem and that was why the state was referred for civil rights violations. Chair Leslie read in the follow up report that staff did not always receive the required and recommended training and that NYTC now has another corrective action plan. She asked auditors to what extent was this issue noted and was it a bigger problem. She stated this information was not conclusive from the summary in the report.

Ms. McGuirk replied auditors selected five employees based on complaint information auditors had received throughout this process. Of the five personnel files auditors reviewed, two were not up to date on either required or recommended training. She stated recommended training in certain circumstances comes from analyzing a complaint and the reason for it, and what could have been done differently. She stated the training of Use of Force and Handle With Care is vital. She noted in NYTC's case they had experienced an increase in their population of youths with the closing of Summit View. It appeared that NYTC tried to streamline the training to the individuals who needed that training. However, in doing that there is always the chance of failing to train an individual.

Chair Leslie stated she was even more concerned after hearing this level of detailed information. She stated she would have questions for the Division in regard to this issue.

Chair Leslie called for questions from the Committee.

Assemblyman Grady disclosed that his son is a juvenile probation officer in Winnemucca and was hired prior to his being in the position as an assemblyman.

Chair Leslie called for an agency representative to testify. She asked for comments on NYTC and general comments about how the Division would utilize the report findings to take corrective action.

Mr. Fernando Serrano, Deputy Administrator for Juvenile Services, Division of Child and Family Services, stated the Division had reviewed the report and that they have oversight of the process. He assured the Committee that all evaluations are up-to-date, all training is up-to-date, and is scheduled on an ongoing basis. He reemphasized that Handle With Care is regarded as a national best practice in the field; and Use of Force guidelines that are taught to staff are per Department of Justice (DOJ) instructions. The Division offers training that is nationally recognized. In this instance, the two individuals that had not received training, have now received the training. The Division has upgraded communication between the supervisors on site and the training officer. The training officer is required to produce a monthly report to confirm that all training and evaluations are completed.

Chair Leslie asked for comments on the issue of how the closing of Summit View has affected NYTC.

Mr. Serrano replied they currently have one youth remaining at NYTC who was transferred from Summit View. The other youths have come since. He emphasized to the Committee that the presenting offense does not necessarily indicate what the behaviors might be at the facility. For example, many times a younger more impulsive youth who has made that decision which has had him placed into the facility may be more likely to act out than a minor who has been through the system and has a more extensive history. Not to say that can happen but that is not necessarily an indicator. Far more important is the background that the youth presents in regard to the mental health status evaluations that have taken place. Review of behavior reports that have

taken place many times provide a better indicator than the presenting offense. He stated the youth at any of the facilities at any time, given their mental status makeup, could act out and require intervention.

Chair Leslie interjected she understood that these are difficult youth. She referred back to his first statement about Summit View kids being integrated and NYTC. Mr. Serrano had stated there was only one remaining child at the facility. She asked if there was still one child at Summit View. She asked for clarification of the issue.

Mr. Serrano replied there is one youth left at NYTC that had been transferred from Summit View.

Chair Leslie stated since Summit View has been closed obviously kids who previously might have gone to Summit View have gone somewhere else and she supposed that NYTC has received some of these kids. She asked for comments on where this level of youth are being taken care of.

Mr. Serrano replied those youth are being housed at NYTC. He stated a younger, less sophisticated male youth is housed at Caliente and the older, more sophisticated youth are housed at NYTC.

Chair Leslie asked is the training being provided at NYTC which has a history and a culture of staff inappropriately working with a lot of these difficult kids. She asked if the training provided by the Division is adequate for staff to safely and appropriately interact with the youth at NYTC.

Mr. Serrano replied yes. He stated Handle With Care is a national best practice, adding, these programs around the country are closely scrutinized before being named as a best practice. He stated the Division goal was to now increase the efficiency in which Handle With Care techniques are carried out.

Chair Leslie stated if the Division is not providing the training to the staff and the auditors found that at least two people of the five people tested had not received it, it does not matter how good the training is if people do not receive it.

Mr. Serrano replied the audit report was very well taken. They have changed their internal mechanisms to ensure that the training does take place.

Chair Leslie replied ok. She was still very concerned about NYTC.

Mr. Serrano pointed out that a lot of good things are happening at NYTC.

Chair Leslie agreed NYTC had improved but she reflected that NYTC had received a lot more difficult kids in the last year. She thanked Mr. Serrano for the testimony.

Chair Leslie called for questions from the Committee.

Chair Leslie called for a motion.

ASSEMBLYMAN GRADY MOVED TO ACCEPT THE REPORT ON THE REVIEW OF GOVERNMENTAL AND PRIVATE FACILITIES FOR CHILDREN (A.B.103) AND INCLUDE A LETTER TO ALL OF THE FACILITIES IN THE STATE REGARDING THE MEDICATION TRAINING. THE MOTION WAS SECONDED BY ASSEMBLYMAN ATKINSON AND CARRIED UNANIMOUSLY.

Item 4—Follow-up on six month report from prior meeting (NRS 218G.270)

Mr. Townsend stated normally auditors present six month reports to review the implementation status of the audit recommendations. Although none are available for this meeting, auditors have three follow-ups where at a prior meeting the recommendations were not implemented so the agencies were asked to return to a future meeting. This is how the auditors help ensure that the recommendations are properly addressed.

A. Office of State Public Defender

Mr. Townsend introduced Ms. Shannon Ryan, Audit Supervisor, to present the report.

Ms. Ryan stated in November 2009, auditors issued an audit report on the Office of State Public Defender that contained 8 audit recommendations. In September 2010, the status of the recommendations was presented to the Audit Subcommittee. At that time three recommendations were fully implemented and five were partially implemented. Auditors had requested that the Office provide information to the auditors regarding the partially implemented recommendations. Based on a review of that information auditors have determined that all but two recommendations have been fully implemented. Those two recommendations are related to the proper completion and submission of reports. Auditors are continuing to review information and procedures from the Office. The Office is very close to achieving full implementation and after some minor revisions the remaining recommendations will be fully implemented. Auditors will continue to review and monitor the recommendation status of the two partially implemented recommendations. Auditors do not have any questions for the Office at this time. However, an agency representative is at the meeting to answer questions from the Committee.

Chair Leslie called for questions from the Committee. Chair Leslie offered for agency testimony. There was none.

Chair Leslie called for a motion.

ASSEMBLYMAN GRADY MOVED TO ACCEPT THE FOLLOW-UP SIX-MONTH REPORT ON THE OFFICE OF STATE PUBLIC DEFENDER. THE MOTION WAS SECONDED BY ASSEMBLYMAN ATKINSON AND CARRIED UNANIMOUSLY.

B. Department of Corrections, Inmate Programs, Grievances, and Access to Health Care

Mr. Townsend stated additional information was included in the Committee packet which was provided from the agency. He introduced Mr. Rocky Cooper, Audit Supervisor, to present the report.

Mr. Cooper stated in September 2008, auditors issued an audit report on the Department of Corrections, Inmate Programs, Grievances, and Access to Health Care that contained 31 audit recommendations. As of June 2009, 17 recommendations were fully implemented and 14 were partially implemented. As of November 5, 2009, the Department had fully implemented 20 recommendations and 11 were partially implemented. On November 2, 2010, auditors requested the Department provide an update on the status of the 11 partially implemented recommendations. However, as the date of this letter, the Department did not reply. He added, auditors recently received an update on the status of the 11 partially implemented recommendations which showed significant progress by the Department. Based on auditor review of the information provided, nine more recommendations are now fully implemented. Although the Department indicated that all recommendations were implemented, complete documentation was not provided to support the full implementation of two recommendations. Therefore auditors had questions regarding Recommendations Number 2 and Number 4. Both recommendations relate to measuring the effectiveness of correctional programs.

Mr. Cooper stated Recommendation 2 is to develop policies and procedures for conducting required assessments of correctional programs every three years. He noted that this was a statutory requirement. Auditors had two questions regarding this recommendation. He asked does the Department have detailed procedures for conducting required assessments of correctional programs and has the Department started to conduct assessments of correctional programs every three years.

Chair Leslie called for an agency representative to testify.

Ms. Kim Peterson, Education Consultant, Department of Corrections, replied the Department does have operating procedures in place for assessments of their programs. She stated the Department will be doing assessments at six-month intervals, one-year intervals, and three-year intervals on the recidivism rates that will compare the inmates who have gone through the programming courses to the general inmate population. She added that reports are currently being run in the NOTIS System.

Chair Leslie asked for information on the review of the policies and procedures.

Mr. Cooper offered to follow up on reviewing those policies and procedures.

Mr. Cooper stated Recommendation 4 is to develop written goals and performance measures for correctional program classes and the reentry program. He asked if the Department had developed written goals and performance measures for each correctional program.

Ms. Peterson replied the Department now requires all of their new programs to include goals, measurable outcomes, and objectives when submitting a proposal. For current programs the Department has implemented that each program has a pre-and post-test component. The instructors are asked to include these pre-and post-test scores along with their monthly reports. She emphasized that all new programs would have measured goals and outcomes.

Chair Leslie asked that auditors review the reports to see if the programs are adequate.

Mr. Cooper replied auditors would review the programs. He thanked the Department for their efforts in addressing the audit recommendations, adding that the documentation reviewed in other areas was thorough. He stated auditors would follow up with the Department on the last two audit recommendations.

Chair Leslie called for questions from the Committee. She asked Mr. Townsend if the Committee would receive follow-up information on the last two recommendations.

Mr. Townsend replied auditors would review the last two recommendations and would not necessarily have to do a formal report but the Department would be monitored for implementation status. He recommended that the Committee would hear back on the Department only if a problem existed with the implementation of the last two audit recommendations.

Chair Leslie agreed.

Chair Leslie called for a motion.

ASSEMBLYMAN GRADY MOVED TO ACCEPT THE FOLLOW-UP SIX-MONTH REPORT ON THE DEPARTMENT OF CORRECTIONS, INMATE PROGRAMS, GRIEVANCES, AND ACCESS TO HEALTH CARE. THE MOTION WAS SECONDED BY ASSEMBLYMAN ATKINSON AND CARRIED UNANIMOUSLY.

Mr. Townsend pointed out to the Committee that during the 2011 Legislative Session he would be working with the money committees. He stated when the Department of Corrections budget came up, audit information would be communicated to the Committee.

C. Department of Business and Industry, Real Estate Division

Mr. Townsend introduced Mr. Rocky Cooper, Audit Supervisor, to present the report. He stated additional information had been provided to the Committee as well.

Mr. Cooper stated in November 2009, auditors issued an audit report on the Department of Business and Industry, Real Estate Division that contained 12 audit recommendations. As of September 29, 2010, eight recommendations were fully implemented and four were partially implemented. On November 2, 2010, auditors requested the Division provide an update on the status of the four partially implemented recommendations. However, as of the date of this letter the Division did not reply. Mr.

Cooper stated auditors had recently received an update on the status of the four partially implemented recommendations from the Division. Based on review of the information provided the Division has made significant progress. He stated new procedures are in place to ensure revenues are deposited timely, and procedures are in place to monitor the status of complaints. Security requirements have been addressed regarding employee access to licensees' social security numbers in the Division's database including the masking of licensees' social security numbers, and procedures have been developed to ensure ongoing compliance with the State's IT security standards. Because of the Division's progress auditors have no questions for the Division. He thanked the Division for their efforts in implementing the audit recommendations since the last meeting in September 2010.

Chair Leslie called for questions from the Committee. She asked if the agency representative would like to testify.

Chair Leslie called for a motion.

ASSEMBLYMAN ATKINSON MOVED TO ACCEPT THE FOLLOW-UP SIX-MONTH REPORT ON THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION. THE MOTION WAS SECONDED BY ASSEMBLYMAN GRADY AND CARRIED UNANIMOUSLY.

Chair Leslie expressed appreciation to the auditors for their work.

Item 6—Public Comment

Chair Leslie asked for public comment.

Mr. Barry Lovgren, private citizen, stated he had submitted written testimony and supporting documents and asked that they be attached to the minutes. He asked to read his written testimony.

Chair Leslie asked that the testimony be summarized because he had submitted written testimony to the Committee.

Mr. Lovgren was here to ask for an LCB audit of the Substance Abuse and Treatment Agency (SAPTA) for the following reasons. In 2000 an LCB audit of the agency found that it was out of compliance with the federal block grant requirement to publicize that each of its treatment programs offers pregnant women treatment and admission priority but instead was delegating that responsibility to the treatment programs. He stated SAPTA continues to delegate responsibility for the publicity requirement to the treatment programs and as a consequence since 2004 the annual number of substance abusing pregnant women receiving treatment has decreased by half while the number of live births in Nevada has gone up by 25%. Second, SAPTA does not meet the federal block grant requirement to assess the needs of pregnant women in Nevada. Third, SAPTA is in violation of NRS 458.025 by its failure to develop a state plan for the prevention and treatment of substance abuse for the past three years. SAPTA is in violation of NRS 458.025 by its failure to adopt regulations providing for the certification

of detoxification technicians. SAPTA is in violation of NAC 458.118 by its certification of treatment programs according to criteria other than SAPTA criteria. SAPTA is in violation of NRS 458.035 by establishing a sub grant instead of a contract for the center for the application of substance abuse technologies to perform certification inspections. SAPTA is either in violation of NRS 239.310 by concealing public records or it does not have a fund source ledger of where state and federal monies are going. SAPTA has adopted a sliding fee schedule that severely penalizes families and ignores collection practices other than the requirement that treatment continued to be offered to those unable to pay. A single person with an income within 200% of the federal poverty level qualifies for SAPTA funded treatment. Mr. Lovgren gave examples of the program.

Mr. Lovgren concluded that he had addressed these concerns with SAPTA to no avail. And he had also addressed with SAPTA that their phone number is not listed meaning that a pregnant women seeking referral to SAPTA funded treatment cannot find SAPTA's phone number in the telephone directory. He hoped the Subcommittee would have more success than he has in getting SAPTA to remedy these problems. He concluded his presentation.

Chair Leslie stated he had raised some very valid concerns. She had spoken with Mr. Townsend and asked when the next agency audit would be coming up for review. She thought it was fairly soon.

Mr. Townsend stated recently the Audit Division had established the audit program for the next two years, which had been approved by the Legislative Commission. He stated the Division of Mental Health and Developmental Services is included in the audit plan. He assured the Committee that when the audit is started that Mr. Lovgren's comments would be reviewed and SAPTA would be included within the scope of the audit. He stated the audit would begin as soon as staff are available.

Chair Leslie stated the audit would be taken up soon. She had her own issues with SAPTA above and beyond issues that Mr. Lovgren had raised before the Committee this day. She assured Mr. Lovgren that the auditors would take a good look at the issue during the audit process.

Chair Leslie thanked Mr. Lovgren for his testimony.

Chair Leslie asked for additional public testimony.

Chair Leslie noted there were no further comments.

Chair Leslie noted the next meeting of the Audit Subcommittee would probably be following the 2011 Legislative Session.

The meeting was adjourned at 12:27 p.m.

Respectfully submitted,

Donna Wynott, Audit Secretary

Senator Sheila Leslie
Chair of the Audit Subcommittee
of the Legislative Commission

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