

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS**

**Seventy-Fourth Session
March 14, 2007**

The Committee on Ways and Means was called to order by Chairman Morse Arberry Jr. at 8:00 a.m., on Wednesday, March 14, 2007, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Morse Arberry Jr., Chairman
Assemblywoman Sheila Leslie, Vice Chairwoman
Assemblywoman Barbara E. Buckley
Assemblyman Mo Denis
Assemblywoman Heidi S. Gansert
Assemblyman Tom Grady
Assemblyman Joseph P. (Joe) Hardy, M.D.
Assemblyman Joseph Hogan
Assemblywoman Ellen Koivisto
Assemblyman John W. Marvel
Assemblywoman Kathy McClain
Assemblyman David R. Parks
Assemblywoman Debbie Smith
Assemblywoman Valerie E. Weber

STAFF MEMBERS PRESENT:

Mark W. Stevens, Assembly Fiscal Analyst
Steve Abba, Principal Deputy Fiscal Analyst
Jeff Ferguson, Program Analyst
Mindy Martini, Program Analyst
Patricia Adams, Committee Assistant
Connie Davis, Committee Secretary

**ELECTED OFFICIALS - STATE TREASURER (101-1080) BUDGET PAGE
ELECTED-123**

Kate Marshall, State Treasurer, identified herself for the record and introduced the members of her staff, Renee Parker, Esq., Chief of Staff; Patrick Foley, Chief Deputy Treasurer, Las Vegas; Mark Winebarger, Deputy of Cash Management; Janice Wright, Senior Deputy Treasurer, Nevada College Savings Plans; Drew Solomon, Senior Deputy State Treasurer, Las Vegas; Stacy Johnson, Management Analyst, Cash Management; Diana Vansickle, Deputy for Investments; Stacy Shaffer, Executive Assistant; Robin Reedy, Deputy Treasurer, Debt Management; Jim Burke, Deputy for Unclaimed Property; Lori Chatwood, Securities Administrator.



Ms. Marshall, who was before the Committee to present the Office of the State Treasurer's budget requests, pointed out that most requests for budget enhancements were associated with training and information technology costs. Ms. Marshall advised that, if approved, the enhancements would add to the overall efficiency of the Office of the State Treasurer to better serve the state of Nevada.

Ms. Marshall advised that she had provided the Committee's staff with a letter dated March 7, 2007, that amended the agency request in Budget Accounts 1080, 1088, and 3815, which would be addressed as each budget account was discussed.

Beginning with Budget Account 101-1080, Ms. Marshall noted that in the base budget, expenditures for check distribution, or postage costs, were budgeted at the work program level of \$151,540 in each year of the biennium, but the actual amount reflected for fiscal year 2005-2006 was \$117,540. Ms. Marshall indicated that over the past four fiscal years, the actual check distribution mail expense had amounted to less than \$120,000 in each fiscal year, and an expenditure of approximately \$119,000 was projected for fiscal year 2007 based on costs-to-date. Ms. Marshall indicated she would continue to work with the Committee's staff to develop a more accurate estimate of costs going forward.

Ms. Marshall directed the Committee's attention to budget enhancement request E252, which recommended \$6,422 in fiscal year 2007-09 and \$7,407 in fiscal year 2008-09 to attend the National Association of Treasurer's (NAST) legislative conference and management conference. Ms. Marshall pointed out that the costs were not included in the base budget as her predecessor, who was a past president of the NAST, had attended the conferences with all expenses paid by NAST.

Ms. Marshall advised that budget enhancement E250 recommended funding to allow the Management Analyst responsible for "pooled collateral" to attend the NAST training to meet with representatives of the state of Tennessee and the state of Texas to review and exchange operating procedures and review operating systems for pooled collateral applications.

Ms. Marshall reported that budget enhancement E251 recommended funding to allow the Management Analyst responsible for debt management to attend the NAST annual conference and the Government Finance Officer's Association. Ms. Marshall pointed out that Robin Reedy's twenty years of experience in debt management was invaluable and that if the Management Analyst position should become vacant at some point in the future, another employee would have to be trained in debt management services. Ms. Marshall advised that the base budget contained funding for the Deputy Treasurer for debt management to also attend the conferences, which could be justified as cross-training.

Ms. Marshall discussed budget enhancement request E710 for 12 desktop personal computers and associated software, surge protectors, and two laptop computers. The replacements were in accordance with the Department of Information Technology (DoIT) replacement schedule.

Additionally, Ms. Marshall discussed budget enhancement request E714 to replace a pressure seal unit, which was used to fold and seal 35,000 checks per month. Ms. Marshall pointed out that The Executive Budget had requested two

fold and seal units, and the March 7, 2007, letter to the Committee's staff changed the request to a single machine for a total one-time cost of \$7,885.

Ms. Marshall also discussed budget enhancement request E721 to purchase software for the agency's disaster recovery plan. The request had been modified in the March 7, 2007, letter to request a server that would mirror the data in the Carson City office for the Las Vegas office. Ms. Marshall pointed out that the request for a server would reduce the funding request from \$23,106 for fiscal year 2007-08 to \$21,925.

In response to Assemblyman Denis, who asked for information relative to the current method of recovery, Patrick Foley, Chief Deputy Treasurer, Las Vegas, advised that information was copied onto tapes, which were placed in an off-site safety deposit box on a weekly basis.

There was no response to a request for public testimony, and Chairman Arberry declared the hearing on the State Treasurer's budget closed.

ELECTED OFFICIALS – STATE TREASURER HIGHER EDUCATION TUITION
ADMINISTRATION (603-1081) – BUDGET PAGE ELECTED 133

Kate Marshall, Nevada State Treasurer, began the budget presentation for the Higher Education Tuition Program with the following statistics relative to the number of children participating in the program in the districts represented by the members of the Committee:

<u>Legislator</u>	<u>Number of Children</u>
Assemblyman Arberry	553
Assemblywoman Leslie	1,882
Assemblywoman Buckley	182
Assemblyman Denis	277
Assemblywoman Gansert	1,785
Assemblyman Grady	828
Assemblyman Hardy	820
Assemblyman Hogan	739
Assemblywoman Koivisto	298
Assemblyman Marvel	1,180
Assemblywoman McClain	222
Assemblyman Parks	460
Assemblywoman Smith	399
Assemblywoman Weber	574

Additionally, Ms. Marshall provided the following information:

- The Nevada Higher Education Tuition Program was authorized by the Legislature in 1997 as a method to prepay college tuition.
- The program locked in the costs of future higher education tuition at current costs.
- Participating costs were as little as \$32 per month to purchase a contract to prepay tuition with a 100 percent guarantee.

Ms. Marshall addressed a fiscal year 2006 actuarial study that reported Nevada had sufficient assets to cover the value of the tuition obligation for all contracts outstanding as of June 30, 2006. The study reported the program had \$97,531,679 in assets and a fiscal year 2005-06 positive reserve balance of \$1.03 million, a decrease of \$5.70 million from the previous year's actuarial study. Ms. Marshall explained the decrease in the reserve balance occurred as a

result of an increase in the Nevada System of Higher Education (NSHE) tuition rate of 10.9 percent in 2007 and in 2008. Ms. Marshall provided assurance that the fund was fiscally sound and that the surplus was expected to continue to grow as existing contracts and installments of approximately \$800,000 were paid each month.

Additionally, Ms. Marshall reported that the actuarial valuation reported the program's fund balance was estimated to have a 51 percent probability of being adequate to satisfy all program obligations, a decrease from the previous year's actuarial report that reported a 61 percent probability to satisfy all obligations. Ms. Marshall explained that the decrease was again a result of tuition increases, but she said the actuaries had determined that the fund exceeded their best estimate reserve of \$108 million by its actual fund balance of \$109 million. Additionally, Ms. Marshall advised that a \$10.7 million ending fund balance had been projected for the year 2027 when all obligations would be paid.

Ms. Marshall discussed the General Fund loans that established and maintained the Higher Education Tuition Administration account and advised that a ten-year repayment schedule was approved by the Legislature in 2003. The current loan balance was \$3.5 million with repayment scheduled to be completed in 2013.

Ms. Marshall advised the Committee that the only enhancement requested was recommended in E710 for technology equipment in accordance with the Department of Information Technology (DoIT) replacement schedule.

There was no response to the request for public testimony, and Chairman Arberry declared the hearing on the Nevada Prepaid Tuition Program closed.

ELECTED OFFICIALS – MILLENNIUM SCHOLARSHIP ADMINISTRATION
(261-1088) BUDGET PAGE ELECTED-138

Kate Marshall, State Treasurer, began her presentation of the Millennium Scholarship Administration budget with a discussion of enhancement request E807. Enhancement E807 recommended funding to upgrade one administrative assistant 2 position to an administrative assistant 3. Ms. Marshall withdrew the request indicating her preference to enlist the assistance of the Department of Personnel to review the duties and responsibilities of the position. The withdrawal resulted in a budget reduction of \$4,389 in fiscal year 2008 and \$4,576 in fiscal year 2009.

Continuing with a discussion of major issues, Ms. Marshall provided the following information relative to the Millennium Scholarship and three projected fund balance formula-driven models ([Exhibit C](#)) with four iterations.

The first model ([Exhibit C](#)) was based on an assumption of projections provided by Global Insight, a financial analysis and economic forecasting company:

- The first iteration reflected an annual transfer of \$7.6 million from the Unclaimed Property Fund, providing the Millennium Scholarship Fund solvency through the year 2019.
- The second iteration provided the ability to draw a total \$7.6 million from the Unclaimed Property Fund at any time during the year rather than at the end of the fiscal year providing the Millennium Scholarship Fund solvency through the year 2019.

- The third iteration drew \$10.4 million from the Unclaimed Property Fund providing the Millennium Scholarship Fund solvency through the year 2060.

Ms. Marshall advised that the first model assumed no reduction in Global Insight's tobacco revenue projections; the second model assumed a 10 percent reduction in Global Insight's projections; the third model assumed an 18 percent reduction in Global Insight's projections. Ms. Marshall explained that the 10 percent reduction was based on the percent of reduction used by the Treasurer's Office and on an actual 10.2 percent reduction in fiscal year 2006 tobacco revenue. The model using an 18 percent reduction was based on a memo from Global Insight in June 2006 suggesting the possibility of an 18 percent reduction in tobacco revenues.

Ms. Marshall pointed out that using a 10 percent reduction with an annual \$7.6 million transfer from Unclaimed Property, the Millennium Scholarship Fund was solvent through 2016, and using a 10 percent reduction with a \$10.4 million annual transfer from Unclaimed Property, the program was solvent through 2020. Assuming an 18 percent reduction with an annual \$7.6 million transfer from Unclaimed Property, the fund was solvent through 2014, and using an 18 percent reduction with a \$10.4 million annual transfer from Unclaimed Property, the program was solvent through 2018.

Assemblywoman Smith noted that the worst-case scenario projections were better than the 2005 projections.

Ms. Marshall indicated that the projections were better as a result of changes to Millennium Scholarship eligibility requirements enacted by the 2005 Legislature. Ms. Marshall reported that in fiscal year 2006, there were 8,678 eligible participants in the Millennium Scholarship Program, which indicated a 0.8 percent change.

Ms. Marshall advised that the following participation assumptions were provided by the Nevada System of Higher Education (NSHE):

- In fiscal year 2007, 8,537 scholars were projected to participate in the Millennium Scholarship Program, a 1 percent reduction in eligibility.
- In fiscal year 2008, 9,212 scholars were projected to participate in the Millennium Scholarship Program, an increase of almost 8 percent.
- In fiscal year 2009, 9,728 scholars were projected to participate in the Millennium Scholarship Program, an increase of 5.5 percent.

Ms. Marshall advised that the projections that had been received from the Western Interstate Commission for Higher Education (WICHE) included legislative changes and were only based on data from one semester.

In response to questions Assemblywoman McClain asked regarding whether Global Insight's projections included revenue from tobacco companies that did not participate in the 1998 Master Settlement Agreement, Ms. Marshall indicated the non-participating tobacco companies were included in the revenue projections, and payments were to begin in 2008.

In response to Assemblywoman McClain, who asked for information relative to the degree of confidence that the payments would begin in 2008, Ms. Marshall

indicated she would contact Global Insight and provide the information to Assemblywoman McClain.

In response to Chairman Arberry, who asked what the largest contributing factor was to the decrease in Millennium Scholarship payments, Ms. Marshall reiterated that the NSHE projected a fiscal year 2007 decrease in the number of eligible students based on legislative changes to eligibility requirements.

In response to Chairman Arberry, who asked how many Millennium scholars lost their scholarship based on the "two-strikes and you're out" provision, Ms. Marshall advised that 447 students lost their eligibility due to the two-strikes rule.

In response to Chairman Arberry, who asked for the number of students who were able to regain their scholarship, Ms. Marshall explained that a scholar could regain a lost scholarship only once. A second loss meant the student was ineligible to participate in the program again.

In response to Assemblywoman Gansert, who asked whether tuition fee increases had been included in the assumptions, Ms. Marshall indicated that tuition fee increases were included, but the Millennium Scholarship was not affected by the fee increases because the program only paid \$10,000 per student.

In response to Assemblywoman Gansert, who noted that limiting the number of credit hours to what would be paid on a student's behalf had extended the program's solvency, Ms. Marshall agreed and reiterated that a student could only receive a maximum of \$10,000 and could only be enrolled for a period of six years.

In response to questions Assemblyman Hardy asked regarding the 447 individuals who had lost their scholarships as a result of the two-strikes requirement, Ms. Marshall advised that the 447 lost scholarships were based on the two-strikes requirement that had only been in effect for one year and confirmed that approximately 5 percent of the participants had been affected by the requirement.

Chairman Arberry asked for comments regarding the need for the recommended additional \$2.8 million annual transfer from the Unclaimed Property Fund.

Ms. Marshall explained that model incorporating the additional \$2.8 million was just one scenario for the Committee's consideration and not one that was being recommended for adoption.

In response to Chairman Arberry's request for her opinion on the proposal, Ms. Marshall noted that the additional money would provide for program solvency, but the program reflected solvency even under the worst case scenario through 2014. Ms. Marshall pointed out that even though it appeared nothing had to be done, it might be a good idea to prepare for the future with additional funding before 2014.

In response to Chairman Arberry's request for a recommendation, Ms. Marshall asked for the Committee's consideration to provide the Treasurer the flexibility to draw money from the Unclaimed Property at any time to assist with cash flow issues. Ms. Marshall advised that the actual tobacco revenue figures would provide a better basis to make a determination on which model to use, which she indicated would be provided upon receipt.

In response to Assemblyman Marvel, who asked if a "dramatic" change in tobacco revenue was anticipated, Ms. Marshall indicated that while she was unable to project a change, the Treasurer's Office was using a 10 percent decrease in tobacco settlement revenues. Ms. Marshall reiterated that actual revenue figures would be provided to the Committee prior to the end of the Legislative Session.

In response to additional questions Chairman Arberry asked concerning the actual figures, Ms. Marshall indicated that she hoped to be able to provide the information by April 15, 2007.

Mark Stevens, Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, said that it appeared there were cash flow issues whether or not the additional \$2.8 million was transferred into the Millennium Scholarship Trust Fund. Mr. Stevens asked whether the recommendation to allow Unclaimed Property funds to be accessed throughout the fiscal year rather than at the end of the fiscal year would completely alleviate the cash flow problem or whether another solution would be needed to address cash flow issues going forward.

Ms. Marshall indicated that the worst-case scenario reflected cash flow issues moving toward insolvency, but allowing access to the Unclaimed Property Fund would "substantially ameliorate" the problem. Ms. Marshall further indicated that when she presented the Unclaimed Property budget, she would provide information regarding the revenue received, revenue returned to claimants, and the fund balance.

In response to Assemblywoman Smith, who asked for information regarding historical data comparisons to actual receipt of tobacco revenue, Ms. Marshall reported that in 2003 revenue payments were slightly higher than forecast by Bear Stearns, an investment banking and securities trading and brokerage firm. In 2004 payments were 1 percent less than forecast by Bear Stearns. In 2005, the payments were slightly less, and in 2006 a "significant change" occurred in that the payments were 10.52 percent less than projected.

In response to Assemblywoman Smith, who asked for information regarding the forecasting firms and the projections, Ms. Marshall indicated that three firms provided projections. And, in 2006 Global Insight's projections were 10.99 percent more than the payments actually received. Ms. Marshall clarified that the models ([Exhibit C](#)) were based on tobacco settlement projections by three forecasting companies.

There was no response to the request for public testimony, and Chairman Arberry declared the hearing on the Millennium Scholarship Administration budget closed.

ELECTED OFFICIALS – UNCLAIMED PROPERTY (101-3815) BUDGET PAGE
ELECTED-144

Kate Marshall, State Treasurer, Office of the Treasurer, began her presentation of the Unclaimed Property budget by providing members of the Committee a compact disc (CD) and a paper document that contained a list of the individuals who had unclaimed property in each of their districts. Ms. Marshall suggested that the members of the Committee download the information from the compact discs onto their individual websites for review by their constituents and offered the assistance of the Treasurer's Office in returning funds to claimants.

Jim Burke, Deputy Treasurer, Unclaimed Property, identified himself for the record and indicated that in a recent search for various members of the Assembly and Senate, several individuals including Chairman Arberry were found to have unclaimed property.

Ms. Marshall and Mr. Burke provided Chairman Arberry with a check for his unclaimed property, which he graciously accepted.

Ms. Marshall reported that after a recently issued press release relative to \$118,028 in unclaimed money that had been returned to 28 Nevada government agencies, the Unclaimed Property website was accessed an average of 330 times a day rather than the normal 50.

Ms. Marshall proceeded with a discussion of budget issues beginning with performance indicators noting that budget indicator 2 was missing from a list of 1, 3, and 4. Ms. Marshall advised that indicator 2 represented the number of audits completed in the office and the amount of money received. Although uncertain why the indicator was removed, Ms. Marshall reported that she had incorporated procedures that tracked the number of audits completed, which was a valuable indicator in determining how well the office was functioning.

In a discussion of budget enhancement requests, Ms. Marshall directed the Committee's attention to enhancement items E250 and E805, which requested a program officer 2, a program officer 1, and an upgrade from an administrative assistant 3 to a management analyst 2. Ms. Marshall amended the recommendation to a request for a program officer 2 only to serve as a manager for the Unclaimed Property fund. Ms. Marshall explained that currently 20 percent of the funds received in the Unclaimed Property Fund were returned to claimants compared with more aggressive states that returned up to 65 percent of funds. Taking into consideration Nevada's transient population, Ms. Marshall indicated her goal was to reach a 40 percent return. Additionally, Ms. Marshall addressed the importance the Treasurer's Office was placing on educating the businesses community in regard to unclaimed property that should be turned over to the State, a function with which the program officer 2 assisted.

Ms. Marshall discussed the withdrawal of the enhancement requests for a program officer 1 position and the reclassification of an administrative assistant 3 to management analyst 2 expressing her preference to work with the Department of Personnel to determine the classification in which her employees should be working. Ms. Marshall indicated a need for additional staff to assist in managing the Unclaimed Property Fund data and asked that the program officer 1 position be replaced with an administrative assistant 2. Ms. Marshall advised that the modifications resulted in budget savings of \$25,706 in fiscal year 2008 and \$30,389 in fiscal year 2009.

Continuing her presentation, Ms. Marshall addressed enhancement request E276, which requested funding to purchase Xcitek, an online service that tracked stock histories and supported "the reconciliation of stock held by third parties to the Unclaimed Property records."

Ms. Marshall asked Patrick Foley, Chief Deputy Treasurer, to explain how a claimant was paid after using the Xcitek online service.

Mr. Foley reported that a claimant provided a stock certificate for 10,000 shares of WhirlyBall, a business that was purchased by Major Video which was

purchased by Blockbuster Video, which was purchased by Viacom Inc. which later merged with the CBS Corporation. After learning through local sources that WhirlyBall and Major Video stock was worthless, the Treasurer's Office was advised by a gentleman representing Xcitek, an online service currently being utilized by ten other states to track corporate transactions, that the 10,000 shares of WhirlyBall was valued at \$158,000. Mr. Foley pointed out that the Xcitek software program provided the assistance that was needed to accurately pay the \$158,000 to the claimant.

Additionally, Ms. Marshall discussed enhancement request E278 that recommended funding for Accurant, an online locate-and-research tool used to verify the identity of claimants. Ms. Marshall advised that the online program provided assurance that fraudulent claims could be avoided by using the service.

In response to a request for Unclaimed Property information during the Millennium Scholarship budget presentation, Ms. Marshall distributed a document entitled, *Unclaimed Property Summary of Historical Transactions* ([Exhibit D](#)). The document provided information relative to gross receipts, disbursements to owners, percent of funds returned to owners, program expenditures, transfer of funds to the General Fund, and transfer of funds to the Millennium Scholarship Fund.

Assemblyman Parks discussed legislation approved in an earlier legislative session relative to unredeemed expired gift cards. Assemblyman Parks questioned whether funds from expired gift cards were returned to the State as unclaimed property from retailers.

Ms. Marshall explained that many retail companies had changed gift cards to a type of credit card that did not include the name of the person receiving the gift. Ms. Marshall advised that most retail businesses were incorporated in Delaware, and funds from a lost card would be returned Delaware, not Nevada.

Assemblyman Parks indicated that Assemblyman Kihuen was pursuing legislation regarding gift certificates. The legislation required a statement to be printed on gift certificates to give notice to buyers that value remaining on gift certificates would be presumed abandoned and returned to the State if the value was not redeemed or charged by certain dates.

Ms. Marshall indicated an issue existed regarding whether a gift certificate differed from a gift card but said that the Treasurer's Office was willing to provide fiscal advice to legislators.

There was no response to the request for public testimony, and Chairman Arberry declared the hearing on the Unclaimed Property budget closed.

ELECTED OFFICIALS – NEVADA COLLEGE SAVINGS TRUST (101-1092)
BUDGET PAGE ELECTED-153

Kate Marshall, State Treasurer, Office of the Treasurer, distributed two documents that were entitled *Nevada College Savings Trust – BA 1092* ([Exhibit E](#)) and *Nevada 529 College Savings Plan Fees* ([Exhibit F](#)).

Ms. Marshall began her presentation of the Nevada College Savings Trust budget by telling the members of the Committee that her office had uncovered inconsistent information pertaining to the program and to the fees earned by the State. Ms. Marshall indicated that while she had attempted to gather all relevant information, she had been hampered by the lack of historical

documents pertinent to Budget Account 1092 that were available in the Treasurer's Office. Additionally, Ms. Marshall indicated that she lacked the appropriate budgetary authority to order an audit of the program, which could perhaps reconcile the inconsistent discrepancies and irregularities that had been identified.

Ms. Marshall indicated she believed it was her "fiduciary" duty to ensure that an audit was conducted and had requested, through legislative leadership, that legislative auditors conduct an audit of Budget Account 1092. Ms. Marshall also requested the Committee's approval to authorize an audit to ensure that the discrepancies that had been identified could be reconciled before the budget was closed.

Ms. Marshall provided the following history of the College Savings Trust and information relative to the discrepancies that had been identified:

- In 2001 the Legislature established the program, a Board of Trustees to oversee the program, and the College Savings Trust Fund, Budget Account 1092, consisting, in part, of all money deposited in accordance with savings trust agreements.
- In 2002 the Board of Trustees contracted with UPromise to administer the program. Under the contract, the Board earned a program fee assessed once a month for each account opened under any of the four college savings platforms that were offered.
- Under the provisions of *Nevada Revised Statutes* (NRS) 353B, the fees were to be deposited to Budget Account 1092.
- It appeared that from 2002 through fiscal year 2006, the state of Nevada should have earned \$4.9 million in fees, but Budget Account 1092 reflected that only \$1.5 million in fees was collected leaving 68 percent or \$3.39 million unaccounted.
- It appeared the latter fees were redirected by management in the Treasurer's Office at that time to an account to be held by UPromise rather than deposited to Budget 1092.
- It appeared that the redirected fees were used for marketing costs above the amount approved by the Legislature and for the services of counsel to date.
- Documents that could confirm that the Board of Trustees, the Board of Examiners, the Board of Finance, or the Legislature had any knowledge or that approval had been provided to enter into a contract for the redirection and expenditures of the fees could not be located.
- On December 28, 2006, the UPromise contract, which was not slated for expiration for more than twenty years, was amended.
- The new amendment, which was to remain in effect for more than twenty years, appeared to benefit UPromise and reduce the fees that would be earned by Nevada in the future.
- The fees earned by Nevada under the original contract grew rapidly. Between 2005 and 2006 it appeared that the portion of fees that came from the Vanguard Platform, a mutual fund, increased approximately

70 percent to \$937,740 while the fees generated under the UPromise Platform, another mutual fund investment option, increased approximately 36 percent to \$413,875.

- The December 28, 2006, amendment to the UPromise contract changed the fee agreement from a percentage per savings agreement to a flat fee that "substantially" restricted Nevada's ability to receive the benefit of growth in fees.
- The Vanguard Platform fee was set at an annual \$1.5 million in addition to increases reflected by the Consumer Price Index (CPI), while the UPromise Platform fee resulted in a one-time fee of \$1 million with no future fees earned thereafter.
- The UPromise Platform one-time fee appeared to represent a little over one year's worth of revenue assuming the same rate of growth.
- There appeared to be no other states that had agreed to a one-time fixed fee under a college savings program.

Ms. Marshall indicated that the college savings program was a great benefit to the state of Nevada and to those who were trying to invest in the future of their children. Ms. Marshall expressed concern that the new twenty-year amended contract was not in the best interests of the State.

Moving to the document entitled, Nevada 529 College Savings Plan Fees (Exhibit F), Ms. Marshall described the document, which included information regarding:

- Mutual funds in which one could invest.
- \$4,981,484.57 in fees earned by Nevada.
- \$1,583,636.93 in Budget Account 1092.
- \$3,397,847.64 in redirected earnings.
- \$700,244.66 in operating expenditures.
- \$82,500 authorized by the Legislature for advertising.
- Redirected and expended funds.
- Vendors that were paid.
- A split of marketing costs between the Pre-paid Tuition, Budget Account 1091, and the Nevada College Savings Trust, Budget Account 1092.

Ms. Marshall requested the Committee's favorable consideration of enhancement request E710 that was in accordance with the Department of Information Technology (DoIT) replacement schedule.

Chairman Arberry expressed concern regarding the State Treasurer's revelations and agreed that a Legislative Audit should be accomplished as quickly as possible.

In response to Assemblyman Marvel, who asked whether the issues had been discussed with her predecessor, Ms. Marshall indicated a recent meeting had been attended by legislative fiscal analysts and two members of her staff, but she had not attended.

Assemblyman Marvel asked whether answers had been provided to staff relative to the issues that had been raised.

Ms. Marshall advised staff had reported they were not provided information that would assist in resolving the discrepancies.

Mark Stevens, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, indicated that the information that was received at the meeting was in the process of being reviewed although he was uncertain whether the information would assist in providing a conclusive opinion that would resolve the discrepancies. Mr. Stevens expressed agreement that the Legislative auditors could examine the budget and provide answers to the issues that had been raised.

In response to Assemblyman Marvel, who asked when the audit could be conducted, Mr. Stevens indicated that Paul Townsend, the Legislative Auditor, indicated that the Legislative auditors could begin conducting the audit within several weeks.

In response to Assemblyman Grady, who asked whether the Treasurer's Office used independent auditors, Ms. Marshall advised that some of programs had been audited and that the UPromise program had been professionally audited under the provisions of the original contract. Additionally, Ms. Marshall advised that the entire Treasurer's Office was scheduled to be audited by the Legislative Auditors in June.

Assemblyman Grady asked whether outside accounting firms, such as Kafoury, Armstrong had audited the programs.

Renee Parker, Chief of Staff, Treasurer's Office, explained that the Treasurer's Office had budgetary authority to have annual audits conducted for various programs that were required to be audited. However, Ms. Parker advised that the Treasurer's Office did not currently have the budgetary authority to order an independent audit of the Nevada College Savings Trust program.

In response to a question Assemblywoman Buckley asked regarding what appeared to be an unofficial use of funds, Mr. Stevens indicated that he had been unaware that any funding from the Nevada College Savings Trust was being redirected during the time frame referenced.

Assemblywoman Buckley asked for information regarding what was paid for with the redirected funds to Orrick and Rose Glenn.

Ms. Marshall responded that the invoices she was in possession of were to the Rose Glenn Group to pay for the television advertisements for Nevada's 529 College Savings Plans and to the law firm of Orrick, Herrington & Sutcliffe for services rendered. Ms. Marshall indicated one bill from Orrick, Herrington & Sutcliffe was for two years of services and another bill for another two years of services. However, as a result of the lack of historical information, Ms. Marshall could not verify that the billings were for services provided.

Ms. Marshall advised the Committee that she had requested copies of contract and client files from a representative of Orrick, Herrington & Sutcliffe but was only provided with a summary of the contracts. After expressing concern to William Donovan, the managing partner, of Orrick, Herrington & Sutcliffe regarding her request, a box of contracts was provided.

In response to Assemblywoman Buckley, who asked for information relative to the legal services that were rendered, Ms. Marshall advised that because she was pursuing fiscal due diligence she had not had time to look into whether the attorney from Orrick, Herrington & Sutcliff had advised the Board of Trustees on Nevada law. However, Ms. Marshall noted that the Orrick, Herrington & Sutcliff attorney did not have a license to practice law in Nevada and indicated the audit would disclose the type of legal services that were rendered.

Assemblywoman Buckley asked whether Orrick, Herrington & Sutcliff negotiated the contract amendment for the UPromise Platform fee that resulted in a one-time fee of \$1 million with no future fees earned thereafter.

Ms. Marshall explained that the discrepancies in the Nevada College Savings Trust had only become apparent in her second week in office, and the focus, during that time, was on the financial data and the terms of the contract. According to the paper record, Ms. Marshall indicated that her predecessor had presented all of the information on the UPromise contract amendment to the Board of Trustees.

In response to questions Assemblywoman Buckley asked about the payments to the Rose Glenn Group in 2006, Ms. Marshall indicated the payments were, to the best of her knowledge, for television commercials to advertise Nevada's 529 College Savings Plans in fiscal year 2006, the time period of July 1, 2005 to June 30, 2006.

In response to Assemblywoman Gansert, who asked whether any of the contracts required that Nevada reinvest in marketing to promote the 529 College Savings Plans, Ms. Marshall advised that a contract with the Rose Glenn Group provided for an expenditure of \$82,500 for marketing of the college savings plan. Additionally, Ms. Marshall advised that under the provisions of *Nevada Revised Statutes* (NRS), the Board of Trustees and the President of the Board could market the program. However, Ms. Marshall indicated Legislative approval was required for the amount of money expended on marketing.

Assemblywoman Gansert rephrased her question to ask whether the contract required the state of Nevada to spend a certain amount of money to promote college savings plans.

Ms. Marshall advised that the UPromise contract did require that UPromise expend funds for marketing. The funds were expended by UPromise but were not included in the spreadsheet ([Exhibit F](#)) that had been distributed to the Committee.

Ms. Marshall reaffirmed that to the best of her knowledge the contract with UPromise did not require the state of Nevada to expend a certain percentage of funds to promote college savings programs.

In response to Chairman Arberry who asked whether the Nevada College Savings Trust program was affected by the discrepancies that had been identified, Ms. Marshall advised that going forward she would seek to maintain

the benefit to families investing in the future college education of their children and to Nevada's benefit from the fees earned. Ms. Marshall indicated she was looking forward to a meeting that had been scheduled with UPromise representatives to review the amendment and to determine Nevada's standing.

In response to Chairman Arberry's concern regarding investors' apprehension in the Trust Fund, Ms. Marshall advised that the discrepancies that had been identified were solely with the fees earned by the state of Nevada. Ms. Marshall advised that the portion of the program that managed the investments families were making for their children had not come under scrutiny at all, and investors could be assured their investments were sound.

Chairman Arberry asked the Committee's staff to prepare a letter to Paul Townsend, the Legislative Auditor, to request a Legislative Audit of the Nevada College Savings Trust.

In response to a question Assemblyman Hardy asked regarding the return on risk versus growth investments, Ms. Marshall advised that the assets were reviewed each month and a 10 basis point fee or 0.1 percent was calculated each month against one-twelfth of the assets to determine the fee at the end of the year.

In response to questions Assemblyman Hardy asked regarding the number of investors in Vanguard versus UPromise and whether investors earned the same percentage of improvement as the State earned, Ms. Marshall explained that as a greater number of people invested in the program, the value of the assets increased and earned additional fees for the State.

In response to additional questions Assemblyman Hardy asked regarding the performance reflected by Vanguard's 70 percent increase in fees versus the fees generated under the UPromise Platform, which increased approximately 36 percent and growth projections for investors, Ms. Marshall indicated that while individuals made their own decisions regarding investments, the program fees for each program would be an important issue of review by investors. Ms. Marshall reiterated that the savings from the renegotiation of the Vanguard Platform to \$1.50 million plus CPI was passed on, "all or in part," to customers, and the amended UPromise Platform to a one-time \$1 million fee had not resulted in any savings to the customers.

In response to Assemblywoman Gansert, who asked for the percentage of investors from Nevada as opposed to other states, Ms. Marshall advised that less than 5 percent of investors were from Nevada.

Assemblywoman Buckley asked for additional information regarding redirection in 2006 of \$328,253.26 by UPromise to Vanguard to Rose Glenn reflected on the chart entitled, *Nevada 529 College Savings Plan Fees* ([Exhibit F](#)).

Ms. Marshall provided the following explanation of the *Nevada 529 College Savings Plan Fees* chart:

- Column "G," entitled, Redirected and Expended, reflected the platform fees used for each invoice, and \$328,253.26 was the amount of Vanguard fees paid to Rose Glenn.
- Column "B," entitled, Fees Earned by Nevada, reflected the fees earned for each platform.

- Column "H," entitled, Vendor, listed the vendors for each amount listed in Column G noting that all vendors were paid from Vanguard fees.

In response to Assemblywoman Buckley who asked whether the \$300,000, the \$54,000, or the \$69,000 in redirected and expended funds was paid from UPromise, Ms. Marshall advised that in reference to the \$300,000, Orrick, Herrington & Sutcliffe had been requested to provide a memorandum with each of their invoices indicating who wired the money, but she did not have the information with her.

In response to questions Assemblywoman Buckley asked regarding redirected funds, Ms. Marshall confirmed that in fiscal year 2006 revenue was redirected from the UPromise platform, and the contract with UPromise was amended.

In response to Assemblywoman Buckley who asked whether the Vanguard contract had also been amended, Ms. Marshall explained that the state of Nevada did not have a contract with Vanguard, but the Platform was renegotiated from 10 basis points to \$1.5 million plus CPI. As previously indicated, Ms. Marshall said it was her understanding that the savings had been passed on to investors. However, Ms. Marshall indicated she was hesitant to arrive at conclusions concerning the Vanguard benefit because analysis was currently underway, but she had concluded that UPromise amendment did not benefit the State.

In response to Assemblyman Parks who asked if there were any expenditures in fiscal year 2007, Ms. Marshall indicated that the advertising stopped in July 2006, and there was no redirection of funds in fiscal year 2007. Additionally, Ms. Marshall indicated that she had information through December 2006 that reflected a significant growth in fees assuming the same amount of money seen over the first five months of fiscal year 2006, but that information had not been provided since it was not "an apples to apples" comparison as a result of one-time payments, which skewed the numbers.

In response to Chairman Arberry who asked whether the Attorney General was involved, Ms. Marshall indicated that she had met with representatives of the Attorney General's Office to seek guidance and had been encouraged to request the audit.

There was no response to the request for public testimony, and Chairman Arberry declared the hearing on the Nevada College Savings Trust budget closed.

ELECTED OFFICIALS – MUNICIPAL BOND BANK REVENUE (745-1086)
BUDGET PAGE ELECTED-162

ELECTED OFFICIALS – MUNICIPAL BOND BANK DEBT SERVICE (395-1087)
BUDGET PAGE ELECTED-164

Kate Marshall, Nevada State Treasurer, Office of the Treasurer, advised that Municipal Bond Bank Revenue, Budget Account 745-1086 and Municipal Bond Bank Debt Service, Budget Account 395-1087 reflected costs associated with debt that had already been issued through the Municipal Bond Bank.

Ms. Marshall advised that 21 municipal entities from across the State had financed 83 projects since 1981, and currently 14 municipalities were participating with 34 bond issuances being monitored. On March 7, 2007, \$632,050,000 in bonds issued were outstanding.

Ms. Marshall indicated that bond issues were exempt from the constitutional limitation of 2 percent assessed value applicable to state debt.

There was no response to the request for public testimony, and Chairman Arberry declared the hearing the Municipal Bond Bank revenue and Municipal Bond Bank Debt Service budgets closed.

Senate Bill 193: Makes appropriations to State Public Works Board to provide early funding for capital improvement projects at Ely State Prison and Grant Sawyer Office Building. (BDR S-1346)

Gustavo Nunez, Interim Manager, State Public Works Board, requested the Committee's favorable consideration of S.B. 193.

Mr. Nunez provided the following information on Sections 1, 2, and 3 of S.B. 193:

- Section 1 would appropriate \$341,525 in early funding for Capital Improvement Program (CIP) Project 07-M01 for heating, ventilating and air conditioning (HVAC) repairs to air conditioning units at the Ely State Prison that required funding before June 30, 2007. An additional \$100,000 would be requested in the 2007 Capital Improvement Program budget to complete the project in July 2007.
- Section 2 would appropriate \$1,252,976 in early funding for Capital Improvement Program (CIP) Project 07-M02. If approved, the funding would allow for continuation of outside tile work at the Sawyer Building by the current contractor.
- Section 3 would exempt the projects from competitive bidding requirements.

Mr. Nunez indicated that passage of S.B. 193 would reduce the 2007 Capital Improvement Program budget by approximately \$2 million.

In response to questions Assemblyman Marvel asked regarding the Sawyer Building litigation, Mr. Nunez advised that a recovery settlement of \$9 million had been proposed for purposes of negotiation.

In response to Chairman Arberry who asked when the work on the Sawyer Building would be completed, Mr. Nunez advised that passage of early funding required that the work be completed by June 30, 2007.

Mark Stevens, Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, advised that S.B. 193 was the Public Works Board early funding bill for Capital Improvement Program projects. Mr. Stevens advised that the funding request had initially been much larger but was scaled back because the work had to be completed before June 30, 2007, to not violate the Education First Initiative.

Mr. Stevens advised that under the provisions of S.B. 193, the appropriation in the bill had to be expended and the work completed by June 30, 2007. Additionally, Mr. Stevens advised that, as previously indicated, the Ely State Prison HVAC project was expected to need an additional \$100,000 in fiscal year 2008 to complete the project.

Mr. Nunez advised the members of the Committee that the Public Works Board needed to issue a notice to proceed with work during the first week in April to complete the work on the Sawyer Building by June 30, 2007.

In response to Assemblyman Denis who asked for information regarding the work on the Sawyer Building, Mr. Nunez advised that tile work on the north side of the building would be funded by the appropriation.

Mr. Stevens indicated that while it was normally the Chairman's policy not to move bills the same day they were heard, S.B. 193 and A.C.R. 12, scheduled to be heard next, should perhaps be considered for a vote that day.

Chairman Arberry opened the hearing to anyone wishing to speak for or against S.B. 193.

Joseph Turco, a public advocate for the American Civil Liberties Union (ACLU) of Nevada, spoke in opposition of the early funding bill citing the isolated area and inadequate health care being provided to inmates at the Ely State Prison.

Chairman Arberry advised Mr. Turco that approval of the emergency measure before the Committee would ensure that inmates were provided air conditioning in the summer months ahead. Chairman Arberry invited Mr. Turco to return to the Committee or Joint Subcommittee hearings to provide testimony that was pertinent to other Ely State Prison issues of concern to the ACLU.

Chairman Arberry declared the hearing on S.B. 193 closed.

Assembly Concurrent Resolution 12: Approves the change in scope and the transfer of funds for certain capital improvement projects. (BDR R-1448)

Gustavo Nunez, Interim Manager, State Public Works Board, requested the Committee's favorable consideration of A.C.R. 12 to defer certain items from the scope of Project 05-C20b, and funds remaining in Project 05-M06 to be transferred to Project 05-C20b to allow for a contract to be awarded for the construction of High Desert State Prison Phase IV housing units. Bids for Project 05-C20b were opened on January 30, 2007, and the lowest responsible bidder could meet the Department of Corrections' requested opening date of September 2008 for completion of Project 05-C20b if a construction contract was awarded by April 5, 2007.

Mark Stevens, Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, advised that the Public Works Board originally requested that the change in scope be presented to the March 21, 2007 Interim Finance Committee meeting. However, Mr. Stevens advised that the Interim Finance Committee lacked the authority to change the scope of a project when the Legislature was in session, and the change in scope could only be amended by a concurrent resolution. Additionally, Mr. Stevens explained that the projects were approved in the 2005 CIP and as a result of the Department of Corrections overcrowding issues at the High Desert State Prison, expenditures in Project 05-C20b were being reprioritized to begin construction as soon as possible to meet the Department of Corrections' requested opening date of September 2008.

Chairman Arberry opened the hearing to anyone wishing to speak for or against A.C.R. 12.

There was no response to the request for public testimony, and Chairman Arberry declared the hearing on A.C.R. 12 closed.

ASSEMBLYMAN MARVEL MOVED APPROVAL OF S.B. 193 AND A.C.R. 12.

ASSEMBLYWOMAN WEBER SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman McClain was not present for the vote.)

* * * * *

JUDICIAL BRANCH – JUDICIAL DISCIPLINE (101-1497) (BUDGET PAGE COURTS-75)

Greg Ferraro, Chairman, Commission on Judicial Discipline, introduced David Sarnowski, Esq., Executive Director, Commission Judicial Discipline, and Kathy L. Schultz, Management Analyst, Commission Judicial Discipline.

Mr. Sarnowski provided the Committee with a packet of documents ([Exhibit G](#)) consisting of 27 numbered pages, and a brochure entitled, *Guide to the Ethical Obligations of Nevada Judges and Filing a Complaint with the Nevada Commission on Judicial Discipline* ([Exhibit H](#)).

Mr. Sarnowski reported that the first group of documents contained a list of the judicial members of the Commission on Judicial Discipline, the majority of whom were volunteers who provided a necessary service to the citizens of Nevada. A list was also provided with the names of 25 members of the advisory Standing Committee on Judicial Ethics and Election Practices.

Mr. Sarnowski advised that the Commission on Judicial Discipline issued decisions with regard to allegations of ethical violations on the part of both full-time and part-time judges.

Mr. Sarnowski further advised that the Standing Committee on Judicial Ethics and Election Practices provided its opinions to judges and to judicial office candidates and in calendar year 2006 issued 20 opinions. The opinions were sent via electronic mail directly to every judge in the State, and the published decisions by the Commission on Judicial Discipline would be sent to all judges and to the media as well.

Additionally, Mr. Sarnowski indicated The Executive Budget recommended funding in the Training category to cover the cost of a seminar held every second year in Chicago.

There were no questions from the members of the Committee.

Chairman Arberry declared the hearing on the Judicial Discipline budget closed.

DEPARTMENT OF EDUCATION – COMMISSION ON POSTSECONDARY EDUCATION (101-2666) (BUDGET PAGE K-12 ED-103)

David Perlman, Administrator, Commission on Postsecondary Education, told the Committee that the primary work of the Commission was to oversee private postsecondary schools operating in Nevada. Mr. Perlman provided the following information:

- The Commission contracted with the Department of Veterans Affairs to provide oversight of training establishments including colleges, vocational schools, on-the-job-training, and apprenticeship programs where veterans could use their educational benefits.
- The budget was "straightforward" with salaries and rent comprising the bulk of budget expenses. Other costs, such as supplies and travel were minimal and services, such as mail and information technology, could not be negotiated.
- Full-time staff had remained constant since 1990 while the number of licensed schools had increased about 60 percent.
- In 2005, the Commission was assigned the additional responsibility to approve statewide alcohol awareness training programs.
- With the exception of reviewing active schools, the Commission on Postsecondary Education had met all performance indicators.
- There had been no delays in processing applications, and provisional school visits had been conducted on time.
- Complaints were handled within the allotted time and had been held at a "record" low of 10 to 15 a year rather than the 200 to 300 a year that occurred in the early 1990s.

Mr. Perlman advised that the growth in schools coupled with the additional responsibility to approve alcohol awareness training programs was beginning to degrade the Commission's ability to continue to meet performance indicators. Mr. Perlman indicated he would seek State Personnel's assistance to add another position at some point in the future.

In closing remarks, Mr. Perlman said he fully supported the budget, which he said would allow the Commission to continue its legislatively mandated mission to ensure that quality educational opportunities existed for all of Nevada's adult citizens.

Chairman Arberry noted that The Executive Budget recommended the reduction of federal reimbursement revenue for the inspection of postsecondary institutions that were eligible to train veterans and asked how the reduction would affect the agency's workload.

Mr. Perlman advised that a five-year Congressional funding bill that increased funding from \$13 million to \$19 million was scheduled to sunset in September 2007, and at that time, funding would be reduced to the \$13 million level. Mr. Perlman further advised that when the agency was previously funded at the \$13 million level, oversight for on-the-job training and apprenticeship programs was not provided, which would occur again when funding was reduced. Mr. Perlman said that although staff would divide the workload, and a little less work would be provided for the Veterans Administration, some difficulties were anticipated because State and federal regulations overlapped.

In response to Chairman Arberry who asked whether the agency would continue the same number of postsecondary institution inspections after funding was reduced, Mr. Perlman indicated that the school reviews would continue to be conducted with funding provided at the \$13 million level.

Chairman Arberry asked for information relative to the agency's performance indicators which had been projected to review 10 percent of active schools in fiscal year 2005-06. The Chairman noted that no schools were reviewed in FY 2005-06, and a reduction to 5 percent in each year of the 2007-09 biennium was projected.

Mr. Perlman advised that the only indicator that had been reduced was the percent of active school reviews and proactive reviews that were conducted during the licensing-renewal period. The staff member whose time had been utilized to review on-the-job-training and apprenticeship inspections for the Veterans Administration would review active schools instead.

In response to questions Assemblywoman Smith asked regarding the on-the-job-training and apprenticeship inspections, Mr. Perlman reiterated that the Commission on Postsecondary Education would no longer be responsible for the inspections. Mr. Perlman explained that although the Veterans Administration had provided the inspections in the past, problems had occurred when a veteran who wanted to use benefits had to wait for approval from a Veterans Administration representative located in Muskogee, Oklahoma. Mr. Perlman advised that the Commission on Postsecondary Education would work with the Veterans Administration, when time permitted, to at least collect the paperwork and mail it to the Veterans Administration for its review.

In response to Assemblywoman Smith who discussed complaints she had received relative to the denial of applications for long-approved apprenticeship programs, Mr. Perlman confirmed that problems existed. Mr. Perlman advised that the Veterans Administration representative, as previously indicated, was located in Oklahoma and had not physically reviewed some apprenticeship program facilities and records.

Mr. Perlman discussed one problem regarding an apprenticeship program for heavy equipment training that had been divided into phases for the operation of a forklift, a bulldozer, and a grader. If a veteran trained on a forklift for the entire number of hours allotted in the training plan, the veteran would only be paid for the number of hours allotted for forklift training. If a veteran was paid for hours over the allotted time, the Veterans Administration would ask for reimbursement. Mr. Perlman advised that the Commission was attempting to balance between the interests of the veteran and the reality of job situations.

Assemblywoman Smith indicated she had received information relative to veterans who were denied training benefits based on technicalities and asked to be provided with information regarding the review of programs for veterans and the outcomes of those reviews.

Mr. Perlman agreed to provide the information to Assemblywoman Smith.

Assemblywoman Buckley commented on the increases recommended under the provisions of S.B. 63 and indicated she had learned that the Commission wanted to increase fees to ensure program integrity, continue the ability to meet performance indicators, and that sufficient funds were available to conduct site visits. Assemblywoman Buckley indicated it was her understanding that Senator Raggio had expressed concern relative to program integrity and asked that the issue be revisited.

Additionally, Assemblywoman Buckley discussed a case 17 years earlier in which she had represented a group of students who were defrauded by a school

that offered a program for an occupation that did not exist. The students were left with loans, no way to get a job, and ruined credit, an example of what could happen if schools were not doing what they promised. The case was finally resolved and the loans dismissed after a lawsuit in federal court. Assemblywoman Buckley indicated that she did not want to see veterans or any other Nevadans experience a similar situation and asked how program integrity was being compromised by inadequate resources.

Mr. Perlman responded that the Commission attempted to be proactive and to have a presence in the schools during licensing renewals but lacked the staff to do so.

Assemblywoman Buckley asked for a Budget Division representative who could discuss the concerns that had been raised in regard to increased fees recommended under the provisions of S.B. 63, the integrity of the Postsecondary Education program, and assurance that citizen benefits were protected.

Elizabeth Barber, Deputy Director, Department of Administration, indicated it was her understanding that a request would or had been made to withdraw the bill. Ms. Barber indicated she would check on the status of the request with Andrew Clinger, Director, Department of Administration and provide the information to the Committee's staff. Ms. Barber pointed out that the fee increases did not appear in the Postsecondary Education budget and, if the legislation had been approved, authority to receive the funding in the Postsecondary budget would have been accomplished through work programs.

Assemblywoman Buckley requested Mr. Clinger's presence in Committee on Monday, April 19, 2007, to provide the Administration's position.

Ms. Barber advised that the Administration's position had not changed in regard to fee increases.

Assemblywoman Buckley indicated that a stand had to be taken to either protect the public or not.

Chairman Arberry indicated Mr. Clinger's presence in Committee for Monday April 19, 2007, would be requested.

In response to a question Assemblywoman Leslie asked regarding the Legislative Audit findings issued in 2005, Mr. Perlman advised that the three recommendations to improve the financial and administrative practices of the agency had been fully implemented.

In response to Assemblywoman Smith's earlier remarks, Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO, spoke in regard to the problems caused by the Veterans Administration cancellation of accreditation of a program in Reno "because of one individual," which had negatively affected every veteran in the program. Mr. Thompson indicated that his office had sought relief through Nevada's congressional delegation but pointed out there was a lack of local guidance or assistance to address problems associated with the apprenticeship programs.

Mr. Thompson, who indicated he represented every apprenticeship program in the State, requested the opportunity to specifically address the problems that were being encountered at a later time.

Chairman Arberry declared the hearing on the Postsecondary Education budget closed.

INFRASTRUCTURE – PUBLIC EMPLOYEES' RETIREMENT SYSTEM - (101-4821)
(PERS-1)

Dana Bilyeu, Executive Officer, Public Employees' Retirement System (PERS) recognized members of the Retirement Board who were in the audience, Charles Silvestri, Chairman, and David Kallas.

Ms. Bilyeu began her budget presentation with a review of the contribution rates for the 2008-09 biennium based upon the actuarial valuation performed by the PERS' independent actuary. Ms. Bilyeu advised that actuarial valuations determined liabilities of the plan and the contribution rates needed to fund the System on an actuarial reserve basis. She indicated that several areas were analyzed during the course of an actuarial valuation including plan design, member demographics, and economic assumptions, such as salary growth and investment return.

Ms. Bilyeu reported that by statute, contribution rates changed on July 1 of each odd-numbered year as determined by the prior even-year valuation, thus the valuation for the 2006 plan year would affect contribution rates beginning July 1, 2007.

Charts ([Exhibit I](#)) had been distributed to the Committee that outlined contribution rates for the Employer-Pay and the Employee/Employer-Pay Plans. The first chart reflected the results of the 2006 valuation and the impact on the Employer-Pay contribution rates for the regular and police-fire fund. Ms. Bilyeu reported that 87,000 of the 98,000 active members of PERS participated in the regular fund and 82 percent of those members participated under the Employer-Pay contribution plan. Additionally, Ms. Bilyeu reported that approximately 11,000 members participated in the early retirement fund for public safety members, and almost 85 percent of those members participated under the pre-tax, Employer-Pay contribution plan.

Ms. Bilyeu explained that Employer-Pay contribution (EPC) was a shared contribution plan in which employees paid half of the contributions, either through salary reduction, as with the State, or by foregoing equivalent pay increases.

The first chart reflected the existing rate currently being paid for the members of the funds, based on the results of the 2004 valuation, the result of the 2006 valuation, the difference between the two rates, and the statutory rounding requirement to arrive at the new contribution rate that would begin July 1, 2007.

Ms. Bilyeu reported that for regular members under EPC, the rate increase of 0.75 percent was split equally between the employer and employee. For police-fire members, the rate was increasing by 1.5 percent, 0.75 percent to the employer and 0.75 percent to the employee. Rates in the police-fire fund were more volatile because of the smaller population and funding status of the plan.

The second chart reflected the results of the valuation for members participating in the employee/employer, after-tax contribution plan. About 18 percent of the System participated under the employee/employer, after-tax contribution plan for which the major difference was the refundability of employee contributions if a member terminated public employment and chose to withdraw his or her

contributions. Refundability in the employee/employer, after-tax contribution plan caused the rate to be slightly higher than the pre-tax EPC plan.

Additionally, the second chart reflected the existing statutory contribution rate for both Employee/Employer funds, the results of the 2006 valuation, the difference between the two rates, and the statutory rates for the 2007-09 biennium. For regular members of the fund, there would be no change from the current contribution rates because the difference between the current statutory rate and the actuarial valuation rate was within the statutory rounding requirement. The police-fire rate would increase by 0.75 percent, and the same factors affecting police-fire members in the employer-pay plan also affected the rates in the employee/employer, after-tax contribution plan.

Tina M. Leiss, Operations Officer, Public Employees' Retirement System of Nevada (PERS), reported that the revenue received for the PERS' administrative budget was transferred from the trust fund on a per capita basis for each member and benefit recipient. The revenues were derived from employer and employee contributions received from the 163 public employers and 98,000 active members who participated in the System.

Ms. Leiss addressed budget enhancement E250, Staffing, which recommended a retirement examiner 1 position to work in the Employer and Production Services Division. The PERS' approved budget for fiscal years 2006 and 2007 included overtime to staff the increased workload because of the purchases under the one-fifth of a year purchase program pursuant to *Nevada Revised Statutes* (NRS) 391.165. The System adjusted the base budget to remove the overtime, and the additional position was requested for the increased production workload.

Ms. Leiss explained that while the one-fifth of a year purchases were the catalyst for the requested position, the need for the position in other product areas had been analyzed after questions from the Interim Retirement and Benefits Committee of the Legislature. The results of the analysis concluded that workload in all production areas justified the need for the position.

Ms. Leiss advised that over the past two years, pension inceptions had increased 33 percent, request for refunds of contributions had increased by 38 percent, requests for purchase of service estimates, excluding one-fifth of a year, had increased by 31 percent, and requests for benefit estimates had increased by 41 percent. Ms. Leiss advised that 20 percent of the benefit estimates and 18 percent of the pension inceptions required manual calculations. If approved, the new position would assist in each area of production work, depending on the areas that were experiencing the heaviest volume at a given time of year.

Moving on to enhancement request E325, Ms. Leiss advised the Committee that the System requested a retirement examiner 1 and one retirement examiner 2 to staff an additional office in the Las Vegas area. The System currently had four retirement examiners and one retirement technician in the Las Vegas office. Ms. Leiss explained that the additional office would offer the same counseling as the current Las Vegas office. Additionally, Ms. Leiss advised that the majority of active members were located in southern Nevada, and the limited number of counselors found it increasingly difficult to provide one-on-one counseling to members and benefit recipients. The current wait time for an appointment during peak retirement periods, primarily for teachers, sometimes exceeded six or more weeks.

In response to questions Assemblyman Hardy asked relative to the number of teachers who had taken advantage of the one-fifth of a year purchase program, Ms. Leiss advised that the one-fifth of a year purchases were required for certain teachers under the provisions of NRS 391.165. In the last fiscal year, 6,300 purchases were processed.

In response to additional questions Assemblyman Hardy asked regarding the percentage of teachers provided one-fifth of a year service credit, Ms. Leiss indicated she did not know the number but advised that the Clark County School District alone had 30,000 employees. As previously indicated, however, the one-fifth of a year purchase covered only certain teachers. Ms. Leiss advised that information regarding the specific number of teachers provided one-fifth of a year of service credit would be obtained through the Department of Education and made available to Assemblyman Hardy.

Continuing her presentation, Ms. Leiss advised the Committee that the current office in southern Nevada was located close to McCarran International Airport. The new location was proposed to be located on the other side of Las Vegas Boulevard South to provide a more convenient location for active members and retirees.

Ms. Leiss reported that enhancement E805 recommended an upgrade for an administrative assistant 2 to an administrative assistant 4. Ms. Leiss explained that the position served as the lead administrative assistant for the agency, and the current duties of the position were within the scope of an administrative assistant 4.

Moving on to enhancement request E275, Ms. Leiss advised the Committee that the System requested funding for a one-time information technology project to migrate the current pension processing system from a Forte/UDS environment to a Java-based environment. The migration was necessary because of the end of life of the Forte/UDS product scheduled for 2008, as announced by the owner of the product, Sun Microsystems. Ms. Leiss said the Forte/UDS environment was specific to Windows 2000 and XP Client, and Windows 2000 had an announced end of life in 2010.

Ms. Leiss indicated that the final stage of the CARSON system (Computer Automated Retirement System of Nevada) was "rolled out" in 2001. The pension processing system had had been "very successful," and would remain in place after migration to the new environment.

Additionally, Ms. Leiss advised that at the end of life, the Forte/UDS environment would no longer be supported by the vendor, and all development would stop, which would involve security and compatibility risks. The System would have no notification of new threats and would not be provided assistance from the vendor in protecting against such threats. In addition, Ms. Leiss said the scope of any new risk would be unknown because risk assessment was dependent on the risks known at the time of end of life. Ms. Leiss advised that the System had an obligation to ensure the integrity and security of data given the nature of the "sensitive" financial information maintained for all members and retirees including names, addresses, Social Security numbers, bank accounts, and tax information.

As previously reported, Ms. Leiss said the System was proposing to migrate to a Java-based environment since Java was portable and the most widely-used language in the world. Java was not dependent on specific operating systems or hardware architectures. The cost associated with the migration was

projected at \$2,315,714 in the first year of the biennium and \$1,615,838 in the second year of the biennium.

Assemblyman Denis requested information relative to the process used to determine the need for conversion from the Forte/UDS environment to the Java-based environment.

Ms. Leiss responded that when the end of life of the Forte/UDS product was announced, research was conducted with various methods of migration. All methods were priced, and three bids were received for three different methods. Ms. Leiss indicated the field had a limited number of vendors, and the Java-based environment method was determined to be the best method for the System.

In response to Assemblyman Denis who asked for the date the Forte/UDS environment would no longer be supported, Ms. Leiss indicated the end of life of the product was scheduled for October 2008.

In response to Assemblyman Denis, who asked whether the migration would be completed by 2008, Ms. Leiss pointed out that the System was facing an 18-month project, and the process would be close to completion by October 2008.

In response to questions Assemblyman Denis asked regarding the migration process, Ms. Leiss advised that the current system would be maintained and lines of code would be translated from the Forte/UDS environment to the Java-based environment.

In response to Assemblyman Denis who asked whether the new system was customized or an off-the-shelf product, Ms. Bilyeu explained that the CARSON system was based on a product marketed by a firm named Clairmont to all mid-tier pension systems, those between \$10 billion and \$50 billion in assets. The product was 60 percent constructed, and the code customized to individual retirement systems. Ms. Bilyeu indicated that the firm had also changed their underlying product to a Java-based environment. However, Ms. Bilyeu explained that a movement to the Java-based Clarity System would cost approximately the same as the one that had been determined best for Nevada, excluding the individual specialized code for Nevada.

In response to Assemblyman Denis who asked how the new Java-based environment would affect the current staff, Ms. Leiss advised that the staff currently worked with a consultant that assisted in maintaining the System, and staff would continue to maintain the System with the assistance of a vendor.

In response to Assemblyman Denis who asked whether staff would require training to move from the Forte/UDS environment to the Java-based environment, Ms. Leiss indicated some training, which was reflected in the budget, would occur.

In response to questions Assemblyman Denis asked regarding ongoing costs, Ms. Leiss indicated that ongoing costs would not significantly differ from the ongoing costs of the Forte/UDS environment.

Chairman Arberry noted that the Governor had not recommended funding for the continued purchase of retirement credits under the provisions of NRS 391.165 in the Distributive School Account budget account. The

Chairman asked why the new retirement examiner position was requested to begin in July rather than October.

Ms. Leiss advised that the one-fifth of a year service credit was normally purchased during June, July, August, and September, but even if the program was not continued, the purchases would continue from the past school year under the current law. Additionally, Ms. Leiss advised that assistance was most needed in the Employer and Production Services Division during September, the heaviest retirement month.

In response to Chairman Arberry who questioned the need for and the location of the additional Las Vegas office, Ms. Leiss advised that a number of locations had been reviewed, but a specific location would not be selected until the request was approved. Ms. Leiss justified the new location based on the current six-week wait for one-on-one counseling to members and benefit recipients in Las Vegas.

In response to Chairman Arberry who asked whether the upgrade of an administrative assistant 2 to administrative assistant 4 had been recommended by State Personnel, Ms. Leiss advised that the forms had been completed but would not be submitted to State Personnel until the funding request was approved.

In response to questions Assemblyman Denis asked relative to the current method of disaster recovery, Ms. Leiss advised that the current disaster recovery site was a fully replicated site located some distance away from the System's site in northern Nevada. Additionally, Ms. Leiss advised that the System was not currently considering a replicated site in Las Vegas.

There was no response to a request for public testimony, and Chairman Arberry declared the hearing on Public Employees' Retirement System closed.

Chairman Arberry announced that the following bill draft requests (BDR) introductions:

(BDR 23-750): Pledges that the retirement benefits for certain public employees will not be increased without adequate funding. (Later introduced as [Assembly Bill 319](#).)

ASSEMBLYWOMAN SMITH MOVED APPROVAL.

ASSEMBLYMAN HARDY SECONDED THE MOTION.

THE MOTION CARRIED.

* * * * *

(BDR S-1085): Makes an appropriation to the Department of Education for allocation to Save the Children for in-school and after-school literacy programs. (Later introduced as [Assembly Bill 318](#).)

ASSEMBLYWOMAN SMITH MOVED APPROVAL.

ASSEMBLYMAN PARKS SECONDED THE MOTION.

THE MOTION CARRIED.

* * * * *

(BDR S-1440): Makes an appropriation to the Department of Administration for allocation to the Nevada Commission for National and Community Service for continuation of its programs dedicated to promoting citizen volunteerism. (Later introduced as [Assembly Bill 317](#).)

ASSEMBLYMAN MARVEL MOVED APPROVAL.

ASSEMBLYMAN HOGAN SECONDED THE MOTION.

THE MOTION CARRIED.

* * * * *

(BDR S-1084): Makes an appropriation to the University of Nevada School of Medicine for the construction of a facility for the treatment of chronic fatigue syndrome and research related thereto. (Later introduced as [Assembly Bill 316](#).)

ASSEMBLYMAN GRADY MOVED APPROVAL.

ASSEMBLYMAN MARVEL SECONDED THE MOTION.

THE MOTION CARRIED.

* * * * *

(BDR S-1086): Makes a contingent appropriation to the Lied Discovery Children's Museum for the costs of planning a new facility. (Later introduced as [Assembly Bill 315](#).)

ASSEMBLYWOMAN SMITH MOVED APPROVAL.

ASSEMBLYWOMAN WEBER SECONDED THE MOTION.

THE MOTION CARRIED.

* * * * *

(BDR S-1121): Makes an appropriation to the Las Vegas-Clark County Urban League for a prisoner reentry program. (Later introduced as [Assembly Bill 314](#).)

ASSEMBLYWOMAN WEBER MOVED APPROVAL.

ASSEMBLYMAN HOGAN SECONDED THE MOTION.

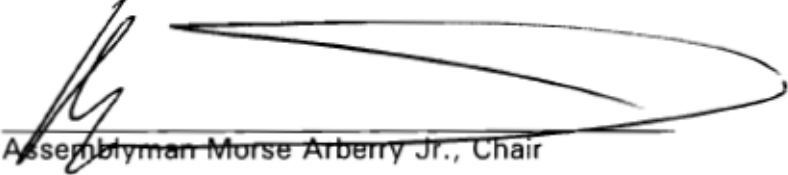
THE MOTION CARRIED.

Chairman Arberry adjourned the hearing at 10:44 a.m.

RESPECTFULLY SUBMITTED:

Connie Davis
Committee Secretary

APPROVED BY:



Assemblyman Morse Arberry Jr., Chair

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Committee on Ways and Means</u>			
Date: <u>March 14, 2007</u>		Time of Meeting: <u>8:00 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Guest List
	C	Kate Marshall, State Treasurer	Millennium Scholarship Program Projected Fund Balance
	D	Kate Marshall, State Treasurer	Unclaimed Property Summary of Historical Transactions
	E	Kate Marshall, State Treasurer	Nevada College Savings Trust – BA 1092
	F	Kate Marshall, State Treasurer	Nevada 529 College Savings Plan Fees
	G	David Sarnowski, Executive Director, Commission on Judicial Discipline	Information Packet regarding the Commission on Judicial Discipline.
	H	David Sarnowski, Executive Director, Commission on Judicial Discipline	Guide to the Ethical Obligations of Nevada Judges and Filing a Complaint with the Nevada Commission on Judicial discipline.
	I	Dana Bilyeu, Executive Officer – The Public Employees' Retirement System of Nevada	Schedule outlining contribution rates for both for Employer Pay and Employee/Employer Pay Plans