

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS
AND THE
SENATE COMMITTEE ON FINANCE
JOINT SUBCOMMITTEE ON PUBLIC SAFETY/NATURAL
RESOURCES/TRANSPORTATION**

**Seventy-Fourth Session
March 23, 2007**

The Assembly Committee on Ways and Means and the Senate Committee on Finance, Joint Subcommittee on Public Safety/Natural Resources/Transportation was called to order by Chair David R. Parks at 8:08 a.m., on Friday, March 23, 2007, in Room 2134 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).

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Assemblyman David R. Parks, Chair
Assemblywoman Heidi S. Gansert
Assemblyman Tom Grady
Assemblyman Joseph Hogan
Assemblywoman Ellen Koivisto
Assemblywoman Kathy McClain
Assemblywoman Valerie E. Weber

SENATE COMMITTEE MEMBERS PRESENT:

Senator Dean A. Rhoads, Chair
Senator Bob Beers
Senator Dina Titus

GUEST LEGISLATORS PRESENT:

Senator Mark Amodei

STAFF MEMBERS PRESENT:

Steve Abba, Principal Deputy Fiscal Analyst
Larry Peri, Principal Deputy Fiscal Analyst
Mike Chapman, Senior Program Analyst
Robin Hager, Program Analyst
Linda Blevins, Committee Secretary
Patti Adams, Committee Assistant

Chairman David Parks called the meeting to order and indicated the agenda would be taken out of order. Peace Officers Standards and Training (POST) budget testimony would be heard first. Chairman Parks asked representatives from POST to come forward and commence with their budget presentation.



PEACE OFFICERS STANDARDS AND TRAINING

PEACE OFFICERS STANDARDS & TRAINING COMMISSION (101-3774) – POST-1

Senator Mark Amodei provided information to the Subcommittee on the proposed Peace Officers Standards and Training (POST) driver training course noting that Nevada lacked statewide facilities for drivers' training for law enforcement officers. According to Senator Amodei, there were officers listed on the Police Officers' Memorial who were victims of on-duty traffic fatalities. Senator Amodei explained to the Subcommittee that a one-time appropriation was needed to develop the Emergency Vehicle Operations Course (EVOC) training course on land available to the State. Once developed, the course would provide a necessary service for law enforcement personnel throughout the State.

Mr. Richard P. Clark, Executive Director, POST, provided the following prepared statement for the Subcommittee included as a part of [Exhibit C](#):

We are reminded every day by the media of increasing threats to our public safety and the peace and freedoms that we enjoy. Crime and violence is on the increase that is a fact. We hear of growing problems with Meth and other drugs that threaten the future of our youth and menace our communities. Not too long ago, it was almost unheard of for peace officers to be involved in a shooting situation, now these incidences are a common occurrence. On one hand, these violent and frightening realities must be countered with aggressive action and sophisticated responses from our criminal justice community. On the other hand, the consequences for unprofessional conduct, unethical decisions or abuse of authority by peace officers can be costly and are unacceptable. The public expects our peace officers to act professionally under pressure and to have the ability to make sound ethical judgments in serious and life-threatening situations.

The importance for our Nevada peace officers to be properly recruited, selected, hired and provided with appropriate, quality training has never been higher in order to meet this increased demand for professionalism.

The Commission on Peace Officers' Standards & Training (POST) is the regulatory commission statutorily mandated by NRS *[Nevada Revised Statute]* 289.500, and NRS 289.510 since 1965 to enforce the professional standards that govern the selection, hiring, basic and in-service training, and certification of Nevada peace officers. Our Mission Statement reflects our two fold responsibilities:

- 1st To develop and deliver professional training.
- 2nd Ensure that all Nevada peace officers and their agencies comply with established statutes and regulations.

We have accomplished many things. So far this biennium:

- POST Academy graduated 65 cadets.
- Granted 2,263 POST Basic and Professional Certificates.
- Conducted, facilitated and/or managed about 52,000 student hours of continuing education training.

- Provided nearly 42,000 student hours of basic training. Both in-service and basic training received a 4.6 evaluation on a 1 to 5 scale.
- Administered 1,850 POST certification exams.
- Processed about 5,000 Personnel Action Reports.
- Certified 40 POST Physical Fitness Test Administrators.

In Addition:

We initiated a web-based, 80-hour, In-Lieu training program with the help of Washoe County Regional Law Enforcement Training Center, and began auditing agencies for compliance with background investigation and citizenship requirements. We helped the International Association of Director's of Law Enforcement Standards & Training (IADLEST), our national parent organization, launch a national peace officer de-certification index that can be accessed to determine if peace officer applicants were de-certified in another state.

The following Nevada Administrative Code (NAC) changes were approved by the Commission:

- The term "less than lethal" was defined.
- Basic Academy core courses were updated.
- Standardized performance objectives for basic training courses were approved by the Commission and became mandatory this year.
- Counter terrorism was added to all basic training curricula except Category III.
- Our budget request is aggressive and appropriate to match our increasing responsibilities. We do not receive general fund money. We are almost solely funded through court assessments that were established in 1983 specifically to provide for the training and education of peace officers. Our funding source for court assessments has improved significantly over the past 4 years. The current level of court assessments is more than adequate to support the governor's recommended budget for the POST Commission.

Our first Budget item to discuss is the construction of an EVOC facility:

We desperately need an Emergency Vehicle Operation Course (EVOC) facility. Officer safety is a big concern. In the last 10 years more peace officers have been killed in traffic accidents than by gun fire (a 40 percent increase). Peace officers are not the only ones involved in these traffic accidents. Citizen safety is also a big concern and the cost of these traffic accidents can be astronomical. In Nevada we've lost 2 peace officers to traffic accidents in the last 4 years. Driving a vehicle is the largest exposure to liability of first responders. The state of Nevada paid over \$2 million for traffic accident liability in 2003, I don't know about 2004 and 2005; but in 2006, the state paid another \$1.8 million and there are other incidences pending litigation which could result in huge damages.

During the presentation, Mr. Clark commented that earlier in the day, Risk Management had provided information ([Exhibit D](#)) which demonstrated that between the years 2000 and 2005, tort claims for the State were \$5.2 million

with an additional \$250,000 for worker's compensation claims, vehicle repairs, and vehicle replacements. Mr. Clark continued the testimony:

In many cases, the courts have cited "deliberate indifference" to training and vicarious liability as factors in the determination of fault. Peace officers are required to participate in many activities that expose them to danger and liability and physical confrontation, use of deadly force; however, the need to drive a vehicle moderately to aggressively occupies 80 percent of their time. Studies show if training does not re-occur on a timely basis, peace officers will revert to old, bad habits. Also, that a higher percentage of traffic accidents occur with peace officers with more than 10 years of service. These facts reinforce the need for in-service training but very little is done without a facility. The prevention of one death due to officer involved traffic accidents would pay for this facility.

The Nevada POST Commission mandates that all Category I peace officers pass a basic EVOC which includes approximately 40 hours of training involving legal issues and liability, pursuit management, tactical operation of a law enforcement motor vehicle, collision avoidance, and evasive maneuvers.

This basic EVOC training is provided to approximately 38 Northern Nevada law enforcement agencies and all state law enforcement agencies other than DPS [Department of Public Safety] (who also have a need for this facility). We have never had an adequate facility for EVOC. We have been forced to use airport runways and parking lots, which are not big enough or designed for an EVOC. The Department of Corrections and State Lands have graciously agreed to grant the use of approximately 10 acres, which is less than 5 minutes from the POST Academy in Carson City to be used as an EVOC. This project will be a multiagency use facility open to Local, State, Tribal law enforcement, Fire Service, Emergency Medical Services as well as other state agencies for driver's education training and skills development.

We have broad based support from all of the Northern Nevada law enforcement agencies.

The one shot appropriation request for Court Assessment funds in FY 2008, \$975,820; FY 2009, \$1,688,938 = \$2,664,758.

Mr. Clark continued with prepared testimony as follows:

Second is our request for the completion of a Job Task analysis and Physical fitness validation study:

The job task analysis is a study to confirm the specifics of the job and the occupational demands of Nevada peace officers, which differ from Category I, II, and III. This analysis becomes the foundation for a validation study to confirm the physical fitness requirements for peace officers set forth by POST.

We were directed by the Commission to complete this job task analysis and physical fitness study for Category I, II, and III peace officers because the Commission considers this their number

1 priority. Continued requests for physical fitness waivers to the [POST] Commission has highlighted a long overdue need to develop scientific documentation to support reliability and the defensibility necessary to avoid litigation regarding challenges to these standards.

This item was approved in our budget in 2001. However, unfortunately after 9-11, the funding was reverted to the General Fund. When this occurred, the Commission opted to revert to a physical fitness standard that was the result of a physical fitness validation study completed in the state of Idaho in the mid-90's.

This is the current standard used in Nevada to determine if applicants are qualified to meet physical demands as Nevada peace officers. Our Deputy Attorney General has advised us that this issue continues to [leave the state with] a weak [legal] position if legal challenges are raised. In almost every POST Commission meeting a request is made for a physical fitness (PF) accommodation to waive the PF standards that are continually denied. Any of these denials could result in a subsequent law suit. NACO Insurance Pool conducted a PF/validation study in 2004. However, the study was very limited in scope; it only affected 17 out of 138 criminal justice agencies; no Category II or Category III agencies, and no state agencies were included. The Commission rejected implementing the results of this study as a state standard based on its limitations, and directed the Commission staff to request funding to complete a more comprehensive study of Category I, II, & III. We are requesting \$150,000 in FY 2008.

Our third request is to create a Professional Development Bureau:

This item was approved by the Post Commission and came from the recognition that Nevada peace officers need to continue to update and improve their knowledge, skills and abilities throughout their career. Through several meetings with criminal justice training managers and a survey with the Nevada Sheriffs and Chiefs, POST staff confirmed a need to update and improve the requirements to obtain the professional certifications beyond the basic certificate.

This request would include the establishment of a Professional Development Bureau within POST and to hire a bureau chief and an administrative assistant 3. The assigned staff would develop specific criteria and curricula necessary to obtain newly created Intermediate, Advanced, Supervisory, Management and Executive POST Professional Certificates. The bureau chief would also facilitate and provide training sessions biannually in various locations statewide, as well as provide support for the 24-hour continuing education requirement for all Nevada peace officers. Budget request for this item is \$123,679 for FY 2008 and \$132,920 for FY 2009.

Chairman Parks advised Mr. Clark that a major issue under Budget Account (BA) 3774 was budget amendment number 54, the elimination of the recommendation for a computer network specialist in decision unit E275. Mr. Clark stated POST had recently met with Department of Information

Technology (DoIT) to discuss the change. The POST division was amenable to the decision to eliminate the position.

Chairman Parks asked Mr. Clark to comment on the request for two additional positions under decision unit E325 to establish a Professional Development Bureau. Mr. Clark explained that as peace officers progressed through their careers a basic professional development certificate was required. Some agencies required training when officers received promotions to positions such as first-line supervisors, but the training was not a state requirement. The development of specific criteria and curricula for each certificate assisted the individuals in supervision management and leadership responsibilities.

In response to a question from Chairman Parks, Mr. Clark stated some of the classes could be developed and taught through the universities or community colleges. Mr. Clark further advised the basic training curriculum was developed in coordination with the community colleges, and the proposed in-service training program would similarly be created in collaboration with the community colleges.

Addressing a question from Assemblywoman McClain, Mr. Clark noted the courses would consist of programs that, for example, would provide supervisory POST certificates for first-line supervisors. When officers were transferred to supervisory positions from field positions, training must be provided on supervising professionally. Ms. McClain voiced concerns regarding whether front-line supervisors were trained to deal with groups such as senior citizens, children, or people with special needs. According to Mr. Clark, specific criteria and curriculum had not been developed, but when developed, curricula would address current issues, problems, and trends.

Senator Beers inquired whether POST had an alternative plan should a shortage in court assessments occur. Mr. Clark explained that over the past four years there had been solid increases in court assessments. As far as the one-shot for the EVOC, if the court assessments were less than anticipated, it would result in a slowdown but not a discontinuation of the work on the facility.

Chairman Parks noted the professional development program did not include revenues generated from registration fees or testing fees and asked whether POST had considered the option of charging fees for the program. Mr. Clark advised the Subcommittee that should a vendor be hired, registration fees would be considered to offset the cost. Mr. Clark pointed out that the funds generated by the court assessment fees were specifically for the training and education of peace officers.

Chairman Parks next asked how the proposed professional development program would impact agencies such as the Department of Public Safety (DPS) and the Nevada Department of Corrections (NDOC). According to Mr. Clark, DPS, for example, was already requiring training courses similar to what would be offered through the professional development program. The POST Commission would be requested to make regulatory changes to make first-line supervisor training mandatory. There may be a small cost to agencies, but the cost was greater when someone without proper training was put into a position of leadership or management supervision.

Ms. McClain asked whether the cost to an agency would result in an agency request for additional funds to attend the required courses. Mr. Clark advised the cost would consist of travel and time from work. It would be advantageous

and cost-effective for POST to provide on-line and distance learning opportunities.

Assemblyman Grady mentioned that the court assessments did not fully cover the POST budget, and the local governments that sent peace officers for training were charged a registration fee that supplemented the income for the academy. Mr. Clark confirmed that was correct.

Chairman Parks moved to the next item, Physical Fitness Standards Study, decision unit E334. Although the Subcommittee had no concern with the necessity of a study, there was a question regarding how POST had determined \$150,000 as the amount needed. Mr. Clark advised that a survey of companies performing these studies had been completed to determine the amount of money required. Nevada maintained three categories of peace officers. All categories had the same requirement for physical fitness. There were continual requests from peace officers for waivers from the physical fitness standards. It was important for POST to ensure the requirements were defensible, reliable, and realistic.

Senator Rhoads noted that the study was a high priority for POST but was uncertain why it had not been recommended in the 2003 or 2005 legislative sessions. Mr. Tim Bunting, Deputy Director, POST, advised the Subcommittee that POST had requested a one-shot for each of the 2003 and 2005 Legislative Sessions, but the requests were not in the Governor's recommended budget. The 17th Special Session of the Legislature ultimately approved a General Fund appropriation of \$50,000 for a physical fitness standards test. The money was not spent because of statewide budget restraints and was reverted to the General Fund in FY 2002-03.

In response to a question from Senator Beers, Mr. Clark explained that other states had category I officers, such as deputy sheriffs, municipal police officers, and state troopers, and category III officers, such as corrections and detention officers; however, few states also had the category II standard for parole, probation, and gaming enforcement personnel and bailiffs. The problem was the defensibility of not having a physical fitness standards study completed in the state of Nevada. Mr. Clark further explained there was a degree of physical fitness called the MET (metabolic rate) levels for heart-lung standards. The Nevada requirement was below what was recommended to pass the test for the heart-lung standard. Generally, the statewide regulations for all peace officers did not meet the standards for the heart-lung test.

Chairman Parks asked whether the existing physical fitness standards had ever been legally challenged and whether the Attorney General was recommending development of a physical fitness standard. Mr. Clark stated the standards had not been challenged, but the most frequent issue that came before the POST Commission was a request for waiving the physical fitness requirement. One successful challenge of the standards would cost the State more than the study would cost. According to Mr. Clark, the Attorney General was providing advice to the POST Commission on the standards.

Chairman Parks next addressed decision unit E888, Emergency Vehicle Operations Course (EVOC) which was addressed by Senator Amodei in earlier testimony. Senator Rhoads asked how many acres of the course would be paved. Mr. Clark responded that seven acres would be paved. There was a total of 26 acres in the parcel that the Department of Corrections allocated for

development. The pavement would be sturdy enough to accommodate fire trucks as well as passenger vehicles.

Responding to a question from Senator Beers, Mr. Clark advised the location of the course was in Carson City adjacent to the Department of Corrections at the Stewart facility. Senator Beers noted that staff believed the Public Works Board (PWB) would not begin construction of the EVOC unless POST had the entire amount of funding required for the project. Ms. Heather Elliott, Administrative Services Officer 1, POST, advised the Subcommittee that POST would function as a pass-through agency. Revenue would be generated through court assessments and transferred to the Public Works Board.

Senator Beers inquired whether the Nevada Department of Transportation (NDOT) would be better suited to the project than the Public Works Board. Ms. Elliott replied that NDOT provided the information for the cost of the materials. Mr. Clark noted that because the EVOC was a Capital Improvement Program (CIP) project, the PWB was selected for the project. Senator Beers recommended the Subcommittee discuss the project with NDOT and PWB to determine which agency had the expertise for a project of this magnitude. Mr. Clark advised the Subcommittee that the EVOC was to be heard in the CIPs on March 29, 2007.

Chairman Parks asked whether the project would be completed in phases as funds were available. Ms. Elliott agreed that was the proposed plan. The project would last approximately six months and span two bienniums. The PWB had the capability to carry forward a project and project funds, if necessary.

Chairman Parks questioned whether a Memorandum of Understanding (MOU) had been developed with primary users of the facility to outline fees, time scheduling, and other contributions. Mr. Clark stated that a business plan had been developed to support operations, but had not been formalized. The plan outlined proposed usage fees as follows:

- An agency that contributed to court assessments and used their own vehicle would not be charged a usage fee.
- An agency that used a POST EVOC vehicle and contributed to the court assessments would be charged \$100 per day.
- An agency that did not contribute to the court assessment fees and used a POST EVOC vehicle, would be charged \$250 per day.

In support of the project, Mr. Grady commented the EVOC was needed to provide defensive driver training for peace officers.

Chairman Parks requested Mr. Tim Bunting, Deputy Director, POST, provide brief information for the Subcommittee on decision unit E175, which requested court assessment fees to allow three employees to attend the International Association of Directors of Law Enforcement Standards and Training (IADLEST) conference in Indiana in FY 2007-08. Mr. Bunting advised the Subcommittee that Nevada would host the IADLEST conference in 2009. The knowledge gained by the employees attending the conference in Indiana would be invaluable when preparing for the Nevada conference in 2009.

Chairman Parks requested information on decision unit E225 which requested \$50,000 in court assessments in each year of the 2007-09 biennium to fund the Crimeline Law Enforcement Training Program. Mr. Bunting explained the

program was an online, interactive e-learning program that included topics such as identity theft, terrorism, and fraud against senior citizens.

Chairman Parks asked Mr. Bunting to provide further information on decision unit E227, which recommended \$5,000 in each year of the 2007-09 biennium to fund honorariums to volunteers who were role-players for training. According to Mr. Bunting, a realistic training environment required victims, suspects, and innocent bystanders to be interviewed by the trainees. In the past, volunteers were recruited, but it had become increasingly difficult to locate volunteers. In the 2005 legislative session, POST was allowed to provide honorariums for instructors which created a reliable instructor pool. When instructors were being paid, they showed up and met the standards required by POST. It was Mr. Bunting's opinion that providing an honorarium for role-players would create an incentive for volunteers.

Chairman Parks noted that in decision unit E327 training expenses were increased 540 percent in FY 2007-08 over the FY 2005-06 actual expenditures [from \$2,123 to \$13,595] and another 35 percent in FY 2008-09 [from \$13,595 to \$18,395]. Mr. Bunting explained the increases were due to staff turnover and would be used for software training and other training, such as academy instructor training and a physical fitness instructor certification program.

Chairman Parks asked Mr. Bunting to provide justification for reclassification of four positions under decision unit E805. Mr. Bunting explained that the POST Commission Activities Bureau was responsible for records and certification for the audits and compliance. It used a sophisticated and complex software program to track all peace officers in Nevada. The administrative aid position was responsible for inputting records that required 100 percent accuracy. To retain qualified staff, POST was requesting an upgrade of the Administrative Aid to Administrative Assistant 1 and the Administrative Assistant 1 to an Administrative Assistant 2 in the records section. A reclassification of an Administrative Assistant 4 to a Program Officer position was requested because the position served as a supervisor for records and certification and performed program officer duties.

Chairman Parks requested public comments. Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association; John Dotson, Chief, Sparks Police Department; Ron Pierini, Sheriff, Douglas County; Jim Fry, Deputy Risk Manager, Risk Management Division; Brian Sanchez, Major, Nevada Highway Patrol; Phil Galeoto, Director, Department of Public Safety; and Lt. Andrew McAfee, Nevada Highway Patrol Training Division, testified in support of the EVOC and the POST Commission budget.

Chairman Parks closed the hearing on BA 3774 and opened the hearing on BA 3675.

ELECTED OFFICIALS

GOVERNOR'S OFFICE OF HOMELAND SECURITY (101-3675)—ELECTED-16

Mr. Larry Martines, newly appointed Director of Homeland Security, provided the Subcommittee with personal background information. Mr. Martines was recently assigned as a member of the executive committee of the National Homeland Security Advisory Council.

Chairman Parks noted a major issue with budget account (BA) 3675 was the transfer of the Office of Homeland Security back to the Governor's Office from the Department of Public Safety (DPS). During the 2005 Legislative Session, the Office of Homeland Security was transferred from the Governor's Office to the DPS.

Assemblywoman McClain expressed her concerns regarding the transfer back to the Governor's Office and the request for General Funds. Ms. McClain asked for justification for these requests and for additional information regarding the accomplishments of Homeland Security. Mr. Martines could not speak for the history of Homeland Security. Mr. Martines noted that the former Governor had directed that Homeland Security was to be a "stand alone" unit. The return of the Homeland Security Department to its original position in the Governor's Office, provided direct access to the Director and staff by the Governor, and vice versa, in all matters relating to terrorism prevention efforts. The chain of command was shortened, thus preventing any filtering or delays of critical federal Homeland Security information, Fusion Center and Terrorism Early Warning System (TEWS) intelligence, directives, or alerts. The transfer to the Governor's Office gave the office credibility and neutrality when dealing with turf conscious Nevada law enforcement agencies.

Mr. Martines continued by explaining that since his appointment as Director, the Office of Homeland Security (OHS) had accomplished tasks directed by the U.S. Department of Homeland Security (DHS) and by the Governor. The OHS was in the process of setting up a Fusion Center hub, for anti-terrorism intelligence, in the state of Nevada. According to Mr. Martines, Nevada was one of the last states to establish a Fusion Center hub. The OHS had also been requested to revive and manage the Citizen Homeland Security Commission (Citizen Corps Commission) and involve citizen groups from every county involved in homeland security training, citizen emergency response teams, or other groups. The OHS had been tasked with inspection of infrastructure sites that were designated as possible terrorism targets. The OHS would visit 10 to 12 sites per year to ensure or enhance the security to the levels required. Failure to accomplish these tasks would result in a reevaluation of federal grants coming into Nevada.

Ms. McClain voiced her disagreement with support of the Fusion Center, transferring Homeland Security to the Governor's Office, or providing General Funds to Homeland Security.

Senator Titus questioned the location of the Fusion Center in Carson City rather than in Clark County. Mr. Martines stated that the Department of Homeland Security directed the location be in or near the state capital. Nevada's two major metropolitan regions, Washoe County and Clark County, interchange information and forward the information into the "Hub." The Hub would be the contact point for ancillary groups in Washington, D.C., which would forward information from Washington, D.C. to the Hub in Nevada. The location of the Hub was as a coordinating entity rather than as a terrorist target area. Mr. Martines pointed out that he received regular updates from colleagues in every state. When the Nevada Hub was activated, the updates would be distributed through the Hub.

Senator Titus pointed out that a major problem presented to the Subcommittee in past sessions was the inability of emergency responders to communicate with each other and asked Mr. Martines the status of the communication system. Mr. Martines responded that it was going to be a few days before he

had an answer to the question. Senator Titus asked what, in the event of an immediate attack, would be the benefit of the Hub without an interoperable communication system. Mr. Martines explained that while none of the local hubs were operational, the anticipated date for activation was July 2007.

Senator Titus further stated the communication problem had been an issue for at least two sessions, and she wanted to see a progress report. Mr. Martines responded that two members of the Homeland Security staff were currently attending an interoperability communications workshop in Los Angeles, California and would report on the status upon their return. Mr. Martines agreed that Nevada must have a system put into place as quickly as possible. Responding to Senator Titus' question regarding the cost for providing interoperability for Nevada, Mr. Martines explained that although the necessary funds were not available at this time, a portion of the proposed grant for fiscal year (FY) 2008 was designated for that purpose. There was also a possibility of additional federal funding through U.S. Senator Harry Reid's office. Senator Titus further commented that without communications during a disaster, a hub was useless, and questioned whether Nevada was prepared for an immediate disaster. Mr. Martines admitted that, at this time, Nevada was not prepared for an immediate disaster. Senator Titus expressed concerns that although OHS had been in operation for six years, it did not appear the budget being requested addressed the major issues of preparedness, such as the lack of an interoperable communication system.

Assemblywoman Weber asked whether the biennial report to the Legislature had been prepared. Mr. Martines advised the Subcommittee that the Homeland Security Commission was putting the report together for the Legislature. Ms. Weber further questioned whether a report of the history of expenditures from 2003 forward had been prepared. Mr. Martines advised the U.S. Department of Emergency Management (DEM) controlled the budget for the Homeland Security Commission, and Mr. Martines did not have the requested figures available. In reviewing the performance indicators ([Exhibit E](#)), Ms. Weber noted that three of the five indicators dealt with meetings rather than outcome-oriented results. Mr. Martines noted the indicators would be reviewed and enhanced.

Senator Beers pointed out to the Subcommittee that Nevada had many terrorist targets. Subsequent to the September 11, 2001, terrorist attacks, a school was seized in Russia and many adults and children were killed. In his opinion, the threat of attack was not an illusion.

As a recap, Chairman Parks noted Mr. Martines would be preparing new performance indicators that could be tracked. Mr. Martines confirmed the performance indicators would be provided to the Subcommittee within one month. Chairman Parks further noted the philosophy of the transfer to the Governor's Office from DPS, according to Mr. Martines, was due to federal priorities.

Moving to decision unit E500 and E501, General Fund Support, Chairman Parks pointed out that budget amendment number 63 changed the funding source for the grants and projects analyst supervisor from the Health Division (50 percent) and DEM (50 percent) to 100 percent General Fund, and requested funding for three positions. Mr. Mark Teska, Division Administrator, Administrative Services, Department of Public Safety, clarified the requested transfer. In the FY 2006-07 budget there were four positions funded 50 percent Homeland Security grant and 50 percent Health Division funding. There was insufficient

funding to fill all four of the positions, and only the homeland security administrator and the grants and projects analyst supervisor positions were filled. Mr. Teska testified that based on correspondence with the Health Division the funding from the Center for Disease Control (CDC) was in jeopardy for FY 2008-09. In addition, the grant funding OHS received from DEM through the federal Homeland Security grant program was anticipated to end. Therefore, it was requested that General Fund money provide the funding for those positions.

In the opinion of Ms. McClain, these unfunded federal mandates should not be supported with General Funds as the necessity for the positions had not been justified.

Chairman Parks asked whether there were alternative funding sources available. Mr. Teska was not aware of other funding sources available at this time. Mr. Phil Galeoto, Director, Department of Public Safety (DPS), testified that DEM was regularly searching for alternative funding sources. It appeared the federal government was not only reducing grant funding, but was now awarding Homeland Security grants through a competitive process. In addition, there could be a 20 percent match requirement for grants.

Ms. McClain reiterated her opinion that the federal government needed to provide the funding for the programs they required, and she would not support General Fund money for federal programs.

Senator Titus voiced further concerns regarding the lack of interoperable communication throughout the State. In her opinion that should be the priority for this budget. Discussion ensued between Senator Beers, Senator Titus, and Ms. McClain during which Senator Beers clarified the requirements of an interoperable communication system for first responders. Senator Titus asked Mr. Galeoto why the communication problems were not a priority. Mr. Galeoto replied that a number of divisions within DPS were working on the interoperability issues, but did not know the cost of a system. According to Mr. Galeoto, the cost was significantly more than Nevada alone could fund, but the issue was a priority for DPS. Senator Titus requested that staff review whether a study had been completed on an interoperable communication system for Nevada and report to the Subcommittee.

Mr. Galeoto noted that diverse and changing technology was a problem for an interoperable communication system. According to Mr. Galeoto, Nevada was the most mountainous state in the nation, which was a major issue when developing a communication system.

Chairman Parks advised Mr. Teska that a budget amendment had not been submitted to remove all of the DPS cost allocations and Health Division transfers from the budget. Mr. Teska replied that DPS staff would work with the fiscal staff to ensure the amendment was prepared and submitted.

Chairman Parks requested Mr. Martines provide a brief overview of the proposed Fusion Center, budget amendment 63. Mr. Martines described the Fusion Center as a "Hub". According to Mr. Martines, space and some equipment was available at the Emergency Operations Center (EOC) for the proposed Fusion Center Hub. Through grants and other means, the Office of Homeland Security anticipated acquiring the additional equipment necessary to make the system operational. Once fully functional, the system would operate

in conjunction with the northern and southern Terrorism Early Warning (TEW) centers, which will open in July 2007.

Chairman Parks asked for further comment regarding the requested staffing for the Hub, one supervising intelligence officer and two intelligence analysts. Mr. Martines advised the Subcommittee that the staffing recommendation was taken from the fusion centers in Las Vegas and Reno. The staffing at the fusion centers in Las Vegas and Reno would consist of personnel from the Las Vegas Metropolitan Police Department and the Washoe County Sheriff's Office. Some of the requested positions at the Las Vegas and Reno fusion centers would be paid with grant funds.

At the request of Chairman Parks, Mr. Martines provided clarification regarding the roles of the Fusion Center Hub and the TEW centers. The Fusion Center was the Hub and the centerpiece of the intelligence matrix across the State. The two TEW centers of northern and southern Nevada were specific to their counties. The Fusion Center Hub would encompass the counties outside of Washoe County and Clark County and bring together the terrorism liaison officers trained and assigned to the those counties. The Hub would be the direct linkage to the Department of Homeland Security in Washington, D.C. and to the Homeland Security Advisory Commissions for every state. The Hub would receive notice of impending terrorist threats and notify the TEW centers in northern and southern Nevada.

Ms. McClain requested further clarification regarding systems that were currently operational in Nevada versus the proposed Hub system. Mr. Martines did not have information on current warning systems but suggested that Sheriff Douglas Gillespie of the Las Vegas Metropolitan Police Department was responsible for the Clark County system. Ms. McClain further questioned what the responsibilities were for DEM. Mr. Martines explained that DEM reacted to actual emergencies, whereas the Hub was a proactive system. The role of the Hub was to prevent terrorism attacks in Nevada by sharing intelligence information from local and national resources.

Senator Rhoads asked whether counties, other than Washoe and Clark counties, early warning systems were in place. Mr. Martines stated those counties had no early warning systems in place. It was Mr. Martines' intent to train terrorism liaison officers in each of those 15 counties.

Chairman Parks noted 46 states were members of the Fusion Center system and inquired whether those states had received federal funding for the systems. Mr. Martines responded that the federal government had provided seed money to those 46 states. All of the 46 states had multiple TEW centers and a Fusion Center Hub.

Chairman Parks requested information on the number of positions required to maintain the Fusion Center. Mr. Martines stated the determination of the number of positions needed was made prior to his appointment as the Director. Chairman Parks noted there was a senior analyst position that could possibly perform the duties of the supervising intelligence officer. Mr. Martines stated the senior analyst would be located in the Fusion Center and would have multiple tasks of managing the Center and be required to attend all meetings and functions of the TEWS. It would be difficult to also perform as the supervising intelligence officer.

Chairman Parks pointed out that overtime was budgeted for unclassified positions and requested justification. Mr. Teska responded that the positions were requested to be unclassified but not exempt from overtime. Senator Beers asked who had requested the positions be unclassified but not exempt and what were the responsibilities of the positions. Mr. Teska replied that OHS was asked by the Governor's Office to include the positions. The three unclassified positions requested were two intelligence analysts and an intelligence analyst supervisor. It was Senator Beers' opinion the supervisor position should be exempt from overtime. Assemblywoman Koivisto was unsure regarding which unclassified positions were exempt from overtime. At the direction of Chairman Parks, staff would research the overtime issue and report to the Subcommittee.

Chairman Parks pointed out that no detail had been provided by the Office of Homeland Security to justify the conclusion that DEM and the Office of Homeland Security did not overlap responsibilities. Chairman Parks asked Mr. Martines to provide the justification to staff.

Chairman Parks closed the hearing on BA 3675 and asked for a short break.

INFRASTRUCTURE

COLORADO RIVER COMMISSION (296-4490)—CO. RIVER COMMISSION-1

Chairman Parks opened the hearing on budget account (BA) 4490. Mr. George Caan, Executive Director, Colorado River Commission of Nevada, provided an overview of the Colorado River Commission (CRC) with a brief PowerPoint presentation ([Exhibit F](#)).

Following the presentation, Senator Titus asked the CRC to explain the issues surrounding the use of \$5 million in land sales proceeds to satisfy contractual obligations in the Power Marketing Fund. Mr. Caan provided an overview of the issue as covered during the interim and which would be resolved by the passage of Senate Bill (S.B.) 301, introduced by Assemblyman Hardy and Senator Hardy. Mr. Caan's testimony stated:

One of the responsibilities of the CRC is to provide electric utility service to customers I outlined before [\[Exhibit F\]](#) that we serve in southern Nevada. A number of those customers are retail customers, meaning that we provide them all the power that they need to produce their goods. A difference would be providing power to Overton Power District where our hydropower is one portion of their entire power, whereas we provide power to the industries in Henderson, the ones located off of I-515 and Lake Mead. We provide that to them as their full requirement. We support all of their electric loads. Originally they had a contract for hydropower that stemmed from World War II that was based on their contributory effort to the war effort. Over the years, their requirements have exceeded the amount of hydropower available to them. Therefore, we have supplied supplemental power to these industries. Meaning that we find out what are their loads, what do they need, how much power do they require, how much hydropower is available and what, in addition to that hydropower, is required, and we go to the market and buy that for them.

One of those industries is Pioneer Americas, the company that Senator Titus mentioned. Back in 2000-2001 we purchased supplies for Pioneer along with a lot of other folks, and long term

contracts which were required during the energy crisis. The only way we could purchase contracts for all utilities and get them at a reasonable price was to buy them long term. We purchased long term contracts for Pioneer. In 2001 Pioneer filed for bankruptcy and during that period attempted to reject those contracts under the bankruptcy law, leaving the State holding \$120 million worth of contracts. They were unsuccessful in rejecting those contracts and we worked with them for a number of months to see what we could do to mitigate the impact on them for those contracts. We were unsuccessful in reaching a conclusion and they went to court and sued us. In 2003, we went through a lawsuit and did not get to deal with the substantive issues. In 2003, we settled with Pioneer. As a result of that settlement, the Southern Nevada Water Authority acquired their component of hydropower, and CRC was left with a responsibility to manage the \$120 million portfolio, to try to eliminate it to the extent we could.

If we fast-forward to the end of 2005, we brought that \$120 million liability down to \$5 million. We worked very hard as a group with the vendors and electricity contractors, but we still had \$5 million of contracts we were responsible for as a result of the settlement.

We have a responsibility to manage the 9,000 acres in Laughlin. Concurrently with this, but not connected with this, we also were engaged in a land sale. We had a land sale of 110 acres that we sold to a company called Riverside Development that went into escrow at the end of 2005 or early 2006. It ended up with \$13 million worth of funds for that sale of land. At the same time, we were trying to determine how we were going to pay the \$5 million that was left of the residual amount that we did not have funds for. We had a number of choices to consider. One was to default, which we did not want to consider. The default would affect the State, the bond ratings, and our ability to procure energy supplies for all of our customers.

In looking at the funds we had available, we looked at the law pertaining to the Fort Mohave Development Account. The priority of the Fort Mohave Development Account provides that the CRC may use those funds to administer the act and "any other expenditure authorized by law." We believed, in reviewing with the attorney, that we could use those funds for the payment of the residual energy bills which were bills that were "expenditures that were authorized by law." We believed we had the authority, we used the \$5 million, and we paid those bills.

That was in the spring of 2005. I went to Laughlin on August 9, 2005. I explained to them exactly what we did, why we did it. They were unhappy with what we did. They disputed our authority to use those funds. I understood those concerns. They had an expectation or misunderstanding that the law did not allow us to use those funds. They had a dispute. They were going to bring a lawsuit against us or the State. I did not believe that was a prudent course of action, to have the State and Clark County go to court over this battle. Through the leadership of Senator Hardy we have reached a compromise that was

memorialized in an agreement approved by Clark County and the CRC that provided that the CRC would support legislation introduced by Senator Hardy that would provide for two things: 1) eliminate the phrase "and any other expenditures authorized by law" so that CRC would no longer have the authority to go ahead and use those funds in that manner and can only use those funds to administer the Fort Mohave Development Act, and 2) seek an appropriation of \$5 million to replace the funds that we legally used to pay those vendors. In consideration of that, CRC agreed that during the interim, while we debated this issue with the Legislature, we would no longer use those funds provided for.

The reason we have never used those funds before, and as I said earlier, we are not state funded, we have water and power customers funding our costs, [and] the receipt of the sale of lands are precarious, at best. They don't happen very often, they are not a firm revenue source, and as a manager, I do not want to rely on that for our funding. This was an extraordinary situation. We had an energy crisis that required us to buy high-priced power to meet the needs of our customers. We had a bankruptcy that occurred that attempted to leave the State holding a \$120 million liability. We turned that into a \$5 million liability. We now only buy for these customers one month in advance. We do not buy long-term contracts. We have three months worth of collateral on hand in the state treasury, either cash or letter-of-credit, should any one of them go to default. We feel that we have, since 2002, protected the CRC and State from ever having this kind of liability. This was an extraordinary circumstance. We had the funds, they were legally available for us to use, and frankly, if we had gone to court, the first thing that would have been asked was "Well, Mr. Caan, what funds do you have that you believe are available"? So, why go through that process when we already had those funds?

I hope that was a helpful synopsis of that issue. I'll be happy to take any questions.

Senator Titus asked how the town of Laughlin intended to use the \$5 million. Mr. Douglas Beatty, CPA, Division Chief, Finance and Administration, Colorado River Commission, stated that under the law the funds were provided to Clark County for capital improvements in the Laughlin area pursuant to a capital improvement list approved by Clark County and forwarded to the CRC. The list was included as an attachment to the budget request. The recommended improvements totaled \$56.2 million. CRC anticipated the county would use the \$5 million as seed money for a grant or as partial funding for a capital project. Without a plan in place for the \$5 million, Senator Titus wondered why the state General Fund should appropriate the money when budget shortfalls had limited the funding for education, highways, and other programs.

Mr. Caan commented that the CRC agreed with Clark County that it was appropriate to request the Legislature to support S.B. 301 rather than take the issue to court. Chairman Parks asked whether the CRC had requested a formal opinion from the Attorney General. Mr. Caan explained that prior to seeking a formal legal opinion, the county and the CRC agreed on the compromise of bringing the issue before the Legislature. An opinion would only have been required if the CRC had gone to court and needed to defend the position of the CRC.

Chairman Parks confirmed that the CRC was supporting S.B. 301. Mr. Caan acknowledged that as part of the agreement with Clark County, the CRC was supporting the bill. In response to Chairman Parks' question, Mr. Caan stated that it was unknown what the actions of Clark County or the town of Laughlin would be if the bill did not pass.

During previous testimony regarding whether a formal opinion had been requested from the Attorney General, Senator Beers interpreted the question as whether or not the Attorney General's Office (AGO) provided an opinion on the use of Fort Mohave Development funds to pay off the contractual obligations, not whether the AGO had provided an opinion on the agreement between the CRC, Clark County, and the town of Laughlin. Mr. Caan clarified the testimony. When the CRC options were reviewed, one option was whether or not the Fort Mohave Development Account allowed, under current law, for the CRC to pay the bills using that account. The attorney assigned to CRC from the Attorney General's office provided an informal opinion which the CRC provided to Clark County and the town of Laughlin. Based on that opinion, Mr. Caan believed the CRC had the authority to pay the bills from the Fort Mohave Development Account. Mr. Caan would provide a copy of the written opinion CRC received from the Attorney General's office to the Subcommittee.

Chairman Parks noted two major issues of concern with BA 4490, one was the vacant positions and reclassifications in decision unit E806, and the other was the request for two new positions in E250. Responding to Chairman Parks' inquiry regarding why a number of positions had been vacant for a considerable period of time, Mr. Caan stated that the CRC attempted to predict the work customers would request for the biennium. Positions were not filled or funded unless the positions were required by the customers.

Chairman Parks asked Mr. Caan to justify the reclassification of two positions, from classified to unclassified service, under decision unit E806. Mr. Beatty explained the two positions were the last two in the account series that were in classified status. The reclassifications were needed to address an increase in workload caused as the Southern Nevada Water Authority member agencies move to the CRC's energy resource load pursuant to S.B. No. 211 of the 71st Legislative Session.

In response to Chairman Parks' question regarding the two positions requested in decision unit E250, a senior power facilities electrician and a power facilities communications technician, Mr. Caan explained the CRC Power Delivery Project had been operating with minimal staff since 1996. The positions were to support the capital improvement program for the project.

Chairman Parks noted decision unit E350 requested substantial funds for travel and associated dues and registrations, and he requested Mr. Caan provide justification. Mr. Caan stated that the Colorado River was managed in various ways for water and power. The CRC dealt with six other states, Mexico, and the watermaster of the river through the federal government. It was important for CRC personnel to travel to these six states and to participate in all meetings and conferences related to the Colorado River to protect Nevada's rights.

Senator Rhoads asked Mr. Caan to justify the need for \$45,000 for publication costs, particularly the *Laws of the River* ([Exhibit G](#)). Mr. Caan provided testimony regarding the importance and complexity of the Colorado River and

that advised the Subcommittee that [Exhibit G](#) had been a much requested account of the issues facing water users and suppliers.

Chairman Parks closed the hearing for BA 4490. There being no major issues for BA 4497, Research and Development; BA 4501, Power Delivery System; and BA 4502, Power Marketing Fund, Chairman Parks excused the Colorado River Commission.

There being no public comment, the meeting was adjourned at 10:56 a.m.

RESPECTFULLY SUBMITTED:

Linda Blevins
Committee Secretary

APPROVED BY:



Assemblyman David R. Parks, Chair

DATE: _____

Senator Dean A. Rhoads, Chair

DATE: _____

EXHIBITS			
Committee Name: <u>Assembly Committee on Ways and Means/Senate Committee on Finance Joint Subcommittee on Public Safety/Natural Resources/Transportation</u>			
Date: <u>March 23, 2007</u>		Time of Meeting: <u>8:08 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A	-----	Agenda
	B	-----	Attendance Roster
	C	Richard Clark / POST	Budget Briefing
	D	Richard Clark / POST	Vehicle Claims/Tort Claims
	E	Lawrence Martines/Homeland Security	Budget Request
	F	George Caan/Co. River Commission	Powerpoint Presentation/Governance, Programs
	G	George Caan/Co. River Commission	Laws of the River