

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS
AND THE SENATE COMMITTEE ON FINANCE
JOINT SUBCOMMITTEE ON GENERAL GOVERNMENT
AND ACCOUNTABILITY

Seventy-Fifth Session
February 6, 2009

The Assembly Committee on Ways and Means and the Senate Committee on Finance, Joint Subcommittee on General Government and Accountability was called to order by Chair Mo Denis at 8:05 a.m. on Friday, February 6, 2009, in Room 2134 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, 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/75th2009/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 IN CARSON CITY:

Assemblyman Mo Denis, Chair
Assemblyman Marcus Conklin
Assemblyman Pete Goicoechea
Assemblyman Joseph M. Hogan
Assemblywoman Ellen Koivisto
Assemblywoman Kathy McClain

SENATE COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Senator Warren B. Hardy II
Senator Dean A. Rhoads

SENATE COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Steven A. Horsford, Cochair
Senator Joyce Woodhouse

STAFF MEMBERS PRESENT:

Brian Burke, Principal Deputy Fiscal Analyst
Tracy Raxter, Principal Deputy Fiscal Analyst
Sarah Coffman, Program Analyst
Christine Bashaw, Committee Secretary
Connie Davis, Committee Assistant

Chair Denis advised that the Department of Personnel and Department of Business and Industry budgets were before the Subcommittee for final consideration. Chair Denis opened the hearing on the Department of Personnel budget.

DEPARTMENT OF PERSONNEL
BUDGET PAGE PERSONNEL -1

Teresa J. Thienhaus, Director, Department of Personnel, asked whether the Senators in Las Vegas had the budget presentation booklet ([Exhibit C](#)) and the handout for the Powerpoint presentation ([Exhibit D](#)).

Senator Steven Horsford answered they did.

Ms. Thienhaus introduced herself and Greg Weyland, Administrator, Administrative Services Division. She read from [Exhibit C](#) and stated that the Department of Personnel had been established and governed by Chapter 284 of the *Nevada Revised Statutes* (NRS). The Department was a cabinet-level agency under the direction of the Governor and had five main responsibilities, which were to:

- Recruit and retain a qualified workforce to meet the state's needs today and in the future.
- Provide comprehensive training and education to the state workforce.
- Analyze job functions and salary levels to maximize efficiency and to promote the state as a viable employer in today's competitive market.
- Maximize the use of technology to better serve customers, job seekers, and all state employees.
- Improve the work environment for state employees by supporting management and employees through the grievance procedure.

Ms. Thienhaus said the Department's staff had been organized into the Director's Office and four functional Divisions:

- Administrative Services
- Compensation and Classification
- Employee and Management Services
- Recruitment and Retention

Ms. Thienhaus stated that the Department's offices were located in Carson City, Reno, and Las Vegas. There were a total of 87.02 full-time equivalent (FTE) positions with 63.02 in Carson City, 1 in Reno, and 23 in Las Vegas. The Department provided administrative support to the Personnel Commission, a five-member group appointed by the Governor. The Commission was responsible for reviewing decisions made by the Director regarding contested classification issues and was tasked with adopting personnel regulations for Chapter 284 of the *Nevada Administrative Code*. The Commission also appointed hearings officers who rendered decisions on certain employee appeals.

Other committees under the Department's organization were the Employee-Management Committee, consisting of six members and six alternates appointed by the Governor, who heard appeals of employee grievances, and the

Catastrophic Leave Committee, which had five members, who heard employee appeals concerning catastrophic leave issues.

Ms. Thienhaus continued her presentation with the Certified Public Manager (CPM) program section ([Exhibit E](#)) and the *State of Nevada 2008 Salary and Benefits Survey* ([Exhibit F](#)) and explained that the CPM program had been designed to prepare managers for the increasingly complex and demanding governmental issues confronting Nevada. Ms. Thienhaus said that with a large percentage of state workers eligible to retire in the next five to ten years, the CPM program would ensure that a new group of leaders would be prepared to assume key management positions.

Ms. Thienhaus provided the following statistics for the CPM program:

- 187 total CPM graduates
- 47 students currently enrolled in CPM Class 6 that would graduate in December 2009; CPM Class 7 was slated to begin in June 2009
- Cost Savings of \$2,419,150 from CPM Classes 1-5
- Revenue of \$642,645 from Class 1–5, which related to the students' Capstone Projects
- \$2.6 million return on investment for the CPM program since its inception in June 2004.

Ms. Thienhaus commented that the *State of Nevada 2008 Salary and Benefits Survey* showed the same results that many of the legislators had expected to see. She said that the methodology in 2008 was altered because of changes implemented by her predecessor. Ms. Thienhaus explained that salary and benefit comparisons were made between Nevada state employees and government employees in western states together with a group representing all Nevada employers, both public and private. The results indicated Nevada was behind in the labor market by an average of 7.8 percent. When state employees of Nevada were compared with their counterparts in other Nevada public sectors, state salaries were lower by 38 percent. Ms. Thienhaus also said that state employee benefits were lower than the benefits in cities and counties in Nevada by 3.04 percent.

Ms. Thienhaus referred to [Exhibit C](#), the budget request summary section, and said the Department of Personnel resources came primarily from personnel and payroll assessments, which were based on gross salaries. Even though the rates were decreasing for both assessments, more and better services had been provided to customers. Ms. Thienhaus referred the Subcommittee to [Exhibit D](#) and the chart on payroll assessment rates which started in fiscal year (FY) 2002 and had been projected through FY 2010 and FY 2011.

The Department, Ms. Thienhaus continued, was requesting minimal new expenditures for FY 2010 and FY 2011 in budget account (BA) 1363. Other than the general decision units, Personnel was requesting an increase in the hourly rate of one contract programmer in its Information Technology (IT) section, funds for replacement equipment, and the transfer of responsibility for facilities at the Fairview location in Carson City.

Ms. Thienhaus said Enhancement (E) decision unit 710 was for replacement furniture and equipment. Funds were requested for soon-to-be obsolete computer equipment, which included essential software requirements. In addition, a small amount of replacement office furniture was requested for staff that spent more than half the day at a computer station.

Chair Denis asked whether the computer replacement followed the new Department of Information Technology (DoIT) guidelines.

Ms. Thienhaus said she believed so but would check further into the issue.

Sarah Coffman, Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau stated she had reviewed the request, and it was in compliance with the new DoIT guidelines.

Assemblywoman McClain asked for clarification regarding information in the Salary & Benefits Survey ([Exhibit F](#)) that Nevada public employees were behind by 38 percent while information in the Department of Personnel's Budget Presentation document ([Exhibit C](#)) said 0.38 percent.

Ms. Thienhaus clarified that the 2008 Salary & Benefits Survey reflected that Nevada's benefits were "slightly behind the western states by an average of 0.38 percent," while salaries lagged by 38 percent.

In response to Assemblywoman McClain who asked how the state salaries and benefits compared to cities and counties in Nevada, Ms. Thienhaus reported that salaries lagged by 38 percent, and benefits lagged by 3.04 percent.

In response to questions Assemblywoman McClain asked regarding the comparison of positions, Ms. Thienhaus explained that the representative benchmark classes that were used began on page 8 of the *State of Nevada 2008 Salary & Benefits Survey* ([Exhibit F](#)). Ms. Thienhaus explained that the methodology used in the survey differed from previous years when the average salaries used were what "most" Nevada employees in the listed positions were earning rather than the average range for a particular position that was used in the current survey.

Assemblywoman McClain noted that the salary comparisons did not reflect the starting pay level, which Ms. Thienhaus confirmed.

Continuing her presentation, Ms. Thienhaus advised that decision unit E275 recommended an increase in the hourly rate for the Master Services Agreement (MSA) programmer, Isaac Abraham, from \$90 to \$100. Ms. Thienhaus advised that Mr. Abraham maintained the ADVANTAGE-HR program and corrected unanticipated problems with software, developed updates to adjust state and federal legislative mandates, and was responsible for programming interfaces with agencies and vendors. Additionally, Mr. Abraham handled projects during the past two years that included elimination of social security numbers in programs and reports and the incorporation of the Department of Transportation pay cycle into the central payroll pay cycle. Ms. Thienhaus advised that future projects required the expertise of Mr. Abraham, who would serve as lead programmer and technical project leader on portions of those projects. Ms. Thienhaus pointed out that because of Mr. Abraham's expertise, savings to the state exceeded the amount requested and that the Department of Administration's MSA programmer, who worked for the same company as Mr. Abraham worked, was paid at the \$100 per hour rate.

Chair Denis asked whether the ADVANTAGE-HR program had been part of the Integrated Financial System (IFS) and how close that system was to completion.

Alan Rogers, Information Technology (IT) Manager, Department of Personnel, advised that the ADVANTAGE-HR, purchased in 1997, was an operational and functional part of the Integrated Financial System. Mr. Rogers reminded the Subcommittee members that the state customized the software, which Mr. Abraham maintained because the MSA vendor would no longer support the software after the customization.

Mr. Rogers explained that the Nevada Employee Action and Timekeeping System (NEATS), which controlled ancillary programs, had been developed, modified, and enhanced and differed from the ADVANTAGE-HR payroll and base personnel records system. Additionally, Mr. Rogers advised that a project associated with NEATS, which was an enhancement of the Nevada application program (NVAPPS), was slated for completion in June 2009. Mr. Rogers advised the Subcommittee that there were no new projects in the current budget for NEATS or ADVANTAGE-HR, only maintenance.

Chair Denis questioned whether Personnel had considered decreasing the number of hours the programmer worked to accommodate the \$90 to \$100 per hour rate increase.

Mr. Rogers discussed the current backlog of 260 requests for services to the system and reported that employee hours, reduced during the previous biennium because of budget cuts, were requested to be restored in the current budget to maintain the system. Mr. Rogers indicated that other agencies that used the same software, and the MSA vendor had hundreds of programmers that assisted in modifying and keeping the program up-to-date. Mr. Rogers explained that Personnel had only three staff programmers, which made it impossible to keep up with the needs of the system to process the payroll, which was one of Mr. Abraham's primary duties.

Chair Denis asked whether there was a plan to replace the ADVANTAGE-HR system.

Mr. Rogers responded that there was no plan to replace the ADVANTAGE-HR system, which had cost approximately \$25 million, and advised that California had been trying to revamp its system with a budget of approximately \$200 million.

Chair Denis asked whether consideration had been given to replacing the contract employee with a state employee. Chair Denis indicated that the Subcommittee's staff had calculated that the costs for a state employee programmer would be less than for a contractor.

Mr. Rogers advised that during the last biennium a proposal had been presented to bring the program into maintenance through state employees. It was estimated that two state positions would be required to replace Mr. Abraham and one and a half years of knowledge transfer time. The proposal was rejected by the DoIT.

Senator Horsford expressed concerns regarding the use of contracted positions rather than comparable state employee positions and suggested that Personnel pursue the proposal again. Senator Horsford requested additional information concerning the proposal and the amount of funding needed for cost comparison purposes.

Mr. Rogers agreed to provide the information to the Subcommittee's staff.

Senator Hardy noted that the consultant was required because of modifications made to the program and asked whether the modifications were critical.

Mr. Rogers explained that when the system was purchased in 1997, a determination was made to migrate the system from a mainframe-based to a server-based system. At that time, however, the vendor did not have a product that ran on a server-based system. The vendor, since that time, had migrated its applications to servers, but the current cost to the state to upgrade to the vendor's system was estimated at approximately \$10 million.

Chair Denis asked Ms. Thienhaus to continue with her presentation.

Ms. Thienhaus discussed the next enhancement, which included a transfer of cost from the Department of Administration to the Department of Personnel for a training room and offices located on Fairview Drive in Carson City and a transfer of rental costs from the DoIT to the Department of Personnel for space at the Fairview building. Ms. Thienhaus said that because of the transfers, there would be no transfer of shared costs between the agencies, and onsite staff would manage the training facility. Twenty-one agencies in the past year had used the training facility at no cost.

In response to questions Chair Denis asked concerning reimbursement practices, Ms. Thienhaus said it was her understanding that other agencies did not reimburse Personnel for the use of the training room.

Chair Denis asked Ms. Thienhaus to discuss the consideration of reimbursement for use of the training room with the Subcommittee's staff.

Ms. Thienhaus next discussed the State Unemployment Compensation, Budget Account (BA) 1339, and referenced the account summary ([Exhibit C](#)). Ms. Thienhaus advised that the projected salary assessment revenue for FY 2009 was dramatically increased to adjust for the underfunded reserve balance. Ms. Thienhaus said that the balance was depleted by a 35 percent rise in the payment of claims for FY 2008; another 35 percent increase was anticipated for FY 2010, and a 17 percent increase was anticipated for FY 2011. Ms. Thienhaus reported that the reserve balance set at two quarters worth of assessments had to be increased accordingly. The estimates were generated from projections made by the Department of Employment, Training and Rehabilitation (DETR) for the current and next two fiscal years.

Ms. Thienhaus advised that [Exhibit C](#) included a chart that reflected the claims history for the past ten years along with projections. The chart showed that the number of claims and the average cost per claim increased at the same time. Ms. Thienhaus pointed out, for example, that in FY 2008, the number of claims increased 27.19 percent while the average cost per claim increased 6.05 percent, and the trend continued to show an increase for the first two quarters of FY 2009.

In response to concerns Assemblywoman McClain expressed regarding the amount of money paid into the Unemployment Compensation account, Ms. Thienhaus reiterated earlier testimony that the reserve balance was depleted by a 35 percent increase in the payment of claims in FY 2008.

Assemblywoman McClain recalled that the Interim Finance Committee (IFC) had allocated money to the State Unemployment Compensation Account.

Greg Weyland, Administrator, Administrative Services Division, Department of Personnel, advised that the IFC approved a work program to increase the assessment rate for FY 2009 from 0.12 percent to 0.47 percent. Mr. Weyland explained that because unemployment claims had been consistent over prior years with increased reserves, the assessment rate was reduced to 0.04 percent in FY 2007. Mr. Weyland said, however, that the downturn in the economy required that a work program request be submitted to the Interim Finance Committee to bring the reserves back to the required level. Additionally, Mr. Weyland advised that no more than two quarters of funding was held in reserve, and the assessment rate was based on projections.

In response to questions Assemblywoman McClain asked concerning how the amount needed for the next two quarters was developed, Mr. Weyland advised that projections were based on historical data provided by the DETR that reflected increases in the average cost per claim and the number of claims for FY 2009. Mr. Weyland advised that if the reserves increased, the rate assessed to state agencies would be reduced.

Assemblyman Goicoechea discussed the number of positions eliminated through budget reductions and the potential for layoffs being considered by the Department of Health and Human Services, the Department of Agriculture, and the Department of Corrections. Assemblyman Goicoechea said that considering the number of vacant and frozen positions, the Subcommittee members needed to know how many of those positions had been vacant for the past five years and the potential number of layoffs. Assemblyman Goicoechea referenced the Department of Agriculture budget as an example in which 24 positions were eliminated, but only 10 were true positions. Assemblyman Goicoechea said that the Subcommittee members needed more facts before they could discuss increasing the reserve.

Mr. Weyland discussed the financial responsibility concerning unemployment compensation for primary and secondary employers and explained, for example, that the state would continue to have some liability for a state employee who went to work for a private organization and was subsequently laid off. Mr. Weyland reiterated that the reserve balance was based on two quarters of projected actual payments, and that without enough funding to pay claims, the Department would be required to approach the IFC for an allocation from the Contingency Fund. Mr. Weyland advised that two quarters of reserve funding would provide the Department with sufficient time to present information to the IFC and to request an adjustment of the rate based on actual experience.

Assemblyman Goicoechea asked for information on the termination costs for employees that were laid off.

Ms. Thienhaus advised that the Department of Personnel was dependent on data provided by the DETR, and that data had also been provided to the Subcommittee.

Senator Horsford referred to [Exhibit F](#), the *Salary and Benefits Survey*, and asked whether Personnel anticipated increases in employee retirements on or before June 30, 2009, because of the Governor's proposal to eliminate the retiree health premium.

Ms. Thienhaus advised that several employees in the Department of Personnel were eligible with 30 years of employment and might choose to retire,

particularly if benefits were altered. Additionally, Ms. Thienhaus reported that 24.32 percent of employees statewide were eligible for retirement in the next five years, but the percentage at grade 40 and above was significantly higher.

Senator Horsford said that he wanted figures for the number of employees eligible to retire on or before June 30, 2009, based on the Governor's proposed elimination of the health insurance subsidy for retirees. He felt that if the elimination of benefits for retirees was imposed, a large number of employees would take early retirement. Senator Horsford asked that accurate projections of the number of employees eligible to retire on or before June 30, 2009, and the cost implications of those early retirements be provided to the Subcommittee's staff.

Ms. Thienhaus agreed to provide the information.

Senator Horsford referred to decision unit maintenance (M) 160, which recommended the elimination of a position, and asked, absent the compliance investigator position, what other factors had contributed to the increase in the average number of days it took to complete a sexual harassment or discrimination investigation.

Shelly Blotter, Administrator, Employee and Management Services, indicated that a number of items contributed to the length of time it took to complete a case including the number of people that needed to be interviewed, availability of people to be interviewed, and the complexity of the issues.

Senator Horsford noted that although the 2007 Legislature funded a position to reduce the time needed to complete a sexual harassment or discrimination investigation, the time was back to 69 days. Senator Horsford pointed out that performance indicators needed to be reviewed and updated not only for the length of time to complete an investigation but also for the percentage of students attending classes who received a passing score, including a reason for the discrepancy between FY 2008 and subsequent years.

Ms. Blotter responded that a review of the investigation unit staffing and method used for investigations warranted the transfer of a position from Reno to Las Vegas, and in addition, a supervisor was reassigned to solely supervise the investigation unit.

Assemblyman Goicoechea returned to the issue of benefits and the changes proposed by the Governor, which increased the number of years of service from 5 years to 15 years for a retiree to access healthcare benefits. Assemblyman Goicoechea indicated that he believed most retirees had over 15 years of service and that he did not expect to see a savings from a change in years. Assemblyman Goicoechea said that although he was "very apprehensive" about decreasing benefits for current employees, he would consider making changes for new hires.

Chair Denis asked for additional information concerning the impact benefit changes would have on hiring since the Salary and Benefits Survey showed that Nevada paid less and that benefits were lower. Chair Denis asked whether benefit changes would affect the Department of Personnel's mission to recruit and retain quality employees.

Ms. Thienhaus advised that the Department of Personnel had faced the problems of being behind the public sector in Nevada for years, and the goal

had been to use the best methods and enticements possible to retain employees and not have them transfer to Clark County or Henderson. Ms. Thienhaus perceived that the impact of decreased benefits would be significant to current employees and would increase difficulty in the recruitment process.

In response to questions Assemblywoman McClain asked concerning the Salary & Benefits Survey ([Exhibit F](#)) comparison of state employees to local government employees, Ms. Thienhaus advised that the comparison to local government employees was not included in the exhibit because her predecessor had adopted a different methodology. Ms. Thienhaus said, however, that she would provide the information to Assemblywoman McClain from other data she had.

Assemblywoman McClain expressed concern that the information provided to the Subcommittee did not include all of the facts and said that she doubted state employee salaries in Nevada were 38 percent lower than in other Nevada public sectors.

Ms. Thienhaus reported that the Las Vegas Chamber of Commerce released information that was skewed because of the inclusion of all public sectors as a group. Ms. Thienhaus advised that the Department of Personnel's compensation staff prepared a comparison between State of Nevada employees and public-sector employees that showed a significant difference in pay rates.

Assemblywoman McClain said that she believed the job comparisons should be similar because local governments, for example, did not have agriculture directors. Additionally, she said that comparisons should be made between management analysts, supervisors, social workers, custodians, and maintenance workers. Assemblywoman McClain advised that although a gap had existed in pay rates, the Legislature had worked to narrow the gap in the last ten years. She asked for a realistic comparison and said she did not believe it would show a 38 percent difference.

Ms. Thienhaus responded that she had a realistic comparison with accepted methodology that compared the average salaries of local government and state government positions, which she would provide to the Subcommittee's staff.

Assemblyman Conklin expressed agreement with Assemblywoman McClain and noted that the fallacies in the Las Vegas Chamber of Commerce report were well documented. Assemblyman Conklin said, however, that job titles could not necessarily be compared because responsibilities differed between government and private-sector jobs. Assemblyman Conklin advised, for example, that the responsibilities of a hydrologist hired by the state versus one hired by an engineering firm would be completely different. Additionally, he pointed out that surveys of the magnitude that were published in the press did not consider all of the realities and responsibilities government had to constituents and what happened when government made bad decisions. Assemblyman Conklin advised Ms. Thienhaus that the survey needed to reflect real comparisons.

Ms. Thienhaus responded that the numbers in [Exhibit F](#) were the ones she had to use.

Senator Horsford expressed concern regarding the different methodologies used by the previous and current directors and asked whether the Executive Branch should establish a policy approved by the Legislative Branch to avoid problems in the future.

Ms. Thienhaus discussed her intention to meet with the Department's compensation and classification staff and use the Las Vegas Chamber report, the Department of Personnel's report, and other collected statistics to develop a better report. Ms. Thienhaus indicated that she believed that the mandate in Chapter 284 of *Nevada Revised Statutes* (NRS) was simple and left a lot of discretion to the Department to develop methodologies.

Senator Hardy indicated that the Legislature needed to establish a methodology for all departments since it appeared that the mandate allowed opportunities for game playing. Senator Hardy said that he believed a methodology needed to be put in place to establish the full cost of an employee and to develop comparisons among different jobs. Senator Hardy pointed out that the private sector considered the total cost for each employee.

Assemblywoman McClain expressed agreement with Senator Horsford and Senator Hardy.

Mr. Weyland commented that a previous suggestion was made to use other firms to gather salary survey information that could provide objective outside reviews.

Assemblywoman McClain indicated her preference for in-house studies because of the knowledge of job responsibilities but wanted to see more cooperation on studies with local governments.

Ms. Thienhaus indicated that most of the local governments involved in the survey were cooperative.

In response to questions Chair Denis asked concerning the completion of phase II of NEATS, Mr. Rogers advised that phase I was a specific project for NVAPPS, which made the application available online to the public, and phase II, slated for completion in June 2009, consisted of background processing, testing, and scoring that was previously not computerized.

Chair Denis questioned whether there would be further enhancements.

Mr. Roger explained he had a list of projects, one that included computerizing reports that state agency employees could access and another project for online evaluation and performance indicators.

Chair Denis requested a list of all the proposed enhancements to be provided to the Subcommittee's staff, and Mr. Rogers agreed.

After a break, Chair Denis resumed the budget hearings.

DEPARTMENT OF BUSINESS AND INDUSTRY
B&I – FINANCIAL INSTITUTIONS
BUDGET PAGE B & I – 136

Chair Denis expressed the certainty that questions would arise concerning the Division of Financial Institutions and the Division of Mortgage Lending budgets because of the Governor's proposal to merge the merge the agencies.

Chair Denis opened the hearing on the Division of Financial Institutions' budget.

George Burns, Commissioner, Division of Financial Institutions (FID), testified that the core mission of the Division was to maintain a safe and sound financial institutions system that promoted a conducive business environment, protected consumers, and defended the public interest through the efficient, effective, and equitable licensing, examination, and enforcement of depository, lending, debt-collection, and money-transmission activities.

Mr. Burns reported that the FID included a staff of 28, 10 in Carson City and 18 in Las Vegas. He said the FID licensed and regulated 12 licensees and was responsible for 25 Chapters of the *Nevada Revised Statutes*. Additionally, Mr. Burns advised that the Interim Finance Committee (IFC) approved ten additional examiners in November 2008 who had been incorporated into the proposed budget.

Mr. Burns advised the members of Subcommittee that the FID was recently reorganized into a depository team, a non-depository team, and a team that addressed applications, complaints, and enforcement issues. He explained that the reorganization brought specific training, certifications, and career paths together to complete jobs in the most efficient and effective manner.

Mr. Burns discussed the Division's 2008 performance indicators and provided the following information:

- The Division received and processed 856 applications and issued 789 licenses.
- Members of the public filed and the Division processed 910 complaints.
- The Division responded to 883 complaints within 45 to 60 days and 27 pending complaints were within the 45-to-60-day parameter.
- Thirteen complaints resulted in enforcement actions for unlicensed activity.
- Thirty-three regulatory enforcement actions resulted from examinations, 9 for depository institutions, and 24 for non-depository institutions.
- Fines assessed because of enforcement actions exceeded \$176,000 in 2008.

Mr. Burns reported that the proposed budget was realistically detailed, accurate, and balanced and was fully self-funded by fees and assessments paid by licensees, and as previously indicated, the budget included ten additional examiners, which was the major enhancement in the proposed budget. Additionally, he said that the proposed budget provided for adequate reserves for contingency expenses and other liabilities that the current economic environment might present.

Mr. Burns discussed the budget proposal to merge the Mortgage Lending Division (MLD) into the FID and advised that preliminary discussions had begun with the MLD to determine a general vision of how the merger would work, both organizationally and logistically.

Mr. Burns advised that FID's position was that the MLD would be maintained as a separate team within the overall organization because of the specialized knowledge, experience, and training the MLD examiners required. Mr. Burns advised that logistically, the FID and the MLD would remain in separate facilities because of leases that would not expire for a number of years and the lack of space that existed in the facilities the FID currently occupied.

Mr. Burns reported that the current career-path training program would be maintained, which would provide flexibility for cross-training purposes subsequent to the merger. Mr. Burns indicated that MLD employees who wanted to move into the FID could begin the training, attend the required schools, and obtain certifications, and FID employees, who so desired, could train for MLD positions.

Assemblyman Conklin asked whether Mr. Burns was consulted about the merger prior to the development of the budget.

Mr. Burns responded that the FID did not make the decision to merge the divisions but advised that discussions concerning the synergies that would be gained by the combination of particular agencies had been discussed for some time.

In response to Assemblyman Conklin who asked whether Mr. Burns was aware of the problems that existed when the divisions were combined as one agency, Mr. Burns indicated he had an understanding of the historical reasons why the MLD had been originally split from the FID.

Assemblyman Conklin expressed opposition to the proposal, which he indicated would save only \$266,000 and that he considered it impractical and poor timing to attempt to consolidate the two divisions during a continuing crisis in the mortgage lending industry. Additionally, Assemblyman Conklin said the state would have to comply with the federal Secure and Fair Enforcement Mortgage Licensing Act (SAFE) P.L. No. 110-289, which would require Nevada to change its mortgage lending statutes. Assemblyman Conklin reiterated that a merger of the two divisions was impractical, especially at a time of changing laws and budget reductions.

Mr. Burns indicated that he understood the challenges involved in the merger but added that while he implemented policy, he was not a policy maker.

In response to questions Senator Rhoads asked regarding Nevada bank loans for out-of-state housing, Mr. Burns advised that Nevada banks had made loans for out-of-state housing but explained that out-of-state market lending was not supported by the FID from an examination point of view.

Senator Rhoads pointed out that a rural bank in his district had lost millions of dollars because of out-of-state market lending practices.

In response to questions Assemblyman Conklin asked regarding whether Federal Reserve Board Regulation Z affected the lending ability of Nevada banks, Mr. Burns advised that the FID was responsible for examination of all state financial statutes and all 26 federal financial regulations including Regulation Z. Mr. Burns explained, however, that because of the rapid decline in lending, it was difficult to determine whether Regulation Z had affected the lending ability of Nevada financial institutions.

Assemblyman Conklin indicated that federal Regulation Z, similar to but created after Assembly Bill (A.B.) No. 440 of the 74th Session, was about the ability to repay a loan. Assemblyman Conklin asked Mr. Burns whether he believed the regulations would restrict loans or make loans more secure for banks and consumers.

Mr. Burns indicated he believed that the regulations would make loans safer for both banks and consumers and said that state regulators, throughout the country, took pride in being proactive in identifying problems that existed for consumers and businesses.

Chair Denis asked for the status on the ten new financial examiner positions the IFC approved in November 2008.

Mr. Burns reported that over 200 applications were received for the positions, and 180 applicants were certified to be interviewed.

Chair Denis questioned whether FID envisioned any difficulties in training the ten new examiners because of the merger.

Mr. Burns advised that training for a new examiner was typically 60 to 90 days and examiners were initially trained for the least complex jobs and worked their way into more complex tasks. Mr. Burns advised that one of the reasons FID proposed to maintain MLD as a separate functional team had been to continue that efficiency.

In response to Chair Denis who asked whether any difficulty was anticipated in completing the examinations required by statute, Mr. Burns said that the projection was to complete 100 percent of the examinations in the current calendar year.

In response to Chair Denis who asked what measures the Division should take to reduce the operating reserve from a 14 month to a 6-month level, Mr. Burns indicated that differences of opinion existed concerning the reserve level. He said, however, that he felt it was necessary to maintain the current reserve level because of the financial crisis. Mr. Burns advised that there was approximately \$3.2 million in reserve of which one-half was contingent upon a 180-day gap that occurred between the collection of the two major revenue streams. Mr. Burns explained that revenue was collected at the beginning of the calendar year when licenses were renewed and on July 1 when assessments of depository institutions were made. Mr. Burns explained that if federally insured licensees had to be closed, the Federal Deposit Insurance Corporation (FDIC) could be appointed as receiver and would absorb all costs. He said, however, that a substantial number of credit unions, trust companies, and other types of licensees were privately insured and if they were closed, the FID would have to access the other half of the reserve to pay for the receiverships. Mr. Burns advised that the average cost of a depository institution receivership was in excess of \$1 million.

In response to Chair Denis who asked for information regarding the status of the licensing, certification, and enforcement system that had been approved by the 2007 Legislature, Mr. Burns advised that the FID began the Versa System project in January 2009, and the project was expected to be completed no later than June 30, 2009.

Assemblyman Hogan asked Mr. Burns how many of the ten new examiner positions would be assigned to MLD and how 50 investigations per month would be achieved without shortening the examinations.

Mr. Burns said the ten examiner positions approved for the FID were necessary to meet statutory mandates because of the increase of risk-focused examinations. He said that depository institutions were previously on a cycle of

18 to 24 months with their federal counterparts, but with the declining ratings for safety and soundness, the cycle was decreased to a minimum of every 12 months and every 6 months or more for the most distressed institutions.

Additionally, Mr. Burns said that during the budget process, it was discovered that there were not enough full-time equivalent (FTE) examiner positions to complete 100 percent of the statutory required exams, which was the reason for the addition of ten examiners to the FID budget. Mr. Burns advised, however, that there were no plans for any of the ten examiners to supplement the MLD.

Randy Robison, representing the Nevada Credit Union League, stated that the membership of the League had concerns regarding the merger of the FID and the MLD. Mr. Robison expressed appreciation for the quality of the regulators who provided the service to help maintain the integrity of financial institutions and said that merger of the two divisions could be a detriment to effective regulation and quality of service.

Senator Hardy disclosed for the record that Mr. Robison lobbied for the Associated Builders and Contractors of Las Vegas, of which he served as President.

Bill Uffelman, President and CEO, Nevada Bankers Association, said 60 percent of the memberships were state-chartered banks, which were under the regulation of the FID. Mr. Uffelman advised that prior to the hiring of the current commissioners for the FID and the MLD, he had advocated for reconsolidation of the two divisions. Since that time, however, he said the commissioners had put "their divisions back on track" and commended their "excellent work." Mr. Uffelman indicated he was opposed to the merger and felt it would be a step backwards but indicated that if the merger were to take place, strong leadership would be required for each division.

In response to Chair Denis who asked Mr. Uffelman's opinion on whether the merger would save money, Mr. Uffelman said it was his opinion that the merger would not save money because of the expertise needed in both divisions.

In response to Senator Horsford who asked about outreach efforts concerning the proposed merger, Mr. Uffelman said that representatives of the Governor's Office had not communicated with him concerning the consolidation.

Senator Horsford asked whether, from an industry perspective, Mr. Uffelman could provide the Subcommittee's staff with some technical expertise if the merger was approved.

Mr. Uffelman advised that the expertise needed was already in place in the divisions' current administration.

Assemblyman Hogan indicated that it appeared a "machete approach" was used to arbitrarily reduce the budgets at a time when mortgages and real property investments were a problem. Assemblyman Hogan said a reconstruction of the proposed budget was needed and that the FID and the MLD provided good examples of agencies that did not have revenue to support their functions.

Mr. Uffelman reminded the members of Subcommittee that financial institutions paid fees for self-regulation and asked whether the fees could be adjusted for

non-depository firms to "catch up" with the cost of regulation. Mr. Uffelman pointed out that depository institutions paid more than their share.

Assemblyman Conklin expressed agreement with Assemblyman Hogan's comments and said that it appeared the proposed budget reductions were made in a vacuum and without consideration of the opportunity cost associated with the reductions. Assemblyman Conklin pointed out that reductions affected all Nevada consumers and businesses because of the likelihood of larger and more costly problems in the future.

Chair Denis recognized David Goldwater, former Assemblyman and former Chair of the Assembly Committee on Commerce and Labor.

David Goldwater, representing the Advisory Council on Mortgage Investments and Mortgage Lending, distributed copies of a letter dated February 4, 2009, from the Law Offices of Herman Thordsen ([Exhibit G](#)) and copies of a letter from Mandy L. Peacock ([Exhibit H](#)).

Mr. Goldwater reported that the Legislative Commission, pursuant to Chapter 645B of the Nevada Revised Statutes (NRS), appointed the members of the Advisory Council. He advised that Joseph L. Waltuch served as the Commissioner of the Mortgage Lending Division (MLD), and Tom Powell, Clay Duncan, and Sean Corrigan served as current members of the Advisory Council.

Mr. Goldwater advised that the Advisory Council had solicited input from the industry, including private moneylenders, mortgage brokers, and residential mortgage lenders who "vigorously opposed the merger."

Mr. Goldwater reiterated earlier testimony that the FID was a fee-funded agency with only a minimal amount of General Fund support.

Mr. Goldwater provided a brief history regarding the separation of the FID and the MLD agencies, which he said began with the 1999 failure of the Harley Harmon Mortgage Company (HHMC). Prior to the failure of HHMC, a Legislative Commission interim study to review housing statutes produced a report, which showed a number of deficiencies, many of which were in the administration of the FID and its oversight of mortgage lending. He said that the Legislature, in 1999, 2001, and 2003, enhanced the regulatory structure to empower the regulators to join with the industry and consumers to strengthen the regulatory process. Mr. Goldwater advised that by 2003, with over 30,000 licensees and many consumers who wanted to speak with specialists about their problems, the FID and the MLD were separated. He pointed out that consumers were happier with the responsiveness from the MLD, and the FID no longer had to respond to the overwhelming number of complaints that arose from 1 out of 12 mortgage licensees.

Concluding his remarks, Mr. Goldwater said that the MLD could do a better job regulating the mortgage industry as a separate division from the FID and that with all of the problems in the mortgage industry over the past five years, he could not imagine what Nevada would look like without the 1999 Legislative reforms.

Assemblywoman McClain agreed with Mr. Goldwater's statement that the FID and the MLD were fee-based agencies and not supported by the General Fund. She said, however, that the \$100 of General Fund support that allowed the

agencies the opportunity to approach the Interim Finance Committee in the event of a crisis should be returned to the budget.

DEPARTMENT OF BUSINESS AND INDUSTRY

B&I – MORTGAGE LENDING

BUDGET PAGE B & I – 172

Joseph Waltuch, Commissioner, Mortgage Lending Division (MLD), introduced Nancy Corbin, Deputy Commissioner, MLD. Mr. Waltuch read the following statement into the record:

The mission of MLD is to license and regulate mortgage brokers, mortgage agents, mortgage bankers, escrow agencies, and agents while providing a fair consumer complaint resolution process.

The Division regulates by conducting examinations, investigating complaints, and taking administrative action.

The Division completed 334 exams this fiscal year to date and is on track to complete 100 percent of its statutorily mandated examinations this fiscal year, in excess of its performance indicator, and three times the percentage of examinations cited in the recent calendar year 2007 legislative audit. The Division has revised its examination policies and procedures, revamped its forms, and worked more efficiently.

In Fiscal Year (FY) 2008, the Division received 643 complaints, took 70 administrative actions and assessed over \$510,000 in fines.

In FY 2009 to date the Division had received 272 complaints, taken 28 administrative actions, and assessed over \$500,000 in fines.

The Division works closely with the Southern Nevada Mortgage Fraud Task Force, the Fight Fraud Task Force, and a yet-to-be-named task force recently formed by the Consumer Affairs Division and the Attorney General's office. In FY 2009, on matters it has referred to law enforcement, 5 arrests had been made and 3 warrants are outstanding. The Federal Trade Commission recently brought an action in a matter the Division also referred.

The Division is presenting a status quo budget. The Division has provided a staffing plan with consideration given to statutory mandates and mortgage industry trends.

This plan shows the Division adequately staffed to meet current demands and/or increased demand through FY 2011. When market conditions improve and the Division's licensee base increases, the Division would request appropriate funding necessary to hire additional examiners and other personnel as may be needed.

Senator Rhoads asked whether there were any mortgage company closures in the past five years in Nevada.

Mr. Waltuch indicated that there had been hundreds of closures and advised that at one time there were 11,000 mortgage agent licensees and approximately 2,000 mortgage broker licensees, but there were currently only 3,300 agents.

Assemblywoman McClain commented that the housing crisis would not last forever, but staff would be reduced when the crisis ended. Assemblywoman McClain reiterated that the MLD needed the \$100 from the General Fund to approach the Interim Finance Committee in the event of a crisis.

Assemblywoman McClain questioned whether the 14 positions that were eliminated were filled or were positions that had not been filled.

Nancy Corbin, Deputy Commissioner, MLD, identified herself for the record and explained that the 14 positions were a combination of "non-filled and vacant positions." Ms. Corbin advised that two years ago, there were approximately 2,200 licensed locations and currently there were 720. Ms. Corbin referred to the MLD Staffing Plan ([Exhibit I](#)) and advised that the Division estimated there would be 528 licensed locations at the end of FY 2009. Additionally, she said that the Division projected a growth rate not to exceed 2 percent in FY 2010 and indicated that there was adequate staff to meet demands through FY 2011.

In response to a question from Assemblywoman McClain, Ms. Corbin reiterated that the 14 positions were a combination of non-filled and vacant positions, which she said the MLD did not fill because of the declining trend in the industry.

Assemblyman Hogan recalled media reports concerning information regarding examinations that the MLD could not release because of statutory requirements and asked whether Mr. Waltuch would support an effort to relax the prohibition against providing the information to the press or an individual.

Mr. Waltuch responded that if the MLD examination reports became public information and members of the public perceived a problem, a run could be made on a business with an unfavorable report. Mr. Waltuch said, however, that if the Legislature changed the policy, he would not oppose a "loosening" of the rules for the publication of some information.

David Goldwater, Goldwater Capital Nevada, LLC, indicated a delicate balance existed because the regulator needed to be thorough and assist licensees, but the main concern with maintaining confidentiality involved competitive issues. Mr. Goldwater said that the Commissioner was empowered to take action, but through regulation could not share the information with the public. Mr. Goldwater indicated that if the Commissioner, after careful consideration, believed there was some information the public should know, he would not have a problem with the disclosure.

Assemblywoman McClain commented that information regarding mortgage lender improprieties had to be made public.

Mr. Waltuch emphasized the best way to make information public was with an enforcement action.

Assemblywoman McClain indicated that press releases would also be helpful.

Assemblyman Conklin agreed that confidentiality in the mortgage lending industry was an important and prudent practice. He said, however, mortgage lender improprieties, prior to the failure of a company, should be publicly disclosed by the Mortgage Lending Division.

Mr. Goldwater reminded the Subcommittee that the Commissioner's examination files included borrowers' tax returns, financial information, addresses, phone numbers, and amounts invested, which made it difficult to balance the confidential nature of the information versus the public's right to know.

Assemblyman Conklin read an excerpt from an MLD audit:

Because of these deficiencies, there is an increased risk to consumers that violations of mortgage lending laws and regulatory requirements would not be detected and corrected in a timely manner.

Assemblyman Conklin indicated that deficiencies and correcting mortgage lending law violations in a timely manner, cited in the MLD audit, were not at issue. He said, however, that it was MLD's job to protect consumers who would not press for the release of confidential information if the MLD provided that protection.

Assemblyman Conklin asked for reassurance that the MLD was doing and would continue to do everything possible to protect consumers and indicated that, unless prohibited by rule, he would support the release of some information to the public.

Mr. Waltuch commented that although the MLD had dedicated motivated, qualified, and knowledgeable staff who served as proactively as possible, deceptive practices would always exist. Mr. Waltuch agreed with Assemblyman Conklin's previous statements but noted that statutory authority for certain regulations did not exist, with the lack of regulation for loan modification companies being a prime example. Mr. Waltuch cited Chapter 645F of the *Nevada Revised Statutes* and noted that prior to 2007, foreclosure consultants were regulated only in regard to a notice of default for foreclosure being recorded. Otherwise, there was no regulation, and the only legal recourse was to the deceptive trade practices statutes in consultation with the Attorney General or the Consumer Affairs Division. Mr. Waltuch said that unresolved complaints, when the MLD had no jurisdiction, were referred to the Bureau of Consumer Protection. Mr. Waltuch said that he wanted loan modification companies licensed and regulated and would provide information for the drafting of legislation to do so.

Assemblyman Conklin advised that he had sponsored a "broad and exhaustive" bill concerning the regulation of "foreclosure consultants," but it appeared that the MLD could not enforce the regulations because of staff reductions.

Mr. Waltuch agreed and said the nature of the complaints MLD received in the 17 months he had been Commissioner had changed tremendously and were currently centered on foreclosure consultants and loan modification companies. Mr. Waltuch advised, however, that the Division had five proactive investigators

and should be provided the authority to regulate foreclosure consultants and loan modification companies.

Spencer Judd, a Las Vegas mortgage broker and attorney, indicated that he believed Chapter 645B of NRS provided the MLD the authority to regulate individuals who claimed to be loan modification and foreclosure specialists.

Mr. Waltuch responded that the Division relied on the advice and opinions of the Office of the Attorney General who had indicated that the MLD had no jurisdiction over loan modification companies. Mr. Waltuch reported that the definition of mortgage brokers in Chapter 645B of NRS discussed originators of loans, but not modifications of existing loans, which for jurisdictional purposes was a large distinction. Additionally, Mr. Waltuch advised that Chapter 645F of the NRS dealt with foreclosure consultants, and he indicated he was unaware of a provision regarding loan modifications.

Mr. Judd advised that the reference to Chapter 645F of the NRS he had provided was in regard to a person who negotiated the terms of a loan, which was a separate section from the reference to a foreclosure specialist.

Mr. Waltuch said he was not a Nevada lawyer but that he believed the definitions related to foreclosure consultants in Chapter 645F of the NRS hinged upon the definition of home and homeowner and required that a loan was in default and a home in the process of being foreclosed.

In response to questions Assemblywoman McClain asked concerning the FID and the MLD, Mr. Waltuch advised that amendments to the NRS would be required.

Corrine Cordon, President of Private Lenders Group, stated that the MLD was adept at understanding the private lending industry and advised that the Private Lenders Group was opposed to the merger of FID and MLD.

Ms. Cordon indicated she had been a Las Vegas resident for 28 years and was in the loan business for 12 years, both before and after the creation of the MLD. Ms. Cordon said that an active, viable, and knowledgeable commissioner was of greater value than any savings that resulted from a merger. Additionally, Ms. Cordon commented that she received daily calls from people attempting to commit fraud and scams similar to those of Bernie Madoff in New York and that the number of calls received had increased greatly since the inception of the MLD. Ms. Cordon asked whether Mr. Waltuch would continue as Commissioner if the MLD and the FID merged.

Mr. Waltuch advised that he would no longer be the Commissioner.

Ms. Cordon said it was her opinion that Chapter 645B of the NRS covered anyone who negotiated a mortgage and that anyone modifying a loan was negotiating a mortgage even though the mortgage already existed. Ms. Cordon pointed out that the MLD had been set up to license, register, monitor, and audit mortgages and was pleased that legislation was being introduced that would bring loan modifications under the MLD. Concluding her remarks, Ms. Cordon said that because the mortgage lending industry faced ongoing changes, it was necessary to maintain the MLD as a separate entity.

Assemblyman Hogan referenced Assemblywoman McClain's earlier remarks concerning the media and asked whether the MLD could publicize its successes.

Assemblyman Hogan advised that from his 25 years of experience as a federal regulator, the public needed to know that an agency was doing a good job.

Mr. Waltuch advised that the Division utilized the services of a public information officer through the Department of Business and Industry for issuing press releases that generally dealt with topics of general education. Mr. Waltuch indicated that although the Division did not routinely issue press releases on actions taken, he supposed that press releases on actions taken could be issued with the exception of those that would affect an investigation.

Assemblyman Hogan indicated that since a high level of public concern regarding the mortgage lending industry existed and there was uncertainty that serious enforcement activity was taking place, press releases that provided information regarding MLD's enforcement successes appeared to be appropriate.

In response to questions Senator Horsford asked concerning policy or merger questions from members of the Subcommittee, Assemblyman Conklin advised that a joint hearing before the Assembly and Senate Committees on Commerce and Labor was scheduled to consider the foreclosure consultant issue. Assemblyman Conklin invited all members of the Subcommittee to attend and to bring any issues and concerns to him before the hearing.

Chair Denis asked what the Division meant when it indicated the transfer of responsibilities would provide the capacity to leverage funding sources of both MLD and FID's budget accounts. Chair Denis asked whether legislation would be drafted to change the Divisions' existing structure.

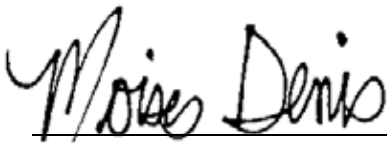
Ms. Corbin indicated that she would provide funding information to the Subcommittee's staff within a week after the hearing since she had not yet seen the bill draft request.

Chair Denis adjourned the meeting at 10:42 A.M.

RESPECTFULLY SUBMITTED:

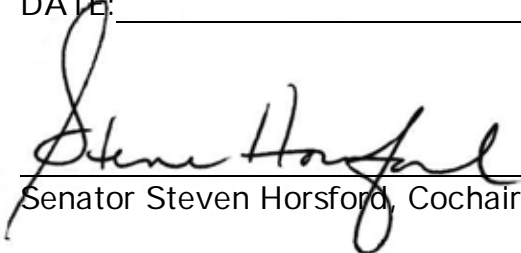
Christine Bashaw
Committee Secretary

APPROVED BY:



Assemblyman Mo Denis, Chair

DATE: _____



Senator Steven Horsford, Cochair

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Assembly Committee on Ways and Means/Senate Committee on Finance Joint Subcommittee on General Government and Accountability</u>			
Date: <u>February 6, 2009</u>		Time of Meeting: <u>8:05 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Teresa Thienhaus, Personnel	Budget Presentation
	D	Teresa Thienhaus, Personnel	Powerpoint Presentation
	E	Teresa Thienhaus, Personnel	Nevada CPM Program
	F	Teresa Thienhaus, Personnel	Salary & Benefits Survey
	G	David Goldwater, Mortgage Advisory Council	Letter
	H	David Goldwater, Mortgage Advisory Council	Letter
	I	Nancy Corbin, Mortgage Lending Division	Staffing Plan