

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

Seventy-Fifth Session
February 23, 2009

The Committee on Ways and Means was called to order by Chair Morse Arberry Jr. at 8:09 a.m. on Monday, February 23, 2009, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/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).

COMMITTEE MEMBERS PRESENT:

Assemblyman Morse Arberry Jr., Chair
Assemblywoman Sheila Leslie, Vice Chair
Assemblywoman Barbara E. Buckley
Assemblyman Marcus Conklin
Assemblyman Mo Denis
Assemblywoman Heidi S. Gansert
Assemblyman Pete Goicoechea
Assemblyman Tom Grady
Assemblyman Joseph (Joe) P. Hardy
Assemblyman Joseph M. Hogan
Assemblywoman Ellen Koivisto
Assemblywoman Kathy McClain
Assemblyman John Ocegüera
Assemblywoman Debbie Smith

STAFF MEMBERS PRESENT:

Mark Stevens, Assembly Fiscal Analyst
Steve Abba, Principal Deputy Fiscal Analyst
Brian Burke, Principal Deputy Fiscal Analyst
Tracy Raxter, Principal Deputy Fiscal Analyst
Alex Haartz, Program Analyst
Anne Bowen, Committee Secretary
Vickie Kieffer, Committee Assistant

Chair Arberry opened the hearing on A.B. 165.

Assembly Bill 165: Revises the provisions governing the Fund to Stabilize the Operation of the State Government. (BDR 31-580)

Assemblywoman Barbara E. Buckley, Clark County Assembly District No. 8, stated she was honored to serve as the Speaker of the Nevada Assembly and proud to be the sponsor of A.B. 165.

Assemblywoman Buckley said A.B. 165 was the product of a project where she had traveled around Nevada discussing the financial structure of the state and ways improvement could be made.

What A.B. 165 accomplished was to ensure funding for critical services during fiscal emergencies. Assemblywoman Buckley said the important missions of state government were education, health and human services, and public safety, which comprised 93 percent of the state's budget.

Assemblywoman Buckley referred to [Exhibit C](#), a hard copy of a PowerPoint presentation regarding A.B. 165.

Since 2007, the approved budget had been cut twice, according to Assemblywoman Buckley. First, the existing Rainy Day Fund (Fund to Stabilize the Operation of the State Government) had been drained. Next, the Legislature had attempted to eliminate one-shot funding. Every capital maintenance project had been examined in an effort to reduce cuts to education, health and human services, and public safety. Assemblywoman Buckley said when there was no more Rainy Day Fund, no more one-shots, no more maintenance, and no more capital improvements, there would be cuts to priority services. The cuts would affect K-12 funding, textbooks, education programs for innovation and remediation, medical and social services, and hospital reimbursements and require the closure of a conservation camp.

Assemblywoman Buckley stated The Executive Budget proposed severe cuts. Many of the budget reductions had been reviewed by the Committee, but the Committee had been reluctant to enact those reductions, fearing for the state's future.

Creating programs in good times to destroy them in bad times made no sense, according to Assemblywoman Buckley. One of the proposals submitted by the Governor suggested closing every rural mental health clinic, an infrastructure which had taken years to build. Assemblywoman Buckley said it was the same in Clark County and Washoe County. Programs designed to keep the mentally ill out of hospitals were proposed to be reduced or eliminated. She commented that the number of mentally ill would not miraculously be reduced when the budgets were cut, rather the mentally ill would appear in hospital emergency rooms to receive more expensive treatment.

While everyone was united in an effort to improve the state, it was necessary to be fiscally prudent at the same time. Assemblywoman Buckley said one way to cushion the budget from the most severe effects was to create a stabilization account large enough to maintain a consistent level of services when times were bad. The current Rainy Day Fund was not adequate to provide that cushion because it relied on voluntary legislative appropriation. While a portion of the unrestricted balance in the state General Fund could be credited to the Rainy Day Fund, that rarely happened; current law limited the amount in the fund.

Present law provided that after subtracting an amount equal to 10 percent of the operating appropriations for all state agencies, institutions, departments, and funding for schools, 40 percent of the remaining unrestricted balance in the General Fund was credited to the Rainy Day Fund.

Assemblywoman Buckley explained that A.B. 165 provided that after subtracting an amount equal to 7 percent of the operating appropriations for all state agencies, institutions, departments, and funding for schools, 40 percent of

the remaining unrestricted balance in the General Fund would be credited to the new Stabilization Fund. In addition, the bill would require an amount to be deposited at the front end.

Under current law, the Rainy Day Fund received a small amount on the back end only, which did not provide a cushion. Assemblywoman Buckley said A.B. 165 would lower the threshold to allow more money to accrue on the back end and would require 1 percent of new revenue to be placed in the Rainy Day Fund.

Assemblywoman Buckley referred to page 6 of [Exhibit C](#), a graph which demonstrated the amounts placed in the Rainy Day Fund over the years. She said A.B. 165 set up a forced savings account, which required the Governor to reserve 1 percent of the total anticipated revenue for each fiscal year of the biennium. The Legislature's approved budget would also reserve 1 percent of the total anticipated revenue for each fiscal year of a biennium for the Rainy Day Fund.

The Governor would use the revenue estimate provided by the Economic Forum on or before December 1 of even-numbered years, and the Legislature would use the revenue estimate provided by the Economic Forum on or before May 1 during the Legislative Session.

Assemblywoman Buckley stated A.B. 165 authorized a larger accumulation in the Rainy Day Fund. Present law limited the accumulation to 15 percent of General Fund operating appropriations, but A.B. 165 would increase the total amount that could be accumulated to 20 percent.

Money from the Rainy Day Fund could be appropriated whenever the total actual revenue of the state was 5 percent less than the total anticipated revenue based upon the Economic Forum projections. Money from the Rainy Day Fund could also be appropriated whenever the Governor and the Legislature, or the Interim Finance Committee (IFC), agreed that a fiscal emergency existed.

Assemblywoman Buckley noted that in the past there had been questions regarding whether a special session was necessary to tap the Rainy Day Fund. She said special sessions were expensive, and A.B. 165 allowed the IFC to make the decision.

The new Rainy Day Fund would not save the state from all budgetary shortfalls, according to Assemblywoman Buckley, but it could reduce the severity of reductions needed during ordinary dips in the economic cycle.

Assemblywoman Buckley said the Rainy Day Fund would not have been sufficient in the present fiscal crisis. She noted every ten years there was a "bust" cycle, and in some of those instances a larger Rainy Day Fund would have meant that critical budgets would not have been reduced.

In answer to a question from Chair Arberry concerning what would happen to programs if the 1 percent were allocated in the midst of a budget crisis, Assemblywoman Buckley explained the IFC could remove the 1 percent, if there was a budget crisis and the revenue dipped below 5 percent. However, she emphasized the state needed a forced savings account. When times were good it was natural to want to improve services, especially when Nevada was ranked 45th to 49th depending on the indicator.

Chair Arberry indicated A.B. 165 would promote gradual growth and eliminate the "boom or bust" cycle as he understood it, and Assemblywoman Buckley agreed.

Assemblywoman Buckley acknowledged that Assemblyman Hardy had sponsored an identical provision in 2003 and had a similar bill in the 2009 Session. She said she wanted to recognize his effort regarding the Rainy Day Fund.

Dan Klaich, Executive Vice Chancellor and Chief Operating Officer, Nevada System of Higher Education, testified in support of A.B. 165. Mr. Klaich said as Assemblywoman Buckley had indicated, the four large budgets were 93 percent of the funding dealt with every legislative session. He encouraged the Legislature to strongly consider A.B. 165 which would help "smooth out the bumps." Mr. Klaich said while the bill would not help in situations like the present fiscal crisis, in more normal economic times A.B. 165 would be an excellent aid.

Sam McMullen, representing the Las Vegas Chamber of Commerce, testified in support of A.B. 165. He stated the Chamber supported being aggressive regarding the Rainy Day Fund mechanisms and appreciated that it would be a planning tool for revenue in the next biennium.

Tray Abney, Director, Government Relations, Reno Sparks Chamber of Commerce, testified in support of A.B. 165. Mr. Abney applauded Assemblywoman Buckley and the rest of the sponsors of the bill and further said a forced savings account was a concept he endorsed.

Carole Vilardo, representing the Nevada Taxpayers Association, testified in support of A.B. 165. Ms. Vilardo noted in 1991 when the Rainy Day Fund was conceived, there had been resistance to the idea because it was necessary to take money from programs. She commended everyone for recognizing the value of the Rainy Day Fund.

Chair Arberry closed the hearing on A.B. 165.

ELECTED OFFICIALS
LIEUTENANT GOVERNOR
BUDGET ACCOUNT (101-1020)
EXECUTIVE BUDGET PAGE ELECTED-42

Brian Krolicki, Lieutenant Governor, State of Nevada, presented Budget Account (BA) 1020. Lieutenant Governor Krolicki introduced Kathryn A. Besser, Chief of Staff, Caleb Cage, Senior Policy Adviser and Linda Frederick, Executive Assistant.

Lieutenant Governor Krolicki commented that he supported A.B. 165, and he considered the bill a prudent tool for the fiscal health of Nevada.

Lieutenant Governor Krolicki stated BA 1020 was probably one of the simpler budgets before the Committee. The Lieutenant Governor was chair of the Commission on Economic Development, chair of the Commission on Tourism, vice chair of the Board of Directors for the Department of Transportation, and a member of the Executive Branch Audit Committee.

Lieutenant Governor Krolicki noted that BA 1020 contained the largest cuts, approximately 18 percent, of all constitutional offices. Approximately

79 percent of BA 1020 was personnel related. Lieutenant Governor Krolicki said 33 percent of his staff would be laid off or the positions eliminated. He said he appreciated the difficulty of the present fiscal situation and realized cuts had to be made.

Lieutenant Governor Krolicki said one of the issues he would like direction from the Committee on was in regard to the budgets of the Commission on Economic Development and Tourism. There was a vacancy on the Board of Directors for the Commission on Tourism, and the Governor's budget proposed to combine the Commission on Economic Development and the Commission on Tourism. Lieutenant Governor Krolicki said he believed that was an inappropriate response, and the two Commissions needed to remain separate entities because they had different skill sets, different audiences, and different needs.

Chair Arberry asked how the personnel cuts would affect the ability of the Office to perform duties. Lieutenant Governor Krolicki responded the cuts would severely complicate the performance of the Office in attending to duties, but there were ways to coordinate efforts with the two Commissions he chaired. However, there was no doubt he and his staff would feel the impact.

Chair Arberry closed the hearing on BA 1020 and opened the hearing on BA 1050.

SECRETARY OF STATE
BUDGET ACCOUNT 101-1050
EXECUTIVE BUDGET PAGE ELECTED-127

Ross Miller, Secretary of State, Office of the Secretary of State (SOS), presented Budget Account (BA) 1050. Mr. Miller introduced Nicole Lamboley, Chief Deputy; Kate Thomas, Deputy for Operations; Matt Griffin, Deputy for Elections; Scott Anderson, Deputy for Commercial Recordings; and Carolyn Misumi, Administrative Services Officer, (ASO). Mr. Miller submitted [Exhibit D](#), a hard copy of a PowerPoint presentation regarding the Biennial Budget Request FY 2010/FY 2011.

Mr. Miller stated BA 1050 complied with the levels requested by the Governor, but the funding requested was necessary to maintain constitutional and statutory duties.

Mr. Miller said the Secretary of State's Office had four main areas of jurisdiction: notaries, commercial recordings, securities, and elections. In September 2008, the agency laid off 16 staff members. In addition to the 16 layoffs, 8 positions were held vacant, making a total staff reduction of 17 percent since the last legislative session.

Last session, according to Mr. Miller, the Secretary of State's Office had 143 positions, and presently the Office had 118 positions. Mr. Miller said the Office had balanced the budget first, and then included the requested cuts, which put the SOS in a worse position than most, if not all, of the agencies in the state.

The Secretary of State's Office had three budget accounts: Budget Account (BA) 1050 which funded the general operations; BA 1051 account which was the Help America Vote Act (HAVA) funded by federal money; and BA 1053 which was the Investigations and Enforcements budget (Securities Revolving Fund).

In the area of Enhancement (E) units, Mr. Miller proposed transferring decision units E903 through E911 from BA 1053 to BA 1050. The purpose for the transfer was to combine the budget accounts to streamline efficiencies, reduce redundancies, and allow for greater flexibility in the event target revenues were not met.

Enhancement unit 325 recommended the elimination of the special services revenue in BA 1050. Eliminating BA 1053 would direct all revenue collected from expedited fees to the General Fund. Currently, according to Mr. Miller, there was approximately a 50-50 split. The SOS received 50 percent of the money and the General Fund received 50 percent. The purpose for the elimination of BA 1053 was to address the decline of special service revenues, which had been declining for some time now, and replace those revenues with a more stable funding source.

Decision unit E805 would reclassify an existing administrative assistant 2 position to an information technology professional 3. The purpose of the reclassification was because the SOS had moved increasingly toward the use of technology to try to create efficiencies, and that would allow the more effective use of resources.

Decision unit Maintenance (M) 160 through decision unit E906 would eliminate five agency vehicles used primarily by the criminal investigators. Four vehicles would remain for use as part of a pool.

Mr. Miller said decision unit Maintenance (M) 160 eliminated 15.55 full-time equivalent positions. Those positions were the personnel that were laid-off in October 2008.

The budget cuts would have a significant impact on the functions of the Secretary of State's Office, according to Mr. Miller. The SOS generated over \$100 million annually which was deposited to the General Fund. In fiscal year (FY) 2008, the agency's General Fund revenue was up 1.34 percent, unlike some other states. Mr. Miller informed the Committee that the Delaware Secretary of State had experienced a revenue decline of 25 percent.

Mr. Miller stated the SOS had consistently increased the amount of revenue generated per full-time employee and approximately \$750,000 was contributed to the General Fund per employee. The SOS was the third highest revenue generating agency in the state.

The Commercial Recordings Division was the largest division in the SOS, contributing approximately 77 percent of the Office's General Fund revenues. Mr. Miller said two years ago there were approximately 310,000 entities on file. As of January 1, 2009, there were 320,000 entities on file. Despite the current economic conditions and the reduced staffing levels, the numbers were being maintained, according to Mr. Miller.

Mr. Miller noted there were a few issues in the Commercial Recordings Division. The first was the decline in special services revenue. That revenue was generated by expedited filings. A customer wishing to set up a Limited Liability Company (LLC) could accomplish that within 24 hours, 2 hours, or 1 hour, by paying an additional fee. Because of the economic situation there had been a decline in expedited filings. The SOS had already seen a decline in that source of revenue because the Office had become more efficient, making it a victim of its own efficiencies, according to Mr. Miller.

Because of Electronic Secretary of State (e-SOS) services, use of expedited processing had declined. The SOS was still receiving some 24-hour expedited requests, but at a reduced rate, and the 1-hour and 2-hour expedited requests were significantly lower.

Mr. Miller said the second biggest issue in the Commercial Recordings Division was the increase in credit card discount fees. Enhancement unit 250 would increase the amount budgeted annually for the credit card discount fees. Mr. Miller stated all state agencies accepting credit cards were experiencing an increase in fees of approximately 50 percent per year. Over the past two years, the SOS had implemented other payment options to try to reduce some fees, including "pinless" debit cards and e-checks. The SOS instituted those alternate forms of payment in February 2008 and realized approximately \$78,000 in savings. Mr. Miller said E250 was an estimate, but it was reduced to meet the 14 percent reduction requested by the Governor. Given the history of credit card fees and the increased usage, it was likely the budget amount submitted would not cover the fees to be paid.

The third biggest issue facing the Commercial Recordings Division was substantial cuts to the e-SOS processing system. Mr. Miller commented that e-SOS was a state-of-the-art system implemented in 2005. Groups from all over the country studied the e-SOS processing system, but the system was aging and the SOS was falling behind the curve. The contract for enhancements and maintenance of the system had been reduced, so the agency was going to lose a competitive edge. More significantly, according to Mr. Miller, was the lack of funds in the account to deal with emergency maintenance. The system had already shut down a couple of times, which was a significant concern. Mr. Miller said the SOS was investigating different options and considering other funding sources, including the use of the one-stop portal and possibly having some tie-ins for developing both systems on the same track as well as locating funding for them.

Budget Account 1051 was a federally funded account that supported the mandates of the Help America Vote Act (HAVA). Mr. Miller indicated the SOS had received \$21 million, and the agency had about \$6 million remaining to help meet those needs.

Assemblyman Denis asked what the SOS would be able to accomplish with the funding left for maintenance of the e-SOS processing system.

Kate Thomas, Deputy for Operations, Office of the Secretary of State, responded the e-SOS funding in the upcoming biennium would allow for maintenance or emergency issues only. The budget allowed for approximately 35.5 hours per month should something happen to the system. Those hours could be used per month or all at once. Ms. Thomas stated that to meet the 14 percent required reductions, that contract had been reduced to emergencies only.

Assemblyman Denis referred to E710 and the 20 requested replacement computers and asked what percentage those computers were of the overall total. Mr. Miller said he would see to it that information was supplied to LCB staff.

Chair Arberry referred to Senate Bill (S.B.) 53 and asked what would happen if the bill was approved.

Nicole Lamboley, Chief Deputy, Office of the Secretary of State, explained that S.B. 53 amended the general statute that governed the Secretary of State, and in that statute was the companion language that mirrored the Governor's recommended budget to eliminate the Special Services account. Under the advice of the Department of Administration, the SOS submitted bill draft language that was a companion to the recommended budget.

Assemblyman Conklin, in reference to E325, asked whether the revenue decline was due to current economic or whether it was due to changing consumer preferences because of more efficiency handling the filings. He also asked whether some restructuring was in order to meet consumer needs.

Mr. Miller replied that the SOS had taken a hard look at the direction commercial recordings seemed to be heading across the country. Almost without fail, most states were increasing the use of technology because it was more efficient, and it was what consumers expected. Mr. Miller opined that the decline in the Special Services account was due to two factors. One was the economic situation and the other was the agency was more efficient than it used to be and that would continue to be the case. He said special services revenue was not a revenue source that could be depended upon. However, Mr. Miller said if there was a silver lining to the recent layoffs, it was the quantifiable decrease in the speed of processing filings. What used to have a turnaround time of three days was now taking closer to a week, which could have an effect on the use of expedited filings because people were not willing to wait a week. The longer the process took, the less competitive advantage Nevada would have against states like California, which could take two or three weeks to process paperwork.

Mr. Miller stated the direction the SOS would like to go with the Commercial Recordings Division was to analyze efficiencies in the use of technology. Mr. Miller said if Nevada could create a One-Stop Portal which would be a centralized place for all businesses to conduct transactions online with the state, without going through many different agencies and processing many different forms, it would capture a greater amount of revenue, provide more efficiency, and use fewer resources. There would be a decline in the Special Services account, but ultimately Mr. Miller believed revenue would substantially increase.

Assemblywoman Leslie asked about a settlement that provided \$1.6 million to state coffers. Mr. Miller replied that he had received word that Nevada's portion of the settlements resulting from negotiations about Auction Rate Securities (ARS) had been finalized. The settlements had been negotiated by the North American Securities Administrators Association (NASAA). Nevada, pursuant to that settlement, would receive approximately \$1.6 million. Mr. Miller stated those settlement funds must be deposited into the revolving account to fund the operations of the Securities Division.

Mr. Miller said he would be requesting the Legislature to authorize the use of a portion of the settlement funds to cover the supplemental appropriation requests of approximately \$900,000 and to fund two elections positions that were being eliminated as well as a compliance audit investigator that had been eliminated. The compliance auditors had been reduced from seven to three and given the type of fraud occurring in the securities market, Mr. Miller believed it was important to add a position.

Assemblywoman Leslie asked what the total was for the three requests. Mr. Miller replied it would cost approximately \$1.3 million.

Assemblywoman Leslie asked when those funds would be given to Nevada, and Ms. Lamboley replied the settlement funds were in two payments from two different companies. The SOS expected to receive the first payment sometime within the week and the second in the next week to ten days.

Assemblywoman Leslie requested a schedule of requests from the Secretary of State, and Ms. Lamboley replied she would provide those figures today.

Assemblyman Denis asked whether the equipment from the positions that were eliminated in FY 2009 was being taken into account in the request for replacement equipment. Ms. Thomas replied all the equipment from the positions that were eliminated had been inventoried, but there was still less equipment than needed for the next biennium.

Chair Arberry asked about six vacant positions the SOS requested to be kept on the roster without funding. Ms. Lamboley explained that to meet the budget target, the SOS had recommended those six positions remain on the roster but not funded to meet the budget target. They were positions that would be needed at some point in the future as funding became available.

Assemblywoman Leslie commented the only way she could conceive of those positions being funded would be for the SOS to appear before the Interim Finance Committee (IFC) and request funding. Ms. Lamboley replied that was correct, but the request would be based on specific need tied to the revenue the SOS generated for the General Fund through commercial recordings or securities.

SECRETARY OF STATE-HAVA ELECTION REFORM
BUDGET ACCOUNT 101-1051
EXECUTIVE BUDGET PAGE ELECTED-139

Ross Miller, Secretary of State, presented Budget Account (BA) 1051.

Mr. Miller stated BA 1051 was the federally funded account that supported the mandates of the Help America Vote Act (HAVA) and was used to administer the elections, including replacement of punch-card voting machines, assistance with the administration of federal election laws, and establishment of minimum election standards.

Mr. Miller said Nevada was given approximately \$21 million in funding from the federal government and had approximately \$6 million remaining. At the February 2009 Interim Finance Committee (IFC) meeting, a request of \$42,000 was approved to meet the 5 percent match for the new HAVA Title I money. Mr. Miller said that was the first money received in BA 1051 since 2004. The SOS was continuing to monitor events in Congress. The biggest concern was the possibility of sweeping changes in the administration of elections and those changes having an unfunded mandate.

Chair Arberry requested the Secretary of State's Office work with LCB staff to reconcile adjustments necessary during the closing process, and Mr. Miller replied that he would.

Chair Arberry said he understood that the voting system contract expired in April 2009, and Mr. Miller replied that was correct. Mr. Miller explained the Office was examining the contract, and during negotiations with Sequoia, the vendor, the biggest concern was the significant amount of money spent on voting machines. Nevada was the only state in the country using 100 percent

of the same machines, all outfitted with verifiable voter trails. Mr. Miller said there had been talks about installing a new certification process at the federal level. He said the SOS wanted to be certain to purchase the latest and most up-to-date machines current with the certification.

SECRETARY OF STATE-INVESTIGATIONS AND ENFORCEMENT
BUDGET ACCOUNT 101-1053
EXECUTIVE BUDGET PAGE ELECTED-146

Ross Miller, Secretary of State, presented Budget Account (BA) 1053.

Mr. Miller stated BA 1053 was the Securities Revolving Fund, which was included in The Executive Budget pursuant to a legislative Letter of Intent in 2005. Budget Account 1053 was the only division in the Office with a separate budget account. Mr. Miller asked, now that BA 1053 was part of The Executive Budget, that it be incorporated under BA 1050. Budget Account 1053 contained funds that were part of miscellaneous fees assessed by the Securities Division, which funded operations of the Division. The Division personnel were funded by the General Fund, but if the Revolving Fund did not meet projections, supplemental funding had to be obtained through the IFC. Mr. Miller said combining those resources would allow the SOS to create efficiencies, reduce redundancies, and provide for necessary resources should target funding not be met.

The Securities Division contributed approximately \$21 million to the General Fund in 2008, through the licensing of investment professionals and the registering of securities and investments. Mr. Miller was requesting the elimination of five agency vehicles.

Chair Arberry asked how the changes would affect enforcement. Mr. Miller replied the elimination of positions would definitely have an impact, but it would be difficult to quantify. In the compliance area, the Office had gone from seven auditors to three, which reduced the rotation schedule and decreased the likelihood that an investment professional would have his books inspected. The head of registration position had also been eliminated, according to Mr. Miller. That position reviewed the registration documents as they were submitted and was primarily responsible for the \$15 million in revenue. Mr. Miller said those were difficult cuts but had been necessary to meet the target budget.

Chair Arberry asked which position Mr. Miller would want to reinstate. Mr. Miller replied he would like to add 2 elections positions because the current budget cuts would reduce that staff by 42 percent, and also add 1 compliance auditor to increase those positions from 3 to 4.

Assemblyman Hardy asked in light of the aging talent pool in most state agencies, whether the possible retirement of employees to save their benefit packages would be a factor in budget reductions.

Mr. Miller said he would have Nicole Lamboley respond, but it was a significant concern, especially in the Securities Division where there were years and years of experience that could be lost.

Ms. Lamboley explained that since Ross Miller took office as Secretary of State, the Office had begun to scrutinize the talent pool and cross-train personnel. It was a very flat organizational chart across the agency, particularly in the area outside of the Securities Division. Ms. Lamboley said the agency had been

considering the situation, and when there was a vacancy, the Office had looked at reclassifying personnel into the areas where talent was needed.

Assemblyman Hardy asked whether the SOS had a figure of how many people would be retirement eligible and could take advantage of retiring early to take advantage of the insurance subsidy. Ms. Lamboley said she could provide a number, but it was a moving target because some staff had enough years in the system but were not eligible because of age. There were a number of factors that made it difficult to determine who would be eligible and what their benefits would be.

Assemblyman Denis said he had been reading the performance indicators regarding securities enforcement cases and noted the projections were higher than the actual. He wondered whether that was because of the cut in staff.

Mr. Miller said there had been a decline in revenue in the Securities Division primarily because the cases were so complex. The Division had become very involved in the area of mortgage fraud which was a widespread problem in Nevada. Mr. Miller said the complexity of the cases had overwhelmed the small staff. There were seven criminal investigators in the Division, but when there was a case involving over a billion dollars in potential losses, it required large amounts of resources to review documents.

Assemblyman Denis asked whether the Secretary of State anticipated continuing to investigate those types of complex cases. Mr. Miller replied that it was likely the Office would make it a priority to assume leadership in the larger cases, because local law enforcement was not prepared to deal with it. Local law enforcement did not have the fraud investigators in place to examine detailed books and records to trace funds.

Assemblyman Denis noted the performance indicator for notaries trained had 4,200 actual trained in FY 2008, but projected 6,000 in FY 2009. He wondered whether that would increase revenue. Mr. Miller said in the last legislative session mandatory training for notaries had been implemented, and that would significantly increase fees and revenue.

In answer to a question from Assemblyman Denis, Mr. Miller stated that mandatory training was helping a great deal. Before mandatory training an applicant was given a notary stamp along with the authority to act as a notary public, opening them up to potential civil and criminal violations. Mr. Miller said educating notary applicants "up front" to statutes and procedures was important to avoid violations and abuses that had been seen in the past.

Mr. Miller also mentioned the SOS had increased investigative efforts regarding notaries public to address some abuses by using criminal investigators from the Securities Division. Assemblyman Denis asked whether those efforts would be continued in light of the budget situation. Mr. Miller said there had been no cuts to the peace officers in the agency, because they had been overwhelmed with fraud cases as well as election abuses.

In closing, Mr. Miller reiterated his request to restore two elections positions that were reduced as part of the 14 percent budget reductions. Those positions had not been laid off in September 2008 making it possible to complete the election cycle with a full staff. Under the current budget proposal those positions would be eliminated, reducing the election staff by 42 percent. Mr. Miller said those were key positions, essential to running elections.

Chair Arberry closed the hearing on BA 1053 and opened the hearing on BA 1080.

STATE TREASURER
BUDGET ACCOUNT 101-1080
EXECUTIVE BUDGET PAGE ELECTED-156

Kate Marshall, State Treasurer, presented Budget Account (BA) 1080.

Ms. Marshall stated she wanted to talk about how Nevada's money was doing. America was in a financial crisis the likes of which had not been seen since the 1940s. Warren Buffet called this "an economic Pearl Harbor," according to Ms. Marshall.

As Samuel Coleridge famously stated, "If men could learn from history, what lessons it would teach us! But passion and party blind our eyes and the light which experience gives us is a lantern on the stern which shines only on the waves behind us!"

Ms. Marshall noted she had identified some indicators (of trouble) because she was a student of history. She said she looked at those indicators and took some actions early, which greatly protected and diversified the state's assets.

In the fall of 2007, Ms. Marshall said she noticed that the unemployment indicator in the country "ticked up," right before the holiday season, which was not the sign of a normal operating market. Because of that abnormal behavior Ms. Marshall determined the Treasurer's Office needed to take steps to diversify and protect the state's holdings. The first step taken was to pull the state's investments out of the corporate bond market as they matured. The Treasurer made the decision that Nevada would not invest in Fannie Mae and Freddie Mac. In December of 2007, the Treasurer made the decision to discontinue a program that had begun in 1996.

Wachovia, the fund advisor of that program, had, at the time, 64 clients, and Nevada was one of 6 clients who chose to discontinue the program and not make new investments. Ms. Marshall stated her disagreement with Wachovia over that action was so marked that they appeared before the Board of Finance.

Ms. Marshall added another position to the Treasurer's Office and saved \$500,000 a year in fees and also brought in the \$300 million in outside investments through a program begun under Treasurer Bob Seale.

Ms. Marshall maintained that when markets became volatile, internal controls needed to be established, and the Treasurer's Office established a divestiture policy. That divestiture policy was posted on the Treasurer's website. The Treasurer's Office had been receiving calls from all over the country asking whether other entities could use the divestiture policy and adopt it as their own.

Ms. Marshall commented that she had operated differently from previous state Treasurers, as well as differently from the industry as a whole. Many states had lost millions when Lehman Brothers went into bankruptcy, but Nevada lost very little.

Vice Chair Leslie asked about the securities lending program and how much of the \$50 million loss (Lehman Brothers notes) could be recouped.

In response, Ms. Marshall first referred to a separate contract (a forward delivery agreement) through Lehman Brothers Bank that bond counsel determined was in default and that the state, as a result, had a right to terminate the contract. The contract was terminated after the Treasurer's Office received approval from the State Board of Finance. The issue was being decided by a court, but if the contract termination was upheld, Ms. Marshall said the state would earn additional interest for the Consolidated Bond Interest and Redemption Fund estimated at \$600,000 this fiscal year (FY), \$700,000 in FY 2010, and \$950,000 in FY 2011.

Ms. Marshall advised that in regard to the Lehman bankruptcy (regarding the \$50 million in unsecured Lehman Brothers' notes) the Treasurer's Office had contracted with outside counsel to determine the state's legal options. In the absence of other legal action, Ms. Marshall said the bankruptcy court indicated that the state could receive about 50 cents on the dollar, which would result in the loss of about \$9 million in General Fund revenue.

Vice Chair Leslie asked when the Treasurer's Office would know about the court's ruling. Ms. Marshall said she did not know, and the bankruptcy court was not saying. She commented there were other legal options being pursued that could result in a much greater recovery to the state.

Ms. Marshall said she would prepare for a worst-case scenario, which was to write-off \$50 million. Vice Chair Leslie asked how much of the \$50 million was General Fund, and Ms. Marshall replied 35 percent or \$18 million.

Assemblywoman Gansert said it was her understanding the investment with Lehman Brothers was for a two-year period, and she asked whether the Treasurer's Office had any more investments of that nature and whether that investment was normal operations.

Ms. Marshall replied that the investment was normal and was purchased under the statutory guidelines. It was also reaffirmed by the Board of Finance in January. It had been customary since 1996 to have those types of investments for those periods of duration. Ms. Marshall said there were other such investments, and the particular one being watched was with Wells Fargo Bank in the amount of \$75 million, which matured in August 2009.

Assemblywoman Gansert asked how much it would cost the state to cash in an investment early. Ms. Marshall said the amount depended on the particular investment. If the entire portfolio of \$254 million was sold immediately, it would incur a loss of \$1.7 million, according to Ms. Marshall.

Assemblywoman Gansert commented that \$1.7 million was not a great deal compared with the potential loss of \$254 million.

Vice Chair Leslie returned to the \$50 million investment and said it was assumed that the bankruptcy court was not going to act before August 2009, when the \$50 million had to be repaid. In the worst case scenario, the state took the \$50 million loss. Vice Chair Leslie said the Treasurer maintained the General Fund impact would be approximately 35 percent of the \$50 million, but LCB staff believed the General Fund amount would be substantially higher.

Vice Chair Leslie requested that the Treasurer's staff work with LCB staff to determine the correct amount of cost to the General Fund and Ms. Marshall agreed.

Assemblyman Hardy commented that newspapers were not always accurate, but one article had implied the State Treasurer's Office was convinced by Wachovia to stay with Lehman Brothers and that was the reason for the \$50 million loss. Assemblyman Hardy further commented that from what he understood Ms. Marshall to say, the Treasurer's Office got out of the contract, so Nevada was not liable for the \$50 million, and the issue was in the bankruptcy court for adjudication.

Ms. Marshall said there were two separate contracts being referred to, one with Lehman Brothers Investment Bank, which had been terminated under a clause that allowed termination without penalty when the bank failed to cure its defects. That should result in a \$23 million to \$30 million return to the state.

Ms. Marshall said that was separate and apart from the contract with Wachovia. She said she had decided to discontinue any new activity with Wachovia, but allowed existing contracts to continue until they matured. In September 2008, Wachovia had a position (on behalf of the state) in Lehman Brothers of two unsecured senior notes totaling \$50 million.

Assemblyman Hardy asked whether it had been against Ms. Marshall's better judgment to take the Wachovia recommendation to stay in the Lehman Brothers Fund. Ms. Marshall said she was constrained not to reply to the question because of legal ramifications, and her reply could put the state's legal position at risk.

Assemblywoman Gansert requested clarification regarding the \$274 million and asked whether the money was invested in corporate funds for a better return, and Ms. Marshall interjected that it was a securities lending program.

Assemblywoman Gansert asked whether they were corporate-type instruments, not treasuries, and Ms. Marshall replied that was correct.

In answer to a question from Assemblywoman Gansert regarding the \$1.7 million loss if the \$274 million were removed from corporate funds investment, Ms. Marshall explained the \$1.7 million was not interest and would be a direct loss.

Assemblywoman Gansert stated the money could be invested in treasury bonds and asked the Treasurer what options were available if the \$274 million was reinvested. Ms. Marshall agreed the money could be invested in treasury bonds, but with a substantial loss of interest.

Ms. Marshall continued with her presentation and said the Treasurer's Office handled the state's cash, the state's debt, and the college savings plans. She said BA 1080 contained two main issues. She said the first of those issues was the salaries of employees funded from BA 1080. The functions and duties of those employees had been examined, and the salaries had been realigned across the accounts for which those staff were responsible. Ms. Marshall stated the end result was a savings to the General Fund of \$1.1 million.

The second issue in BA 1080 was that \$300 million had been brought in-house to save \$500,000 in fees, and the Treasurer's Office had been approved to receive another position. Ms. Marshall said the current investment officer had requested a voluntary demotion to a lower position because of the stress of the current position, as well as personal issues. While the Treasurer's Office had made three or four offers of employment for the chief investment officer's position, everyone had declined the offer on the basis of the salary.

A substantial increase in salary for the position was being requested in the proposed budget. Ms. Marshall said one individual had finally accepted employment and would become the chief investment officer at the end of March 2009. However, Ms. Marshall said she had made representations that she would do everything in her power to acquire an increase in salary for the chief investment officer in an effort to retain that individual.

Ms. Marshall commented that the state of Idaho paid a \$128,619 annual salary for its investment officer; Oregon paid a \$190,000 to \$300,000 annual salary, plus a 30 percent bonus; Montana paid up to a \$160,000 annual salary, plus a 20 percent bonus; Utah paid a \$103,000 annual salary; Wyoming paid up to a \$222,000 annual salary; and South Dakota paid a \$112,000 annual salary, with up to a 100 percent bonus. Ms. Marshall said the \$97,000 per year that Nevada paid was on the low end, which was why it had taken almost one year to fill the position.

Assemblyman Hardy asked whether the bonuses offered by other states for their investment officer came out of General Fund, and Ms. Marshall replied the payment method varied by state. Assemblyman Hardy said he would be interested in how that was generated, because realistically if Nevada had the same attitude of paying someone what they were worth and allowing them to have some type of bonus program based on performance, it would make sense. Ms. Marshall said she was not requesting a bonus program, but she could provide the information about how other states managed bonus programs.

Assemblyman Hardy commented he was interested in the funding sources for both salaries and bonuses, because he believed the public/private partnership concept was being utilized, and he thought Nevada might want to consider that type of arrangement for investment positions.

If the salary increase was approved for the chief investment officer, Chair Arberry wondered whether the Treasurer would be requesting salary increases for all management positions. Ms. Marshall said no one in the Treasurer's Office wanted the chief investment officer position.

STATE TREASURER
TREASURER HIGHER EDUCATION TUITION ADMINISTRATION
BUDGET ACCOUNT 603-1081
EXECUTIVE BUDGET PAGE ELECTED-165

Kate Marshall, State Treasurer, presented Budget Account (BA) 1081, the Prepaid Tuition program.

Originally, the Prepaid Tuition program received seed money of \$4.4 million from the General Fund, which had been repaid in full, according to Ms. Marshall. When the Treasurer's staff performed outreach throughout the state to inform residents about college programs, both the Millennium Scholarship and the Higher Education Tuition program were addressed together.

Ms. Marshall said the travel expense for outreach activities was allocated equitably across all the higher education programs.

Chair Arberry asked how the Treasurer's Office planned to improve the Higher Education Tuition trust fund's stabilization reserve level. Ms. Marshall replied that on an annual basis an actuary performed an analysis of the fund. The analysis had certain assumptions built-in such as the cost of tuition and fund interest levels. The Board of Finance was responsible for telling the

actuary what its assumptions were, and the actuary based its tuition rates on those assumptions. Ms. Marshall said the Treasurer's Office was conducting discussions with the Nevada System of Higher Education (NSHE) regarding the Prepaid Tuition program and the value of that program to them. The actuary continued with the assumption that the program would make 7.5 percent in the market. As a result, on June 30, 2008, the fund had a \$780,000 reserve, which was down from an \$8 million reserve, according to Ms. Marshall. The market had depleted the fund, and it was currently 80 percent funded. Ms. Marshall noted, as with many such funds throughout the country, the prepaid tuition fund was having a difficult time.

Chair Arberry asked whether the Board of Finance had considered capping or suspending open enrollment until market conditions improved. Ms. Marshall replied that the Board had considered such a move but had decided against it. The Board had decided to permanently set the dates for open enrollment so that every year the dates would be the same.

In answer to a question from Assemblyman Denis, Ms. Marshall said the loan to establish the Prepaid Tuition program had been repaid in full to the General Fund.

Assemblyman Denis asked how the outreach efforts were interconnected. Ms. Marshall explained that staff attended college nights, college fairs, and parent-teacher meetings and people did not want to hear just about the Millennium Scholarship or the Prepaid Tuition program, but they wanted to hear about all options available for college attendance aid.

Assemblyman Denis asked how success was measured in the outreach area. Ms. Marshall said one of the ways success was measured in the 529 program was the increase in accounts in Nevada. Previously, there had been a low level of Nevada residents participating in the 529 program. The prepaid tuition program had a four-year university plan, a two-year university plan, or a two-year community college and two year university plan, and Ms. Marshall said a one-year option would soon be available. She said it would be difficult to determine whether the outreach or the different options would be bearing on the outcome.

Ms. Marshall explained a number of actions were being taken to make the Prepaid Tuition program more consistent.

Assemblyman Denis remarked that the Committee had to use indicators to aid in understanding whether the program was succeeding or not, and requested a measurement from the Treasurer. Ms. Marshall said she could discuss with the Board of Finance what types of performance measures could be implemented to gauge the outreach program.

Assemblywoman Gansert asked whether the cost to enter the Prepaid Tuition program had been significantly increased in light of the diminished reserve. In addition, she wondered whether the time to pay had been increased to make the program more affordable. Ms. Marshall replied the Treasurer's Office was implementing a number of options. She acknowledged the cost of the contracts had increased, but cautioned the increase might not be sufficient considering the state of the economy. The rules of the plan had been clarified to require a participant to keep his money in the plan for five years. Ms. Marshall stated the rules had been streamlined as well, which resulted in a more equitable value to all plan participants.

One other change in the plan, according to Ms. Marshall, was to clarify that if the plan was underfunded, a participant would only receive a pro rata amount.

Assemblywoman Gansert asked whether it was correct that if the Prepaid Tuition plan was funded at only 80 percent at any period, then participants would receive only 80 percent of what was promised to them. Ms. Marshall replied that was correct; otherwise, the Legislature would have to fund the remaining 20 percent, and the fund explicitly stated it was not backed by the full faith and credit of the state. The fund must stand on its own, and to do that it would have to distribute funds on a pro rata basis.

Chair Arberry closed the hearing on BA 1081 and opened the hearing on BA 1088.

STATE TREASURER
MILLENNIUM SCHOLARSHIP ADMINISTRATION
BUDGET ACCOUNT 261-1088
EXECUTIVE BUDGET PAGE ELECTED-171

Kate Marshall, Nevada State Treasurer, presented Budget Account (BA) 1088 and referred the Committee to [Exhibit E](#), Number of Students from a High School in an Assembly District that Received a Millennium Scholarship. Ms. Marshall said the exhibit depicted the number of students in each assembly district who were taking advantage of the Millennium Scholarship or had taken advantage of the scholarship. The statistics were based on high schools, so in areas where the high school abutted two districts, the numbers might not be entirely correct.

Ms. Marshall said based on assumptions, tobacco revenues would be 10 percent lower than the projections, and 56 percent of the eligible students would utilize the Millennium Scholarship in the fall immediately following high school graduation. The Millennium Scholarship was currently funded through fiscal year (FY) 2019, according to Ms. Marshall, if about \$500,000 in fees from the College Savings Plans could be used for administration of the Millennium Scholarship Program.

The Treasurer had approached the Board of Trustees of the College Savings Plans of Nevada, which approved the request to use the fees from the College Savings Plan to pay for the administrative costs of the Millennium Scholarship. The Legislature would also have to approve that action, which added a year to the Millennium Scholarship funding.

Ms. Marshall pointed out that in the 25th Special Session, the Legislature removed \$7.6 million from Unclaimed Property and placed it in the General Fund instead of the Millennium Scholarship and removed \$5 million directly from the Millennium Scholarship. What had not been addressed in the 25th Special Session was the treatment of the interest earned over time from the \$5 million and from the \$7.6 million. Ms. Marshall said if the Legislature would allow the interest on these amounts to be separated out and deposited to the Millennium Scholarship, it would add another year and fund the Millennium Scholarship to FY 2020.

Chair Arberry commented that on February 4, 2009, the Treasurer's Office provided revised projections related to the utilization rate for incoming fall semester freshmen college students. Those projections showed a decrease from 58 percent to 56 percent. Chair Arberry asked how that 2 percent decrease would affect the Millennium Scholarship.

Ms. Marshall said one of the struggles with the Millennium Scholarship was identifying trends, such as how, when, and where eligible students were utilizing the scholarship. There had also been rule changes determining how the scholarship had been applied, making it difficult to identify trends.

For example, was the utilization rate tied to the "second strike" program, or because there were no longer remedial courses. Ms. Marshall said it had been difficult to assess because of the number of changes to the program. Statistics indicated the previous use of the 58 percent utilization was too high; therefore, the utilization rate had been lowered to 56 percent.

Chair Arberry questioned how the requirement for a higher grade point average (GPA) would affect student eligibility for the scholarship. Ms. Marshall suggested that the Nevada System of Higher Education (NSHE) might be a better entity to provide information on that issue. The Treasurer's Office depended upon the NSHE and the Western Interstate Commission for Higher Education (WICHE) for information regarding what students would and could do. Ms. Marshall said the effect of the requirement for a higher GPA was very difficult for the Treasurer's Office to assess.

In response to a question from Assemblyman Denis regarding decision unit E251, a change in the budget account funding source, Ms. Marshall said across the board certain members of the unclassified staff had been reallocated. She also noted all administrative costs, including salaries, were picked up by College Savings Plan fees.

Assemblyman Denis asked about the legality, risk, and benefits of the proposed funding swap, and how it would be sustained for the long-term.

Ms. Marshall responded there was a contract (for the College Savings Plan fees) good through 2031, which provided \$1.5 million annually to the state. Currently the annual administrative costs of the Millennium Scholarship were only \$500,000, and Ms. Marshall believed those costs could be funded with little problem.

Assemblyman Denis asked what the long-term impact would be on the Nevada College Savings Trust Endowment Account. Ms. Marshall replied the Endowment Account would pay for the administrative costs. The Endowment Account had been used to supplement pre-paid tuition when it had been needed, according to Ms. Marshall. She had been allowing money to accrue in the Endowment Account and presently the account contained between \$6 million and \$7 million.

Chair Arberry recessed the meeting at 9:50 a.m. and reconvened at 9:55 a.m. The Chair opened discussion of BA 3815.

STATE TREASURER
UNCLAIMED PROPERTY
BUDGET ACCOUNT 101-3815
EXECUTIVE BUDGET PAGE ELECTED-178

Kate Marshall, Nevada State Treasurer, presented Budget Account (BA) 3815 and stated that in fiscal year (FY) 2008 the General Fund had received \$49 million from the Unclaimed Property Division, a substantial increase from previous years. In FY 2009, \$34 million was projected for the General Fund from Unclaimed Property. Ms. Marshall said that figure would be revised on May 1, 2009, and expected it to increase.

Ms. Marshall stated on February 1, 2008, Unclaimed Property had taken in \$72 million, and on February 1, 2009, Unclaimed Property had taken in \$66.8 million. On February 1, 2008, \$10.1 million had been paid out, and on February 1, 2009, \$13.4 million had been paid out.

The Treasurer's Office had increased outreach for Unclaimed Property. Ms. Marshall explained the Office formerly advertised in 9 newspapers and now advertised in 16 newspapers. While the Treasurer's Office formerly advertised an average of 31,500 names, it now advertised an average of 79,000 names.

Ms. Marshall said the *Nevada Revised Statutes* required the Treasurer's Office to collect interest and penalties on holder reports that were submitted late; however, that had never been done. The Office sent a notice just before holder reports were due in November advising holders that interest and penalties would apply. As a result, submitted holder reports increased by 25 percent.

In addition, Ms. Marshall said the Treasurer's Office was requesting an increase in printing and mailing costs. Part of the reason for the request was because of a decision issued by the Ninth Circuit Court of Appeals. The decision pertained to California and had cost the state a significant amount of time, effort, and money, according to Ms. Marshall. The Ninth Circuit Court of Appeals decision said California had not sufficiently attempted to contact the persons whose property it had.

Ms. Marshall said in an effort to prevent Nevada from receiving judicial action, the Treasurer's Office had issued a note card to all claimants who had securities or actual property, such as jewelry, informing them the state had their property and it would be sold. There was a 10 percent increase in claims among the recipients of the note cards.

Chair Arberry asked whether the note cards were sent by certified mail, and Ms. Marshall replied they were sent to the last known address by regular mail.

The Treasurer's Office was requesting funding for printing and mailing costs for the Unclaimed Property Division, mainly because of the Ninth Circuit Court of Appeals decision. Ms. Marshall said the Treasurer's Office was also requesting funding for travel for the Chief of Staff and the Senior Deputy. She said the Office could manage without the funding, but without the funding, the staff became ineffective and lost skills.

Chair Arberry asked how the new positions approved during the last legislative session had improved the Unclaimed Property Division's efforts to expedite the return of unclaimed property. Ms. Marshall said the Division had not only been able to process more claims, but had received more money. The website for Unclaimed Property had also been updated and improved.

In answer to a question from Chair Arberry, Ms. Marshall said the State of Nevada had received a grade of C, which was an improvement and apparently at the higher end of the ratings because many states received D and F grades.

Chair Arberry asked why there were fewer projected completed audits. Ms. Marshall responded that measurement had not been met because of a position that had been empty for seven months. Additionally, for five months all of the auditors in the Division had been removed from auditing and had worked on organizing the vault and improving the databases so money could be distributed to claimants. The work performance standards for auditors, as written by the Department of Personnel, required each auditor to conduct

15 audits per year, except for the head auditor who was required to conduct 12 audits per year.

STATE TREASURER
NEVADA COLLEGE SAVINGS TRUST
BUDGET ACCOUNT (605-1092)
EXECUTIVE BUDGET PAGE ELECTED-185

Kate Marshall, Nevada State Treasurer presented Budget Account (BA) 1092, Nevada College Savings Trust.

Ms. Marshall stated she was requesting to align the travel requests in BA 1092 with the Millennium Scholarship Administration and Prepaid Tuition. All expenses were funded by the College Savings Endowment Account, according to Ms. Marshall.

Ms. Marshall noted in BA 1092 the program fees received by the state were not listed. She said she believed those fees should be listed, and she was willing to work with LCB staff to ensure fees were shown.

Mark Stevens, Assembly Fiscal Analyst, recommended that BA 1094, (the Endowment Account) be included as a closing in this legislative session and be included in The Executive Budget in each session thereafter.

Ms. Marshall stated she was building up the Endowment Account in the event of a shortage of Prepaid Tuition funds because, previously, that was what had happened.

Chair Arberry requested information regarding the status of the marketing plan. Ms. Marshall informed the Committee that the Treasurer's Office had implemented a payroll deduction plan and had increased the number of accounts in-state, which had been the goal. The Board of Trustees of the College Savings Plans of Nevada had authorized the expenditure of up to \$2,000 for attendance at fairs and college nights. Ms. Marshall said that was the marketing plan at the present time. The Treasurer's Office was working with Upromise Investments, LLC (Upromise) to develop a marketing plan.

Chair Arberry asked whether the Treasurer anticipated any changes once the marketing plan was finalized. Ms. Marshall said the Board had to approve any marketing plan, and when the plan was approved, she would make sure the Committee was informed.

In answer to a question from Chair Arberry regarding decision unit Enhancement (E) 252, Ms. Marshall explained that decision unit pertained to outreach, where staff attended college fairs and college nights with information regarding prepaid tuition and the college savings plan.

Chair Arberry inquired about on-site visits, and Ms. Marshall explained that was training for outreach held annually in Boston, Massachusetts at the Upromise offices.

Chair Arberry closed the hearing on BA 1092 and opened the hearing on BA 1086 and BA 1087.

STATE TREASURER
MUNICIPAL BOND BANK REVENUE
BUDGET ACCOUNT (745-1086)
EXECUTIVE BUDGET PAGE ELECTED-195

STATE TREASURER
MUNICIPAL BOND BANK DEBT SERVICE
BUDGET ACCOUNT (395-1087)
EXECUTIVE BUDGET PAGE ELECTED-197

Kate Marshall, Nevada State Treasurer presented Budget Account (BA) 1086, Municipal Bond Bank Revenue, and BA 1087, Municipal Bond Bank Debt Service.

Ms. Marshall stated there were no enhancements requested in BA 1086 or BA 1087. The funds in both budget accounts were used for the collection and related debt service payments of the Municipal Bond Bank participants.

Assemblyman Denis requested more informative performance indicators, and Ms. Marshall agreed to provide more information.

Assemblyman Grady returned to the subject of participants making investments for the future education of their children and grandchildren (the Prepaid Tuition program), and asked the Treasurer whether the return could be less than the original investment.

Ms. Marshall replied in any investment program there was always the possibility that the expected returns would not materialize. In the present market that possibility was a reality, according to the Treasurer. She said she was not very concerned because the timeline of the program was so far into the future the fund would have an opportunity to rebound.

From the inception of the (Prepaid Tuition Trust) Fund, it had been stated that it was not backed by the full faith and credit of the State of Nevada. Ms. Marshall said people had to be aware of the risk involved when participating in the Fund. If the Fund was not fully funded, participants would receive a pro rata payout, which the Treasurer maintained was basic, prudent financial management.

Assemblyman Grady said he did not believe that information had been disclosed to participants as well as it could have been and wondered whether there had been a change in policy. Ms. Marshall replied there had been no change in policy as the state had never backed the Prepaid Tuition program. Assemblyman Grady commented that he believed the participants needed more information regarding the policy.

Assemblywoman Gansert commented that while no one expected the state to support prepaid tuition 100 percent, between returns on the investment and the addition of more participants, people expected to receive what they thought they paid for, which was 120 units of higher education. There were participants who invested 10 years ago who had certain expectations based on their understanding of the policy. Assemblywoman Gansert said she believed there had been a shift in policy and what she was hearing now was different from what she had been told before.

Ms. Marshall said she may have raised a concern inadvertently. She said there was no shift in policy, and the Prepaid Tuition program was being conducted under the same principles it started with. Ms. Marshall indicated that she was building reserves from the College Savings Plans' fees to support the Prepaid Tuition program should the need arise. She noted a prior Prepaid Tuition program shortfall had been remedied through a General Fund loan. She apologized for raising an unnecessary concern about the program.

Chair Arberry closed the hearing on BA 1086 and BA 1087 and opened the hearing on BA 1343.

ETHICS COMMISSION
BUDGET ACCOUNT 101-1343
EXECUTIVE BUDGET PAGE ELECTED-199

Patricia Cafferata, Esq., Executive Director, Commission on Ethics, presented Budget Account (BA) 1343. Ms. Cafferata submitted [Exhibit F](#), Annual Report of the Executive Director, Fiscal Year 2008, and [Exhibit G](#), an Expanded Program Narrative.

Ms. Cafferata said the Ethics Commission was an independent state agency. The Ethics Commission was comprised of four members appointed by the Legislative Commission and four members appointed by the Governor. According to Ms. Cafferata, 65 percent of the Commission's funding came from local governments. Every budget cycle the caseload was reevaluated to determine where the caseload was derived from, and then it was determined how much the state would fund and how much local governments would fund.

Ms. Cafferata stated there were no new requests for BA 1343. She said she had done everything possible to reduce the budget, including cancelling caller identification for the office telephones.

Ms. Cafferata said an item of concern in BA 1343, prepared by the Department of Administration, was the Attorney General (AG) cost allocation. The Ethics Commission employed its own general counsel and did not utilize the staff of the Attorney General. Ms. Cafferata explained that the Office of the Attorney General was allowed to charge all state agencies receiving federal funds for time spent aiding those agencies. She emphasized that the Attorney General spent no time aiding the Ethics Commission and had not since 2006. According to the Attorney General's guidelines the Ethics Commission should be charged an hourly rate, if services were used. In 2008, the Attorney General's cost allocation was \$24,000, and in 2009 the allocation increased to \$52,000.

Ms. Cafferata said she had discussed the matter with the Department of Administration, as well as the chief of staff of the Attorney General. She had been assured by the Department of Administration that the cost allocation would be removed or reduced. Ms. Cafferata commented it did not seem fair to be charged for a service the Commission was not receiving. Further, it was a conflict for the Attorney General to provide services to the Commission because that agency represented persons who might have ethics complaints against them.

Assemblyman Hardy said in the past an attorney from the Attorney General's Office had briefed local elected officials regarding ethics laws. He asked where that funding came from. Ms. Cafferata replied that the Ethics Commission staff performed the ethics presentations funded by the Attorney General.

Chair Arberry asked whether the Ethics Commission would be able to fulfill its responsibilities based upon the funding recommendations for fiscal year (FY) 2010. Ms. Cafferata said she was concerned about one other item in the budget, which was the salary for the executive director. In FY 2008 when the budget cuts were implemented, Ms. Cafferata said she took leave without pay, which reduced her salary approximately \$10,000. She said she took the salary reduction to avoid closing the Las Vegas Office or eliminating personnel.

Ms. Cafferata said although she had been assured at the time she took leave without pay, the lowered salary would not appear in the next budget, it had. When she asked the Department of Administration why the executive director's salary was approximately \$10,000 lower, she was told it was the 6 percent salary reduction everyone was taking. However, the final budget showed a reduced salary of approximately \$10,000 plus the 6 percent reduction.

Ms. Cafferata commented that she was concerned because she would not always be executive director of the Ethics Commission. Whoever replaced her would be making less than the general counsel and she did not believe that was a good model.

Another concern of Ms. Cafferata was that to cut expenses, the Ethics Commission had cancelled the LexisNexis online research subscription, which meant the Commission's general counsel could not perform legal research at the office, but had to go to the Supreme Court Library. Ms. Cafferata stated LexisNexis was one of the first budget cuts because it was a great deal of money.

Ms. Cafferata commented that she was sure many agencies in the state subscribed to LexisNexis and suggested consolidating the needs of state agencies to attempt to procure the best contract with the company.

Ms. Cafferata said there were a couple pieces of legislation that she had not seen, and she understood one was to create a legislative ethics commission. She commented on the caseload and noted the Ethics Commission had provided one advisory opinion to Senator Raggio and the legislative staff in 2008. The Commission had received two complaints during the campaign season that had been dismissed by the Commission because there were no ethics violations. Ms. Cafferata said out of the entire caseload there had been only five complaints relating to the Legislature.

The other pending legislation concerned the Secretary of State's request to oversee the financial disclosure statement function. The Secretary of State handled all elected individuals, and the Ethics Commission handled all appointed individuals. Ms. Cafferata said it was always a problem when the disclosure statements were due, and she had no objection to housing the function in one place.

Since the original projections had been compiled in August 2008, the caseload for the Ethics Commission had increased a great deal. Ms. Cafferata said after the complaint against the Governor became public in September 2008, the Commission received publicity that informed the public anyone could file an ethics complaint. Within 48 hours of the Governor's hearing, the Ethics Commission had received six or eight complaints.

Assemblyman Denis referred to performance indicator number 5 where education programs rated as relevant, useful, and well-prepared were rated 95 percent. He asked how that rating had been determined. Ms. Cafferata replied the data was compiled from surveys.

Chair Arberry noted the budget for the Investigations/Paralegal category had been reduced to \$722 for both FY 2010 and FY 2011. He asked how that reduction in funding would affect the Commission. Ms. Cafferata explained the funding reduction had severely restricted travel for the investigator. Since the investigator was stationed in southern Nevada, any investigation in northern Nevada had to be conducted by email or telephone.

Assemblyman Hardy raised concerns regarding the need to take ethics questions to the Commission rather than to receive an opinion on an issue beforehand from the general counsel. He felt there needed to be a streamlined method to handle questions and asked whether there was anything in the Ethics Commission budget to provide answers to ethics questions before the fact to prevent later ethics problems.

Ms. Cafferata said there was no easy answer to Assemblyman Hardy's question. The way to receive an advisory opinion from the Ethics Commission was to file a form and ask the question. The Ethics Commission had 45 days to answer the question, and the entity asking the question would appear before the full Commission. While staff could answer simple questions or refer someone to a previously issued opinion, the law prohibited staff from giving an ethics opinion: it had to be issued by the Commission.

Assemblyman Hardy pointed out the current method for Ethics Commission opinions was in the law, and the Legislature had the power to change the law. He also noted that there were opinions on which the Legislative Counsel and the Commission might disagree. He asked whether the Commission was requesting or needed something in its budget or through a law change to proactively avoid problems, instead of dealing with them after the fact.

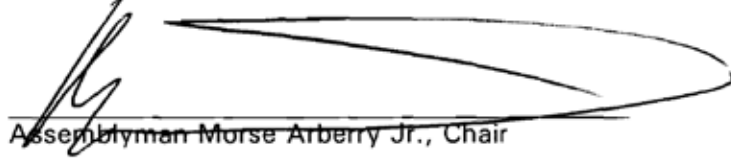
In response, Ms. Cafferata said the Ethics Commission was sponsoring Senate Bill 104 that would be heard tomorrow afternoon in a Senate committee. However, there was nothing in that bill that addressed Assemblyman Hardy's concern. She said that past Legislatures were concerned with previous executive directors, who were not lawyers, providing opinions in regard to the ethics laws. She believed the safeguard was to have the Commission issue the opinions, and although the procedure was cumbersome, the Commission tried to meet the 45-day deadline, unless the deadline was waived. She pointed out that the Commission met every month and provided the requested opinion on time.

Chair Arberry adjourned the meeting at 10:34 a.m.

RESPECTFULLY SUBMITTED:

Anne Bowen
Committee Secretary

APPROVED BY:

A handwritten signature in black ink, appearing to be 'Morse Arberry Jr.', is written over a horizontal line. The signature is stylized and extends to the right, ending in a large, sweeping loop.

Assemblyman Morse Arberry Jr., Chair

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Committee on Ways and Means</u>			
Date: <u>February 23, 2009</u> Time of Meeting: <u>8:09 a.m.</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Sign-In Sheet
<u>A.B.</u> <u>165</u>	C	Assemblywoman Barbara Buckley	PowerPoint Presentation
	D	Ross Miller, Secretary of State	PowerPoint Presentation
	E	Kate Marshall, Treasurer	Number of Students from a High School in an Assembly District that Received a Millennium Scholarship
	F	Patricia D. Cafferata, Esq.	Annual Report of the Executive Director, Nevada Commission on Ethics
	G	Patricia D. Cafferata, Esq.	Budget Account 1343, Expanded Program Narrative