

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON WAYS AND MEANS  
AND THE  
SENATE COMMITTEE ON FINANCE  
JOINT SUBCOMMITTEE ON AUDIT**

**Seventy-Sixth Session  
June 3, 2011**

The Assembly Committee on Ways and Means and the Senate Committee on Finance, Joint Subcommittee on Audit was called to order by Chair Paul Aizley at 2:45 p.m. on Friday, June 3, 2011, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 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/76th2011/committees/](http://www.leg.state.nv.us/76th2011/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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**ASSEMBLY SUBCOMMITTEE MEMBERS PRESENT:**

Assemblyman Paul Aizley, Chair  
Assemblyman Joseph M. Hogan, Vice Chair  
Assemblyman David P. Bobzien  
Assemblyman John Hambrick  
Assemblyman Cresent Hardy

**SENATE SUBCOMMITTEE MEMBERS PRESENT:**

Senator Sheila Leslie, Chair  
Senator Moises (Mo) Denis  
Senator Steven A. Horsford  
Senator Dean A. Rhoads

**GUEST LEGISLATORS PRESENT:**

Senator Shirley Breeden, Clark County Senatorial District No. 5

**STAFF MEMBERS PRESENT:**

Rick Combs, Assembly Fiscal Analyst  
Mike Chapman, Principal Deputy Fiscal Analyst  
Paul V. Townsend, Legislative Auditor  
Todd Peterson, Deputy Legislative Auditor  
Sherie Silva, Committee Secretary  
Sally Stoner, Committee Assistant

Chair Aizley announced the purpose of the meeting was to review and accept a legislative audit report of the Office of Labor Commissioner, which was issued on April 12, 2011 ([Exhibit C](#)). He explained the Labor Commissioner had sixty days to present a plan of corrective action, and the plan was due to the Director of the Department of Administration by July 7, 2011.

Chair Aizley stated the report was divided into three major audit exceptions:

- Inadequate Controls Over the Collection and Disbursement of Cash for Unpaid Wages.
- Wage Claim Resolution Process Can Be Improved.
- Management Information Not Sufficient or Reliable.

Details of each section would be presented by the Legislative Auditor, followed by questions from the Subcommittee members.

Paul V. Townsend, Legislative Auditor, Legislative Counsel Bureau, introduced Todd Peterson, Deputy Legislative Auditor in charge of the audit of the Office of Labor Commissioner (Office). He thanked the Subcommittee members for the opportunity to present the audit, which he hoped would assist the Legislature in its ongoing oversight of the Office.

Mr. Townsend emphasized that a major concern of the auditors was an outside bank account maintained by the Labor Commissioner. The account was authorized by statute and used to deposit money collected from employers for unpaid wages and distributed to employees with valid claims. Mr. Townsend reviewed the findings of the audit:

- The payments to the claimants were delayed two to three weeks because of the time the Office took to deposit the payments, wait for the checks to clear, and write checks to the employees. Approximately \$2 million flowed through the account in fiscal year (FY) 2009-10.

- The account was very poorly controlled, resulting in a high risk that fraud could occur and go undetected.
- Rather than purchase a new information technology system or pursue other efforts to improve the controls, the auditors believed a more efficient process could be applied to correct the problem with existing resources to expedite payments to the claimants.

Mr. Townsend said the auditors had contacted Arizona, Utah, and Washington, which all used a process in which checks for unpaid wages were submitted to the Labor Commissioner, and the Labor Commissioner transmitted the checks directly to the employees without cashing them. The audit recommended that the Labor Commissioner adopt a similar process to eliminate the banking between the employer and the employee. He said in cases when the check could not be directly transmitted, the check should be deposited in the State Treasury where it would be subject to the state's accounting system and internal controls.

In summary, Mr. Townsend said the Audit Division believed the outside bank account was unnecessary, it was a risk to the state, and it should be closed. He turned the presentation over to Todd Peterson to review the details of the audit report.

Todd Peterson, Deputy Legislative Auditor, Audit Division, Legislative Counsel Bureau, reviewed the background and functions of the Office of Labor Commissioner:

- The major responsibilities of the Office were to investigate claims from employees that their employers did not pay them the correct amount of wages and to establish prevailing wage rates and enforce prevailing wage laws.
- The Labor Commissioner had offices in Carson City and Las Vegas and eighteen full-time employees as of September 2010.
- The Office was funded through a General Fund appropriation, and in FY 2009-10, expenditures were approximately \$1.4 million.
- The Office maintained an outside bank account, as previously discussed by Mr. Townsend, which was authorized by statute in 1967. In FY 2009-10, the average monthly account balance was \$416,298.

Mr. Peterson noted that Exhibit 3 on page 3 of the audit report ([Exhibit C](#)) displayed the types and number of claims received by the Office, and the scope and objectives of the audit were found on pages 3 and 4.

Mr. Peterson then reviewed the audit findings in the first section of the report, Inadequate Controls Over the Collection and Disbursement of Cash for Unpaid Wages:

- The Office's procedures for safeguarding cash held in trust for claimants were inadequate and caused inefficiencies in the processing of payments. Fiscal year 2009-10 deposits to the outside bank account were about \$1.9 million.
- To track the deposit and disbursement of money, as well as information about its claim investigations, the Office developed an information system. Although the system had an important role in the Office's current process, the system had significant control weaknesses, including:
  - Ø Access Controls: System passwords were constructed the same for each employee, and user names and passwords were shared by staff because the Office did not know how to edit the information.
  - Ø Edit Logs and Controls: The system did not automatically track modifications made to records or control improper activity. Without edit controls, payment or deposit information could be changed at any time.

Mr. Peterson explained the inefficiencies of the Office's process of handling the receipt and disbursement of the claim money. Many of the inefficiencies were the result of the Office's practice of depositing employer checks and then issuing new checks to claimants. However, he added, other inefficiencies came from the system itself, as follows:

- Delay in Remitting Checks: Because of the time required to deposit and wait for checks to clear, payments to claimants were delayed for two to three weeks.
- Slow System Processing: The auditors observed that it took the system an average of seven minutes to record the information for each check. The employee entering the information could not perform other actions in

the system until the current check was processed. Staff indicated the seven minutes was representative of the time it took the system when first entering claim receipt information and later to print the check to the claimant. In FY 2009-10, approximately 1,300 checks were printed using the system.

- Reconciliation of the Outside Bank Account: The Labor Commissioner had indicated it took an employee in the Las Vegas office about 40 percent of his time to reconcile the Office's outside bank account and perform other financial activities. The bank reconciliation would not be necessary once the bank account was closed, leaving additional time for the employee to investigate claims. Additional time was also required to make bank deposits and safeguard check stock.

Mr. Peterson reported that the three states surveyed, Arizona, Utah, and Washington, remitted payments from employers directly to claimants. Nevada's Office of Labor Commissioner currently remitted payments directly to claimants only when 30 or more checks were received from an employer. The Office stated that the practice was because of the time it took the system to process cash receipts and disbursements.

Mr. Peterson reviewed additional cash control weaknesses observed by the auditors:

- The Office did not perform key reconciliations to ensure receipts and disbursements recorded in the Office's system (books) were reconciled to the bank statements.
- Deposits were not always made timely; payments from employers were placed in the safe instead of depositing them upon receipt. Out of 25 transactions randomly selected, 10 checks totaling nearly \$3,000 were forgotten in the safe and were held an average of 3 1/2 months before they were deposited.
- Proper restrictive endorsements were not used on checks, and restrictive endorsements were not applied timely.

Mr. Peterson pointed out that without proper controls over cash, there was increased risk that payments to claimants would be delayed and cash would be mishandled or stolen. He cited two examples of mishandled cash in the Office:

- Over \$3,000 in payroll checks remained unnoticed for ten months in the Office's safe, and once the checks were noticed, the Office had to request new checks from the employer.
- Approximately \$4,600 was deposited in the Office's account but not remitted to claimants until 3 1/2 years later when it was brought to staff's attention by the auditors.

Mr. Peterson explained that numerous errors were found in 15 of 20 claim balances tested from the Office's system that had gone uncorrected. The balances represented amounts due to claimants. The size and frequency of errors in the accounts increased the risk that claimants would be paid incorrect amounts.

Mr. Peterson went on to relate that the Office did not always transfer funds to the State Treasurer's Unclaimed Property Program in a timely manner. He cited the audit recommendations contained in the report concerning inadequate controls over the collection and disbursement of cash for unpaid wages:

- Discontinue use of the outside bank account and instead remit checks received from employers directly to claimants.
- Utilize the state's accounting system to process and record the receipt and disbursement of monies for unpaid wage claims when checks cannot be directly passed to claimants.
- Ensure all money received is deposited timely, and periodically reconcile the outside bank account to the Office's records of amounts owed to claimants until the account is closed.
- Develop controls to ensure restrictive endorsement stamps include the proper wording and endorsements are done timely.
- Develop policies and procedures to track the aging of account funds and establish when funds should be transferred to Unclaimed Property.

Mr. Petersen said because of the many control weaknesses and process inefficiencies, the Audit Division believed that the benefits, such as getting money to claimants faster, eliminating many time-consuming tasks performed by staff, and reducing the risk of money being lost or stolen, far exceeded the efforts or potential administrative efforts of implementing the recommendations.

Assemblyman Hambrick asked when the Office of Labor Commissioner was last audited. Mr. Townsend replied the last legislative audit was performed in 2001, and it focused on a different scope.

Assemblyman Hambrick asked whether the current practices had been in place during the last audit or whether they had been implemented since that time.

Mr. Townsend replied the Office had a different information technology system in place when the last audit was performed, and a different process was being used. He said the previous process appeared to be similar to that being recommended in the current audit report: checks were provided directly to the claimants.

Assemblyman Hambrick asked whether Mr. Townsend was aware of the cause for the change in practices. Mr. Townsend replied it was his understanding that the information technology system had crashed, and the Office was unable to salvage it. A new system was developed by an in-house employee; the employee had left the agency, which was the reason the Office could not set new passwords and make adjustments to the system to make it more effective.

Chair Aizley asked the Labor Commissioner whether he would like to respond to Mr. Peterson's presentation.

Michael Tanchek, Labor Commissioner, Office of Labor Commissioner, testified that he did not need to respond to the report because the work performed by the Audit Division was excellent. The report validated many of his concerns and pointed the Office in the right direction to find solutions. He was in agreement with the audit's recommendations, but finding the fixes to implement them was going to be a challenge in some instances. Some recommendations had been implemented: new restrictive endorsement stamps were in place two days after the recommendation was received. Mr. Tanchek offered to answer questions from the Subcommittee.

Chair Aizley remarked the main recommendation was to discontinue use of an outside bank account, and he asked whether that recommendation was acceptable to Mr. Tanchek.

Mr. Tanchek said the account had been in-house since 1967. There were previously two separate bank accounts: one for southern Nevada and one for northern Nevada, and they were combined into one account for better control. He noted the account had placed the Labor Commissioner, including his

predecessors, at a tremendous amount of risk because the account was in his name and he was responsible for it. He would support a change from the current system.

Mr. Tanchek said he had forwarded a copy of the audit report and a letter to the State Controller and the State Treasurer because their assistance would be needed to change the system. He had not received a response from either of them.

In response to a question from Chair Aizley, Mr. Townsend said he had not had contact with either the State Controller or the State Treasurer concerning the report.

Senator Rhoads asked whether the Office banked at a Nevada bank. Mr. Tanchek replied the account was with the Bank of America in Nevada.

Senator Horsford noted the report indicated the Office had not reported to the Office of the State Controller over \$1.7 million in debts owed by employers on behalf of claimants. He asked whether there was an ultimate resolution of the pending payments or fines from employers and how long they were outstanding.

Mr. Peterson replied the \$1.7 million included claims in which the Labor Commissioner's Office had taken the claim through to the summary judgment process because of a lack of response or the ability to force any action by the employer. The summary judgment filed with the courts placed a lien on the assets of the employer. He said the practice of providing those debts to the Controller's Office for collection was discontinued for two or three years.

Senator Horsford asked whether discontinuing the practice was a policy or regulation change. He remarked it was a substantial departure to not forward \$1.7 million in debts owed by employers for violations to the Controller's Office for collection.

Mr. Peterson replied from the Audit Division's review, it appeared the change in process was the result of a policy change by the Office.

Mr. Tanchek recalled the process of forwarding the summary judgments to the Controller's Office was started in 2002 or 2003, before he became the Labor Commissioner. He had talked with Haydee Meeker, an accountant in the



Controller's Office, who had indicated there was currently \$3.9 million in uncollected judgments at the Controller's Office dating back to 2002. Collections had totaled approximately \$124,820 to date because, Mr. Tanchek explained, by the time the claims made it through the process that far, the odds were that there would either be no assets or the debt was deemed uncollectible.

Mr. Tanchek said there had been a dispute between the Labor Commissioner's Office and one of the collection agencies hired by the Controller's Office in which the employer had paid the money to the employee to close out the account after the Controller had sent it to the collection agency. The collection agency had tried to collect its fee from the Labor Commissioner's Office even though it had taken no action. Because the account was a non-interest-bearing account and a trust fund, all monies collected through the account had to be paid to the worker: neither the Controller nor the Labor Commissioner retained any portion of the amount collected to pay collection fees. At that point in time, because of the lack of success in collections, the Labor Commissioner's Office determined it could be as successful at collections as the collection agents were at the Controller's Office.

Continuing, Mr. Tanchek said the Controller recognized that there were problems, and she had worked to improve the collection procedures. The Labor Commissioner's Office was working with the Controller's Office to transfer all of the current uncollected debt back to the Controller.

Senator Horsford affirmed there was a total of \$3.9 million dating back to 2002 of uncollected debts owed by employers to the Office of Labor Commissioner on behalf of claimants, and the Controller's Office had collected \$124,820. Mr. Tanchek replied the Labor Commissioner's Office had collected a similar amount.

Senator Horsford asked whether Mr. Tanchek realized something was wrong with the fact that the Labor Commissioner's Office had assessed nearly \$4 million in fines to employers on behalf of claimants for violation of state labor laws in the state of Nevada, and only \$400,000 had been collected.

Mr. Tanchek acknowledged there was a problem. He said the number did not reflect that \$1.7 million to \$1.9 million was actually collected and distributed to the workers before it was necessary to forward the debt to the Controller's Office for collection. He said by the time a claim received a judgment from the court, the debt was essentially uncollectible.

Senator Horsford asked whether Mr. Tanchek had data to support his statements, adding that he could not be expected to accept that the reason debts were deemed uncollectible was the business was no longer in operation or it had no assets.

Senator Horsford read from the audit report ([Exhibit C](#), page 16): "In fiscal year 2009-10, the Office did not report to the State Controller over \$1.7 million in debts owed by employers to the Office on behalf of claimants, as required by law. Amounts owed have not been reported for several years. If debts are not reported by the Office, the Controller will not be able to pursue actions to collect monies owed to claimants."

Mr. Tanchek said if Senator Horsford was asking why the Controller was unsuccessful in collecting the funds, that question would be better directed to the Controller.

Senator Horsford again read from the report, ". . . the Office did not report to the State Controller over \$1.7 million . . ."

Mr. Peterson clarified the \$1.7 million represented the amount that had not been reported by the Labor Commissioner's Office to the Controller's Office over the past several years. He believed Mr. Tanchek was referring to approximately \$3 million that was reported to the Controller's Office prior to that time, and the audit did not cover that period of time.

Senator Horsford said he was aware that all state agencies had problems relating to collection of previous debt owed. His question to Mr. Tanchek was why the \$1.7 million in debts was not reported to the Controller's Office.

Chair Aizley observed the basic question would more appropriately be who should be responsible for the collection of debt. He asked whether the Office of Labor Commissioner should process claims and immediately turn all claims over to the Controller's Office for collection.

Mr. Tanchek replied that with the current system, the complaints were generally resolved if the employer had assets, and the employees would get paid before a judgment was required. Many of the judgments would be returned when they could not be served on the employers because they could not be located. He pointed out that the majority of debts were actually resolved in the claims resolution process before the point of judgment. He believed turning it over to the Controller's Office at that point would probably delay the process.

Mr. Townsend recalled that the Legislature passed Assembly Bill No. 87 of the 75th Session (2009), which greatly changed the authority for the Controller over accounts receivable, which was the basis for the audit recommendation. Agencies were now required to turn bad debts over to the Controller, and the Labor Commissioner would need to develop a process to turn the debts over to the Controller as soon as possible and within the guidelines established in A.B. No. 87 of the 75th Session. He added the older a debt was, the harder it was to collect.

Senator Horsford asked whether the Labor Commissioner reported businesses with uncollected debt to the Secretary of State to pursue revocation of their state or local business license.

Mr. Tanchek replied that possibility had never been considered.

Senator Horsford observed that an employer who had broken labor laws and refused to pay his fines even after attempts were made to collect them was allowed to continue to operate a business in Nevada. He suggested that the Office of Labor Commissioner had not enforced compliance with state laws in any manner.

Mr. Tanchek replied that by the time a business was processed through the investigative and complaint resolution process and the debt was submitted to the court for a judgment, the employer would be out of business and unable to be found. He assumed the Controller's Office had difficulty collecting the debt for the same reasons. He did not know whether having the Secretary of State pursue a dissolved corporation, a bankrupt company, or revoking a business license of a business that no longer existed would be time well spent.

Senator Horsford asked whether Mr. Tanchek knew for a fact that the businesses had gone out of business and were not doing business in the state.

Mr. Tanchek replied he knew when a company could not be found when a letter was returned with "Unable to Forward: Business Closed."

Senator Horsford stated that the Labor Commissioner's job was to enforce the labor laws of the state, and the Office had failed to forward nearly \$2 million of outstanding debt owed by employers to the Controller's Office, there was no empirical data to substantiate whether the businesses were operating in the state, and measures were not pursued to revoke their business license. He did

not understand where the enforcement function was in the Labor Commissioner's Office.

Mr. Tanchek replied the enforcement was in the claims that were resolved. He noted that the audit report reflected a new claim was opened for investigation by the Labor Commissioner's Office every 57 to 60 minutes, 9 hours a day, 5 days a week, 50 weeks a year. The volume of work was tremendous, and most of the claims were ultimately resolved.

Mr. Tanchek said that each investigator had slightly less than four hours available to resolve a claim before the next one arrived on his desk.

Chair Aizley noted that Appendix A of [Exhibit C](#) reflected the wage and hour claim resolution process: claim received, employer notified, claim investigated, hearing held, action taken for nonpayment, and judgment filed in court. He asked whether there was a recommendation to expedite the process and to transfer the pursuit of the claims outside of the Labor Commissioner's Office into the Controller's Office.

Mr. Townsend replied the section on the recommendation that the wage claim resolution could be approved addressed a number of problems, including the delays in processing claims and the time it took to resolve them. He noted that the report contained recommendations for development of policies and procedures to address more efficient processing of the claims, and he noted the recommendations had been accepted by the Labor Commissioner.

Mr. Tanchek remarked he agreed with the recommendations, and he recognized that he was not the only agency in the state that was without sufficient resources. He pointed out that the chart in the report that outlined the claims process was abbreviated; a large part of the process involved trying to resolve a dispute between the two parties, which could be complicated and time-consuming.

To summarize what had been discussed, Chair Aizley noted there was a strong recommendation to eliminate the checking account outside of the state's accounting system. He asked Mr. Tanchek whether the recommendation was acceptable, and Mr. Tanchek reiterated that he had accepted all of the recommendations in the report because they validated the concerns he had had since he became the Labor Commissioner.

Senator Leslie asked whether the bank account had been closed. Mr. Tanchek replied it was still open; there was not an alternative at this point. He would need to work with the State Controller and State Treasurer to set up a new procedure.

Senator Leslie remarked the audit was released in April; she asked what the time frame was for implementing a new process. Mr. Tanchek reiterated he needed to consult with the Controller and the Treasurer. On a trial basis, the Office had begun to mail checks directly to the claimants for those that did not have an underlying problem. Mr. Tanchek said the Office had implemented some of the recommendations in the report and was in the process of resolving the others.

Senator Leslie asked when the bank account would be eliminated and a new process would be in place. Mr. Tanchek reiterated he could not predict a time frame.

Senator Leslie asked when the Audit Subcommittee would receive a report on the progress made by the agency on the recommendations. Mr. Townsend replied the 60-day plan for corrective action was due on July 7, 2011, and at that point the Labor Commissioner's Office should have prepared an outline of the steps that would be taken to implement the recommendations.

Senator Leslie said she would prefer to see a specific time frame of when the bank account problem would be resolved; she was worried about the continued risk.

Moving to the second part of the report concerning improvement of the wage claim resolution process, Chair Aizley asked Senator Horsford whether he was satisfied with the recommendations.

Senator Horsford replied he was not happy with any of the recommendations in the report, but he would follow up on them and possibly pursue legislation before the Legislature adjourned on June 6.

Mr. Townsend suggested that Mr. Peterson review the audit report section concerning the untimeliness of resolution of claims: there were often delays as long as several months.

Mr. Peterson stated that for most of the wage and hour claims filed, the employer did not object to the claim and therefore remitted money to the Office.

However, for claims in which the employer filed an objection, the Las Vegas office often did not take timely action to resolve the claim. Out of 29 claims randomly selected from the Las Vegas office, the employer objected to 10 of the claims. The actions taken on 5 of the claims were very untimely. Investigators took months, and years in some cases, to take action after the objections were received. Mr. Peterson noted that specific information concerning untimely resolution of the 10 claims was included on pages 13 and 14 of the audit report ([Exhibit C](#)).

Mr. Peterson reported that once the investigators took action, the employers made timely payments. The average payment to the claimants in 5 of the cases was almost \$1,800.

Continuing, Mr. Peterson stated that untimely resolution of wage claims could cause financial hardship to claimants and their families. Two major factors contributed to the untimely processing of claims in the Las Vegas office:

- The focus was to resolve claims that were not challenged by the employer to allow processing of more claims. As a result, claims with objections were put aside until staff felt they had time to work on them.
- It was common practice to send documentation back and forth between the employer and claimant instead of requiring both parties to bring their documentation to a meeting and then making a determination.

Mr. Peterson also stated that wage claim penalties were not always assessed correctly or consistently by the Labor Commissioner's Office. The incorrect or inconsistent assessment of penalties was not equitable to employers and to claimants who received the penalties.

Mr. Peterson reviewed three recommendations in the audit report to help ensure wage and hour claims were resolved timely:

- Develop policies and procedures setting forth the guidelines for resolving wage claims, including time frames and supervisory responsibilities for the various tasks.
- Develop policies and procedures on the assessment of penalties, including need for supervisory approvals.

- Report to the State Controller's Office debts owed by employers to the state on behalf of the claimants.

Mr. Peterson asked for questions from the Subcommittee regarding the second section of the report.

Senator Horsford asked the meaning of incorrect assessment of wage claim penalties.

Mr. Peterson replied wage claims involving money would occur if an employer failed to pay overtime or failed to pay the correct wages or commissions per the contract. As the process was outlined in the *Nevada Revised Statutes* (NRS), there was a penalty assessed for those actions based on the rate of pay for the employee up to 30 days, or if the claim was paid before 30 days, the rate of pay up to the time that the wages were submitted to the Labor Commissioner. He said in some cases an employer would make a payment prior to the 30 days, but the Labor Commissioner's Office would assess the full penalty of 30 days versus the actual number of days until the wage was paid.

Senator Horsford stated that he understood the lack of timeliness in following through to determine the disputed claims and that 30 percent of the wage claims reviewed were assessed incorrectly or inconsistently. He did not understand the actual violation of the employer. The auditor had indicated violations were typically due to nonpayment of overtime or improper payment of wages. It seemed to Senator Horsford that the Labor Commissioner's Office did not hold employers accountable. He maintained that even when the violators were identified, penalties were not always assessed consistently and accurately.

Mr. Tanchek replied the penalties were based on a formula that was tied to the pay rate of the individual. The Office had the authority to settle the claims to try to get the money to the employee. The position of the Office had been to collect 100 percent of the wages owed, and the penalty was also paid to the worker. There was a 25, 50, 75, and 100 percent regressive penalty system based on how far a claim made it through the system to encourage the employers to settle earlier rather than later.

Mr. Tanchek said the problem pointed out by Mr. Peterson that some amounts collected were mistakenly in excess of the formula did not surprise him. He had reviewed a sample of orders relative to penalties that were assessed: he pulled every third order. He recognized there were inequities, and the Office was

working on developing new criteria. He reviewed the details of penalty assessments that were either below or over the formula.

Chair Aizley asked whether there was a schedule of penalties in the *Nevada Revised Statutes* (NRS). Mr. Tanchek replied the penalty provisions for unpaid wages were included in NRS 608.040. He believed the provisions provided a reasonably good deterrent, particularly for an employer who might not be on good terms with an employee.

Chair Aizley remarked he had no previous involvement with the penalties, but they seemed to be excessive in relation to the wages being paid. Mr. Tanchek replied the penalties were based on the pay rate of the employee, and in some cases, it could be a small amount owed to the employee, but it would get larger if the employer did not pay it for a long period of time.

Senator Horsford again asked the reason for the employer sanction and penalty. He asked whether it was due to misclassification of worker, violation of overtime, or other labor laws.

Mr. Tanchek replied there was a wide variety of reasons that money could be owed to workers: unpaid overtime; not giving the worker his paycheck; uniform violations when employers required employees to pay for their uniforms, which under state law the employer was required to pay; or an unlawful or unauthorized deduction by the employer. He said misclassification occurred when an employee was incorrectly classified as an independent contractor: there was an average of 300 cases a year in which an employer would claim he did not owe wages because the employee was an independent contractor.

Chair Aizley moved to the third section of the report, Management Information Not Sufficient or Reliable.

Mr. Peterson reported the final section of the report concerned management information. The Office of Labor Commissioner did not have sufficient or reliable information necessary to effectively oversee wage and hour claim investigations and to report important information to external parties. He reviewed some of the inadequacies of the current system to monitor claim investigations:

- Few management reports were produced by the system.
- Performance information was not readily available.
- Some information in the system was not reliable.



- Penalty and wage collection data was not tracked separately by the system.

Mr. Peterson went on to explain that sufficient information was not collected and reported to external parties. Specifically, contractors with multiple violations of labor laws were not reported to the State Contractors' Board, and statistical data related to the state's labor trends was not reported to the Governor or Legislature as required by law.

Mr. Peterson reported that the Office did not report, as required by law, contractors with three substantiated claims in a two-year period, in part because the Office's information system was not capable of easily identifying such contractors. Based on multiple queries of the system data and review of claim files, the Audit Division was able to identify 13 contractors with 3 or more substantiated claims in a two-year period. In addition to not reporting the contractors to the Contractors' Board, the Office had only assessed administrative fines against 3 of the 13 contractors.

Mr. Peterson said the Labor Commissioner had indicated the penalties assessed and paid to claimants were sufficient. However, when contractors repeatedly violated labor laws, assessing fines may be warranted to reduce the risk that their actions would be repeated and additional workers affected. He noted that although the NRS authorized the Office to assess administrative fines, it rarely levied fines and did not have written guidelines to decide when to issue fines. A chart on page 20 of the audit report ([Exhibit C](#)) exhibited the number and amount of administrative fines levied by the Office in the past five years. Ninety fines were assessed in the total amount of \$83,928.

Mr. Peterson said the limitations of the current information system contributed to the problems reported. According to management of the Labor Commissioner's Office, the current system was implemented in 2007. It was developed by a former employer and had not been maintained by the Office. The Audit Division maintained that the Office could use existing software, such as spreadsheets, to collect the information it needed to monitor the timeliness of claims, track contractors with multiple violations, and report information to decision-makers and the public.

Mr. Peterson reviewed four recommendations in the report to improve the information available to external parties and supervisors that monitored claim investigations:

- Identify and track information, using existing software, for use by supervisors to help ensure the timely resolution of wage and hour claims.
- Notify the State Contractors' Board when contractors have three or more substantiated claims in a two-year period, as required by law.
- Establish written guidelines for deciding when administrative fines should be levied against employers who violate labor-related laws.
- Periodically provide data, at least biennially, to the Governor and the Legislature that relates to the Office's statutory objectives, and make it available to the public on its website.

Chair Aizley asked how many contractors there were in the state; he wondered whether there were too many to track on a spreadsheet.

Mr. Tanchek responded that only those contractors who were involved in the Office as a result of a claim would need to be tracked. The Office had not been tracking them, but staff was pursuing ways to do so. There were questions as to how to determine and track repeat violators through the system

Assemblyman Hogan recalled that when he represented the U.S. Department of Labor in Nevada, California, Hawaii, and others, he had a good idea of how many people were working, the workload, the number of cases or violations, and ways of tracking the age of the cases and which needed to be moved along. He had not seen the number of inspectors in the Office of Labor Commissioner who were responsible for completing that work. He realized the Office was short-staffed, and he wondered whether the workload was manageable.

Mr. Tanchek recalled that problems with the management information system had been reported in the agency's last legislative audit conducted in 2000. The problems were never fixed and the system crashed in 2006, at which point the Office was manually tracking what information it could. He said the Legislature had appropriated funds to develop criteria for a new system, which resulted in a workable system with functionality. Mr. Tanchek acknowledged much of the information being discussed could be generated by the existing system, including spreadsheets and ongoing tracking, but some improvements and enhancements were needed. He reported the number of claims for the past three years, which were investigated by six staff members:

- 2008: 2,391 claims
- 2009: 2,364 claims
- 2010: 2,138 claims

Chair Aizley asked whether the Office had written guidelines. Mr. Tanchek replied the guidelines were not aggregated, and the Office was currently developing an investigator's manual. He added that the individual who developed the management information system had left the Office before a procedures manual could be developed, and that process was ongoing as well.

Senator Horsford asked how many employees were in the Office and whether the Office had standard operating procedures. Mr. Tanchek replied there 18 full-time employees, and there had never been time to develop written procedures: it would be necessary for staff to disengage from other assignments to find the time to develop them.

Senator Horsford observed that most employers with 50 to 100 employees had written standard operating procedures. He was disturbed that there were no standing operating procedures for site-level inspections on labor-related laws and compliance to those laws by employers. Senator Horsford believed the audit revealed the ineffectiveness of the Office of Labor Commissioner to hold employers compliant with labor laws, including safety, wage compliance, overtime, and proper classification.

Senator Horsford did not understand how members of the public or workers who had complaints and needed to petition the Labor Commissioner could have confidence that their inquiries would be pursued. It was his belief that the Office of Labor Commissioner was not following through on its mission with the authority it was granted by state law, and he did not know what the Legislature could do to remedy the situation.

Chair Aizley asked for further comments from the Subcommittee; there were none. Chair Aizley then called for public testimony.

Randy Soltero, representing the Sheet Metal Workers' Union Local 88 in southern Nevada, referred to the public website of the Office of Labor Commissioner, which stated:

Welcome to the website of the Office of the Nevada Labor Commissioner. Our mission is to enforce the labor laws of the State of Nevada in a manner that protects the rights of working families in a fair, professional and timely manner.

Mr. Soltero said he worked with the Sheet Metal Workers' Union to try to help workers who had been cheated, misclassified, or treated wrongly by their employers, and he had to refer to the Labor Commissioner's website often. He was frustrated that it was so difficult to navigate the website for assistance.

Specifically, Mr. Soltero said he had an ongoing complaint with a contractor who had repeatedly misclassified workers, not paid fairly, and refused to pay back wages and penalties. The contractor had worked on no less than 13 public works projects since the original complaint was filed without any penalties for violations. He said oftentimes complaints were dealt with through a preconference settlement hearing, which usually occurred with little or no penalties imposed, and in some cases, even discounts of wages owed to the worker. Mr. Soltero noted the website indicated the purpose of the Office of Labor Commissioner was to protect the rights of the working families, but it was not fulfilling that purpose.

Chair Aizley asked Mr. Soltero to tell him the name of the contractor privately, and he would ask Mr. Tanchek to respond.

Mr. Soltero added there was a huge problem with the Labor Commissioner's Office, and he hoped it could be fixed: something had to be done to correct the problems to properly serve the working families of Nevada.

Paul McKenzie, representing the Building and Construction Trades Council of Northern Nevada, testified that prior to becoming the Council's representative, he was a contract compliance officer for the Operating Engineers for five years. Mr. McKenzie said the legislative audit did not address the whole problem. Several years before when Mr. Tanchek's predecessor, Terry Johnson, was in office, he approached the Legislature with a new way of enforcing labor laws and prevailing wage in Nevada. Prior to that time, the Labor Commissioner's Office was tasked with investigating every complaint filed in the state, and every certified payroll was sent to the Office and maintained. The Office now had fewer staff members, who were definitely overworked. Mr. McKenzie acknowledged it was difficult for the Labor Commissioner's Office to enforce the labor laws with the limited staff and heavy workload.

Continuing, Mr. McKenzie said that Terry Johnson came to the Office of Labor Commissioner with the unique idea of placing the responsibility of investigating wage complaints back on the public body (the contracting agency responsible for the contract), and when that was done, a process was instituted whereby when a complaint was filed it went to the Labor Commissioner, who referred it to the public body, and the public body had to investigate the complaint. If the public body failed to investigate the complaint, the Labor Commissioner had the authority to cite the public body—but that never occurred. Therefore, Mr. McKenzie stated, the public bodies were not held responsible for investigating the complaints.

Mr. McKenzie said he had filed a complaint regarding a road that was built two or three years before, and it was never investigated. The complaint was sent to the Labor Commissioner, who sent it to the public body, and the public body did not agree with it and did not act on it.

Mr. McKenzie said the public bodies were not being held to a standard that was established in law to investigate and ensure that employees were paid, which he said, was not the responsibility of the Labor Commissioner. The Labor Commissioner's responsibility was to ensure the public body performed, and that was not being done either.

Another problem, Mr. McKenzie continued, was once the public body made a determination that a contractor violated the law, the decision was sent to the Labor Commissioner's Office where penalties were supposed to be assessed. If there was cause, a complaint should be filed against the contractor, but that was not occurring: complaints were not being filed against contractors who repeatedly violated the law.

Mr. McKenzie said when he contacted the Labor Commissioner's Office, he was told that if a complaint was filed against every contractor that violated prevailing wage, there would not be a contractor left in the state to do the work. Consequently, complaints were not issued. He pointed out that under existing law, a contractor receiving a complaint was to be barred from public works projects for two years.

Mr. McKenzie said he believed that the manner in which the labor laws were currently being enforced in Nevada invited outside companies to the state where they could violate the labor laws, pay the penalty if caught, and continue to operate with no further repercussions. He reiterated the problem with the current labor laws was violators were not being held responsible: they could

violate the law, pay the penalty, and move on as if nothing happened. Mr. McKenzie believed if the laws were properly enforced and contractors were disqualified for violating prevailing wage laws, there would be no further complaints. The honorable contractors would continue to work, the poor contractors would cease to exist, and employees would receive better treatment.

Assemblyman Hogan asked Mr. McKenzie what his reaction would be to a procedural suggestion that upon receiving what appeared to a credible complaint, within a defined period of time, the employer received the evidence of the complaint, the level of detail included in the complaint, and a reasonable period to make an initial response. It seemed to him that if the supervisory employees were being held to a schedule and time frame, many companies that did not want a drawn-out complaint would attempt to resolve it quickly. He wondered whether an expedited system would make a difference.

Mr. McKenzie replied the process described by Assemblyman Hogan was currently in the law. When a complaint was filed, a copy must be sent to the contracting body and all of the contractors involved, including all subcontractors, the owner of the project, the employee, and all parties to the complaint had to be noticed. The Labor Commissioner was to forward the complaint to the public body immediately, and the public body had 30 days to make its initial responses. Mr. McKenzie said in actual practice, the complaint was sent to the public body, the public body asked for an extension claiming it did not have the workforce to respond within 30 days, and the complaint was never acted upon. He pointed out that the employer could resolve the issue immediately if he wanted to by notifying all parties involved and offering a solution. However, the contractor waited to be contacted by the public body, and the public body in practice became an advocate for the contractor because it did not want to be held responsible for the fact that the violation was dropped because it was the public body's responsibility to review the certified payrolls and act upon discrepancies.

Chair Aizley asked whether there was a requirement that actions had to be reported once found. Mr. McKenzie replied the law required the public body to review the certified payrolls and bring any violations to the attention of the Labor Commissioner immediately. However, honest mistakes could be resolved between the public body and the contractor without involving the Labor Commissioner.

Lou Salazar, Compliance Officer for Plumbers, Pipefitters, and Refrigeration, Local 525 in Las Vegas, testified from Las Vegas. He said one of the biggest problems for him was a person needed to be part lawyer to file a complaint with the Office of Labor Commissioner because the paperwork was returned if everything was not exactly correct, and it was difficult to obtain information from the Office. Another problem was that contracts were still being awarded to contractors who were under investigation. He currently had investigations of several contractors for misclassification of employees or incorrect wages; the cases were under appeal, which would take months to resolve, and then the contractors would ask for an extension. In the meantime, the contractors would be awarded another job because the complaint cases were pending.

Mr. Salazar said when there was a complaint against a contractor, his license should be flagged indicating there were complaints against him before being considered for additional projects.

Senator Horsford stated Mr. Salazar had raised a good point. He noted that the Department of Motor Vehicles had a notification system in place which placed a hold on a driver's license renewal until fines were paid. The same should be done for employers who were violating the state's labor laws pertaining to health and safety, wages, and classification of workers.

Senator Horsford noted a business portal had been created by the Secretary of State's Office which contained a database of every business in the state. He suggested that the Labor Commissioner should be required to report pending complaints against an employer to the portal.

Senator Horsford observed that the average citizen had to pay his fines, fees, and traffic tickets to get his driver's license renewed, but an employer did not have to pay his debt to a worker whose rights had been violated. He said the law was in place, but he believed the Office of Labor Commissioner had failed to do its job. Senator Horsford found the problem frustrating and said he would speak to the Governor concerning the situation.

Chair Aizley asked Mr. Tanchek whether he wished to respond, and he declined. Chair Aizley asked for further public comment.

Terry Johnson, Director, Department of Business and Industry, of which the Office of Labor Commissioner was a part, commended the legislative auditors for their work. He had met with them shortly after his appointment as Director of the Department and reviewed the audit findings.

Mr. Johnson assured the Subcommittee members that he was aware of the concerns that had been expressed at the meeting, as well as those reported in the audit. He pointed out that he had served as the Labor Commissioner for five years and had adopted a number of the regulations and penalty provisions that had been discussed earlier. Given that familiarity and the importance of the issues and the audit findings, he assured the Subcommittee that he would be working with all interested stakeholders, as he had done in the past, to come together and find resolutions to the challenges that had been presented. It was a critical time for the economy, and there were critical needs on behalf of working families. Mr. Johnson was aware of the problems and concerns and would be dedicating his efforts toward addressing them. He looked forward to the work ahead.

Chair Aizley asked for further comments; there were none. He adjourned the meeting at 4:18 p.m.

RESPECTFULLY SUBMITTED:

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Sherie Silva  
Committee Secretary

APPROVED BY:

  
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Assemblyman Paul Aizley, Chair

DATE: November 7, 2011

\_\_\_\_\_  
Senator Sheila Leslie, Chair

DATE: \_\_\_\_\_



**EXHIBITS**

**Committee Name: Assembly Committee on Ways and Means/Senate Committee on Finance Joint Subcommittee on Audit**

**Date: June 3, 2011**

**Time of Meeting: 2:45 p.m.**

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A	*****	Agenda
	B	*****	Attendance Roster
	C	Paul Townsend, Legislative Auditor	Legislative Audit Report of the Office of Labor Commissioner, 2011