

**MINUTES OF THE  
SENATE COMMITTEE ON FINANCE**

**Seventy-sixth Session  
March 7, 2011**

The Senate Committee on Finance was called to order by Chair Steven A. Horsford at 8:07 a.m. on Monday, March 7, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Steven A. Horsford, Chair  
Senator Sheila Leslie, Vice Chair  
Senator David R. Parks  
Senator Moises (Mo) Denis  
Senator Dean A. Rhoads  
Senator Barbara K. Cegavske  
Senator Ben Kieckhefer

**STAFF MEMBERS PRESENT:**

Rex Goodman, Principal Deputy Fiscal Analyst  
Mark Krmpotic, Senate Fiscal Analyst  
Patricia O'Flinn, Committee Secretary

**OTHERS PRESENT:**

Michael J. Willden, Director, Department of Health and Human Services  
Romaine Gilliland, Administrator, Division of Welfare and Supportive Services,  
Department of Health and Human Services  
Jane Laurence, Vice President, Electronic Financial Services, JPMorgan Chase  
Cynthia A. Jones, Administrator, Employment Security Division, Department of  
Employment, Training and Rehabilitation  
David Turner, Senior Vice President, ACS, a Xerox Company  
Greg Smith, Administrator, Division of Purchasing, Department of  
Administration  
Andrew Clinger, Director, Department of Administration  
Dino DiCianno, Executive Director, Department of Taxation  
Pat O'Donnell, Executive Director, Public Sector, JPMorgan Chase

Phil Weyrick, Administrative Services Officer, Health Division, Department of Health and Human Services  
Kimberlee Tarter, CPPB, Deputy Administrator, Division of Purchasing, Department of Administration

CHAIR HORSFORD:

This morning's hearing is about good government and efficiency in government. The State of Nevada spends hundreds of millions of dollars annually on contracts with private companies to provide essential services to the citizens of Nevada. These are services that the State government cannot, and in some instances, should not, provide from its own resources. Outsourcing can save the State money. However, it must be done with the right safeguards and oversight. The hearing today is about determining the adequacy of these controls in Nevada, and what may need to be done legislatively to make the contracting system more efficient, competitive and transparent.

We have identified some major State contracts to be explored to help us gain a clearer understanding of how contracting currently works and some insight into how improvements can be made going forward. The intent is not to single out any contractor or State agency for criticism. The contractors we will talk about today were selected based on their size and the number of Nevadans affected. These contracts affect Nevadans both as taxpayers and as citizens who receive the services provided in these contracts. We have an obligation to ensure these contracts deliver the best value to Nevadans in an effective and transparent way. There are four key areas to cover: the first is the Division of Welfare and Supportive Services (DWSS) contract, the second is the Unemployment Insurance (UI) benefits contract, the third is the lockbox contract with the Department of Taxation, and the fourth is an overview of the contract process currently in place.

The first contract we would like to examine is that between the Department of Health and Human Services (DHHS) and JPMorgan Chase & Co. which provides electronic benefits transfer (EBT) services to DWSS clients. This contract allows clients to access their benefits using point of sale (POS) transactions, particularly for supplemental nutrition assistance program (SNAP) and Temporary Assistance for Needy Families (TANF) benefits. This contract is valued at about \$19.1 million, was awarded in October 2009 and has a term of nearly nine years. It is funded 47.5 percent by General Fund appropriations and 52.5 percent by federal funds. The questions the Committee would like to have

answered include: How is the contract constructed? Are clients charged for the use of their EBT cards? How does JPMorgan Chase earn a return on this contract? What is the return on the contract? How was the contract negotiated?

MICHAEL J. WILLDEN (Director, Department of Health and Human Services):

The Department has a contract with JPMorgan. There are four facets to this contract: the SNAP benefits; the TANF benefits; the Women, Infants & Children USDA Special Supplemental Food Program (WIC) benefits; and the Child Support Enforcement Program (CSEP), whereby the funds collected from the noncustodial parent are passed through to the custodial parent. The first three programs issue benefits on EBT cards; the Child Support Enforcement benefits are distributed on a debit card. There has been discussion regarding savings in the contract. Section 1 of Assembly Bill No. 6 of the 26th Special Session delineated savings required from the JPMorgan contract. The Department instituted a work program that found approximately \$640,000 in savings to the General Fund, and about \$1.5 million in total savings.

ROMAINE GILLILAND (Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services):

There are three perspectives from which to view the JPMorgan contract: the history of the negotiations, the client transaction fees, and the cost of the contract to the State. The original request for proposal (RFP) dates to 2001. The RFP was issued by Colorado on behalf of Nevada and the Western States EBT Alliance. The original contract was effective August 17, 2004, for a term of 6 years and 9 months, for SNAP and TANF EBT services on a single-tier cost of \$1.81 per SNAP transaction. In March 2008, the contract was amended to add the WIC program and the termination date was extended to June 30, 2013. In the 2008-2009 time frame, Colorado negotiated with JPMorgan for cost reductions. The State of Nevada recognized the need to reduce our costs for EBT transactions. In concert with the negotiations with the Alliance, we negotiated with JPMorgan for a contract effective in April 2010, retroactive to October 1, 2009. The term of the contract was extended to 2018 and negotiated a tiered pricing structure reducing the cost per transaction from \$1.81 in the highest tier to 95 cents in the equivalent tier with additional reductions based on the number of transactions occurring in the State. The lowest tier level is 75 cents per transaction.

SENATOR LESLIE:

What is the cost per transaction? Explain the tiers to the Committee.

MR. GILLILAND:

The cost you are referring to is the cost the State incurs. We pay a cost per member month. For each EBT card issued, the fee was \$1.81; it has been reduced to 95 cents. The tiered pricing structure accommodates a reduction to 75 cents a month at a level of 225 cases a month.

CHAIR HORSFORD:

To reiterate, the contract was initially awarded through a bid process. Through a sole source exemption, the terms of the contract were extended.

MR. GILLILAND:

The contract was continuing to be negotiated through the Western States EBT Alliance in a competitive environment.

CHAIR HORSFORD:

What does that mean and who is the Western States EBT Alliance?

MR. GILLILAND:

The Western States EBT Alliance is a coalition of several Western states, excluding California. It was determined that Colorado would take the lead in submitting an RFP for the initial contract in 2004. Through renegotiations, the Alliance went through a further competitive process.

CHAIR HORSFORD:

Who represents Nevada in the Western States EBT Alliance? What are they seeking to change in the negotiations?

MR. GILLILAND:

The negotiations are for a better rate for each of the states in the Alliance. One of my staff members represents Nevada. We meet periodically to review the status of the contracts. The Alliance was taking the lead in renegotiations. We thought the pace of negotiations was too slow. Using the negotiations that had already occurred, we accelerated the process for Nevada when we renewed the contract in 2010, retroactive to October 1, 2009.

CHAIR HORSFORD:

The DWSS has a representative on the Western States EBT Alliance. Does the Alliance negotiate any contracts other than those dealing with EBT issues?

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MR. GILLILAND:

No, the Alliance is only concerned with EBT contracts.

CHAIR HORSFORD:

Is there a master negotiator for the Alliance?

MR. GILLILAND:

Yes. It was determined that Colorado would take the lead as negotiator on behalf of the Alliance.

CHAIR HORSFORD:

Is there a counterpart to someone in your Office in Colorado who serves in that capacity?

MR. GILLILAND:

Yes.

CHAIR HORSFORD:

Are they trying to get the same rate, or a negotiated rate that is fair for each individual state?

MR. GILLILAND:

They are attempting to get the same rate for each state. The Alliance is negotiating as a composite. When Nevada renegotiated this contract, we led the Alliance by several months. The intent of the Alliance is to use the purchasing power of all the states together to obtain a better rate on behalf of all the states.

CHAIR HORSFORD:

I support the attempt to lower costs through strategic purchasing, but I have questions about the transparency of the negotiations, and the relation to Nevada's contract review process.

MR. GILLILAND:

For this contract, we used the negotiations as started by Colorado as a basis. Further negotiations in the State of Nevada were tailored specifically for our needs. For example, the three-tier pricing was based on the significant growth in our caseload and the anticipation it will continue.

CHAIR HORSFORD:

When the Alliance negotiates, multiple states are involved. Is the process public? How can a citizen of any of these states know a master contract is being negotiated?

MR. GILLILAND:

I do not know if these types of negotiations are covered by any Open Meeting Law. However, the results of each one of the meetings are available through DWSS. There have not been meetings recently because there are contracts in place, but the entire history of the process is available.

CHAIR HORSFORD:

Does the Alliance have conflict of interest rules and requirements?

MR. GILLILAND:

I do not know, but we do have an established protocol that provides for each one of the states to be operating without any conflict of interest. I can research the particulars and give that information to the Committee.

CHAIR HORSFORD:

Once there is a draft term of agreement with the Alliance, what is the next step?

MR. GILLILAND:

We had a choice of going forward with the contract being negotiated by the Alliance, or negotiating directly with JPMorgan to obtain a contract that was better tailored for the State of Nevada. One of the objectives for the renegotiation of this contract was to accomplish a General Fund savings for the last biennium. We were interested in having a contract effective date of October 1, 2009. Another objective of this contract was a transactional cost savings. We then worked with JPMorgan directly to achieve these objectives.

CHAIR HORSFORD:

Explain the final negotiation process within your Division and how the contract is ultimately approved.

MR. GILLILAND:

The DWSS published a White Paper that summarized the existing contract and the options going forward. This was discussed with the Executive Branch, the Department of Administration and the Division of Purchasing.

MR. WILLDEN:

All large contracts, those exceeding \$100,000, must be vetted by the Division of Purchasing and the Attorney General. Even though the Western States EBT Alliance creates a volume discount and structure in which states can participate, each state's contract is separate.

CHAIR HORSFORD:

Is the draft contract examined by the Agency involved, the Division of Purchasing and then presented to the Board of Examiners?

MR. WILLDEN:

The Attorney General reviews all contracts before they go to the Board of Examiners. The contract is reviewed at the Agency level, the Division of Purchasing, the Attorney General, and then a final review at the Department before it is sent to Director Clinger to be scheduled for the Board of Examiners' review.

SENATOR KIECKHEFER:

Mr. Gilliland, you indicated the process was competitive. Given the amount of time with one vendor, has the contract been put back out for an open bid, or has it just been renegotiated with the existing vendor?

MR. GILLILAND:

It goes through a competitive process with the Alliance.

SENATOR KIECKHEFER:

Does that mean another company can bid on the contract?

MR. GILLILAND:

There is an RFP process.

CHAIR HORSFORD:

What are the costs to the State? What fees are charged to individuals including retail establishments? Are these fees transparent to the user? Are there

subvendor contracts within the master agreement? If so, do the subvendors charge any fees?

MR. GILLILAND:

I have distributed a document summarizing the EBT and debit card client transaction fees ([Exhibit C](#)) included in these programs. Currently, the WIC contract is a separate contract with JPMorgan administered through the Health Division of DHHS. The EBT for SNAP replaced the food stamp coupons and EBT for TANF replaced the warrant system that was previously used. Nevada is one of the leading states to use EBT for WIC benefits. Clients utilizing any of the EBT cards at a retail establishment using a POS machine do not incur any fees. The SNAP and WIC EBT cards may only be used to make purchases; they cannot be used to receive cash, either at an automated teller machine (ATM) or as cash back from a purchase. One hundred percent of the benefits in these programs are distributed on EBT cards.

CHAIR HORSFORD:

Are retail establishments assessed a fee for having the EBT machines available or for consumers utilizing it?

MR. GILLILAND:

The retailer has the option of using the EBT-only machine. The SNAP EBT card is the only card that can be used with these machines. There are approximately 6,000 in use throughout the State. All the fees for the machines are paid by the State through the JPMorgan contract. The average fee is \$14.50 a month. Most retailers choose not to use these devices, because they are able to use a single POS device for credit, debit and EBT transactions.

SENATOR LESLIE:

Is a per transaction fee associated with the multiple transaction device?

MR. GILLILAND:

There is no charge to either the State or the individual. That device is used at the convenience of the retailer because they prefer to have a single device that handles all transactions, rather than having a separate device strictly for the SNAP EBT transactions. It is the smaller retailers who tend to use the individual POS device for SNAP transactions.



Previously, TANF cash benefits were only distributed on a warrant. The recipient was then responsible for cashing the warrant. Currently, 97 percent of benefits are distributed on an EBT card. The client is not charged a fee for POS transactions, even those that include cash back. Cash withdrawals from an ATM incur a fee of 85 cents for in-network transactions. These fees are remitted to JPMorgan.

CHAIR HORSFORD:

By in-network, do you mean a financial institution that allows the client to make an ATM cash withdrawal?

MR. GILLILAND:

Yes. We have an affiliate relationship with various institutions.

CHAIR HORSFORD:

What institutions? Are they listed in the contract?

MR. GILLILAND:

Yes, they are listed in the contract. JPMorgan Chase banks and another institution in the rural counties are the in-network institutions.

JANE LAURENCE (Vice President, Electronic Financial Services, JPMorgan Chase):  
In-network means any JPMorgan Chase ATM and any bank or ATM in the Allpoint Network.

CHAIR HORSFORD:

The cardholders can get cash back from a purchase at a grocery store without a fee, but a withdrawal from an in-network ATM incurs a fee of 85 cents per withdrawal.

MS. LAURENCE:

That is correct.

MR. GILLILAND:

Out-of-network transactions are charged the 85 cents per withdrawal payment to JPMorgan plus the surcharge levied by the ATM owner for out-of-network transactions. Those surcharges typically range from \$1 to \$3 per withdrawal. A TANF EBT card recipient can receive cash without any fees. Depending upon the convenience they would like to have, the fee will go up. The recipient can

also receive a balance inquiry by telephone, Website and ATM without incurring a fee. The vast majority of TANF recipients choose to have their benefits distributed by EBT card.

CHAIR HORSFORD:  
What is the 1 percent distributed by warrant?

MR. GILLILAND:  
Clients may request a warrant, or check. It is discouraged, but there are some cases where it is in both the clients' and the Division's best interest to issue a warrant.

CHAIR HORSFORD:  
To clarify, there are no fees for SNAP or WIC EBT transactions and the only fee for TANF EBT transactions is for cash access at an ATM.

MR. GILLILAND:  
That is correct. If the card is used at a POS retailer, there are no fees.

For additional information regarding the DWSS EBT and debit card programs, see our Website at <https://dwss.nv.gov>.

The CSEP debit card fee structure is similar to the EBT cards for the other three programs. There are no fees for POS transactions, including those from which the client receives cash back. There is one free in-network ATM withdrawal per deposit. Each subsequent withdrawal is charged a \$1.50 fee plus the potential surcharges imposed by an out-of-network ATM owner. Balance inquiries can be made by telephone, Website or ATM. The first 4 phone calls a month are free; they are 35 cents each thereafter.

CHAIR HORSFORD:  
What does the one free in-network ATM withdrawal per deposit mean? Is the network still JPMorgan Chase or the Allpoint Network? Why is the client limited to one withdrawal a month?

MR. GILLILAND:  
The child support payment is made by the noncustodial parent through the State Collection and Disbursement Unit (SCaDU). Payments are processed within 48 hours. They are then posted by SCaDU on a debit card, by direct

deposit, or sent as a warrant. Fifty-six percent of the CSEP recipients choose a debit card as the distribution method, 16 percent choose direct deposit, 2 percent choose warrants and 26 percent choose electronic fund transfers to other states. If the client chooses to receive a debit card, deposits are made to the debit card by SCaDU, typically once a month. Clients may make POS purchases with no fee, or, if they choose, may make a cash withdrawal from an in-network ATM. There is no fee for the first withdrawal; additional withdrawals are assessed a fee of \$1.50 per withdrawal. This item was structured in a way the Division thought was in the best interests of the child support recipient.

CHAIR HORSFORD:

This will not be a card for everyday use. It is the vehicle for receipt of funds from the noncustodial parent. The money can be withdrawn once with no penalty.

MR. WILLDEN:

The client can use the card at any retailer with a POS machine. The card can be used to purchase groceries, clothing, whatever is necessary, without any fee. Cash withdrawals from an ATM are the transactions that can incur fees.

CHAIR HORSFORD:

That highlights my general concern regarding the ATM use of these cards. I have information that indicates individuals with these cards make ATM withdrawals more than seven times a month. Over time, these fees add up. Granted, the POS transactions are free, but there is a lack of financial literacy among some of the recipients of these benefits. If recipients do not know how to avoid excessive fees, they continue to incur them. Companies can use modeling that indicates a particular group of people will use an ATM seven to ten times a month and therefore they can charge \$1.50 for those transactions and make a profit. This is a broad generalization about the industry; rather than a specific provider. This level of information and its use is what concerns me; the people who receive these benefits can least afford extra fees.

MR. GILLILAND:

These fees are paid by JPMorgan. The cost to the State is zero. The contract was structured to enable the client to withdraw cash without a fee. It is possible we should consider an improved method of outreach so people are aware of that. If we were to change the structure and increase the cost of the

transaction to either the State or JPMorgan, that would be a subject of negotiation. At that point, we would have to recognize the State cost would need to be paid with State share of collections or General Fund monies.

CHAIR HORSFORD:

Does the fee for ATM cash withdrawals not come from the amount the recipient would otherwise have received?

MR. GILLILAND:

I misspoke. It does come from the amount the recipient would have received.

CHAIR HORSFORD:

Parents who receive child support can make one free cash withdrawal a month. Thereafter, they are charged \$1.50 for in-network transactions, or, if it is out-of-network, \$1.50 plus the surcharge.

MR. GILLILAND:

That is correct.

CHAIR HORSFORD:

That is where I have problems with this process. One free withdrawal is not how the average person in this situation operates. They do not take one withdrawal; they take several a week. They are assessed fees from their allocation that could be going to support their basic needs.

MS. LAURENCE:

Child support recipients get paid at various times. Some people only get paid once a year, others are paid every week or every two weeks. If they were paid once a week, they would get four free transactions a month. The free withdrawal is related to the deposit.

CHAIR HORSFORD:

If there is only one deposit, the client can make one withdrawal. If deposits are made weekly, the client can make one withdrawal a week.

MS. LAURENCE:

It is true that some people make multiple withdrawals in a week no matter how much it is going to cost. It is the only way they can figure out how to budget. The majority of people do not do this. We have watched the statistics and I can

bring some modeling to show you how Nevada cardholders are using their cards. There are other services that are not reflected here that help the cardholders to manage their money. They can pay their bills directly from the debit card, for example.

CHAIR HORSFORD:

Most individuals in these circumstances, broadly speaking, are not "banked." They do not have access to traditional banking. Having access to this tool, to the extent they know how to use it, are they able to make online payments?

MS. LAURENCE:

Yes. We have tried to incorporate some of these other services to offset some of the expense. The clients do have to understand the benefits. JPMorgan sends out information at least annually explaining the use of the card and the services available with the card.

CHAIR HORSFORD:

What is JPMorgan Chase's support of financial literacy? What do you do to help educate your customer base, including clients in these programs?

MS. LAURENCE:

Every new cardholder receives a pamphlet explaining the program and how to use the card. The fees involved are listed. There are 800 numbers that can be called for additional assistance. Printed on the bottom of each statement is a short reminder of services that are available to the cardholders. When customers call in and are placed on hold, the interactive voice response system offers information about available services. We are trying to talk to the cardholder as much as possible since we do not have direct access.

SENATOR CEGAVSKE:

Who pays the \$1 for an ATM balance inquiry? Is this in addition to the \$1.50 charge?

MS. LAURENCE:

If the cardholder does a balance inquiry, he is charged a \$1 fee. The balance is printed on the receipt if a withdrawal is made, however. In addition, there is a system called "My Alert," whereby clients choose the preferred method of notification of deposit; they can be texted, e-mailed, or called. There are other ways for the cardholders to determine their balance.

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SENATOR CEGAVSKE:

There are other ways to obtain balance information and we are trying to teach the clients about them.

Regarding TANF, can EBT cardholders pay their utilities through the bank? If so, is there a fee for this service?

MS. LAURENCE:

There is a bill pay option available for TANF cards. I believe there is a 50 cent charge, but I would have to get back to you with that information.

SENATOR CEGAVSKE:

Please confirm that information to the Committee. Has JPMorgan set up a bill pay system with every utility?

MS. LAURENCE:

We do not have to. The client sets up the payments.

SENATOR CEGAVSKE:

But, the bottom line is that TANF dollars pay fees.

MS. LAURENCE:

They could, yes.

CHAIR HORSFORD:

The fee issue is interesting. We debate fees in the budget. I find it interesting there are agreements to increase or impose fees on users through the contract process everyday. Why are these fees not considered the same as fees that are debated in the budget context?

The Committee will now move to the contract that impacts more than 110,000 Nevadans who are out of work and receiving weekly unemployment insurance benefits. This contract is between ACS State and Local Solutions and the Employment Security Division of the Department of Employment, Training and Rehabilitation (DETR) which provides unemployment insurance recipients with debit cards to access cash and POS transactions from their benefits. The ACS contract has no direct cost to the State; ACS earns a return on the contract through "float" on the money ultimately dispersed to UI recipients, and

ATM fees it collects through an arrangement with Wells Fargo Bank. I would like to examine the impact these fees have on UI recipients.

A fee schedule is associated with this contract. Cardholders receive one free ATM cash withdrawal at a Wells Fargo ATM for each weekly benefit deposit. They receive unlimited free withdrawals at any VISA member bank or credit union location. Beyond the one free cash withdrawal, users are charged \$1.75 for each subsequent withdrawal at Wells Fargo ATMs. Cardholders receive one free ATM balance inquiry a month, but are charged 50 cents for each inquiry thereafter. Cardholders receive two free ATM denials each month, but are charged 50 cents for each subsequent denial. They can receive one free replacement card each year, but they are charged \$5 per card for additional replacement cards.

Is this contract funded through the fees charged UI recipients? If so, why was that method of contract payment chosen? Was there an alternative to paying for it without charging fees to people who are unemployed? How are UI recipients notified about fees they will be charged if they exceed the allowable fee structure I outlined? What is the contractual relationship between ACS State and Local Solutions and Wells Fargo Bank? And how is Wells Fargo compensated in that relationship? Wells Fargo has been invited to participate in this hearing, but they have refused to appear before this Committee.

CYNTHIA A. JONES (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):  
It is my understanding that Wells Fargo was unable to attend the hearing today because of the lateness of the request.

CHAIR HORSFORD:

I do not want you to be the messenger to defend Wells Fargo. Fiscal Staff has had this on our agenda and notified all the representatives asked to be here. Representatives from JPMorgan Chase were able to be here. Wells Fargo has a large contract with the State of Nevada to administer the UI Fund. It is an affront to the unemployed workers of Nevada for them to refuse to show up to a legislative hearing to explain the terms of the contract on which they make a profit.

MS. JONES:

I will refer to the DETR Nevada Unemployment Insurance Debit Card handout provided ([Exhibit D](#)). This is a no-cost contract to the State of Nevada. It was negotiated and became effective in July 2007, and the first benefit payments were issued in November 2007. Benefits are paid through the VISA weekly debit card account to approximately 98,000 unemployed workers each week. Approximately 96 percent of our unemployed workers have chosen to receive payment using this method rather than the traditional paper check method. When DETR began this program, we paid out approximately \$324 million a year in benefits. In 2010, nearly \$2 billion in benefits were paid. Benefit recipients have access to unlimited free bank teller withdrawals at any financial institution displaying a VISA logo. There are approximately 550 such branches in Nevada. The recipients also have unlimited, free POS transactions from which they can receive cash back. Benefit recipients are also allowed one free ATM withdrawal from over 280 Wells Fargo ATMs per weekly deposit. The deposits on these cards are FDIC insured up to \$250,000 per account. Cardholders have unlimited balance inquiry access through the Website, [www.eppicard.com](http://www.eppicard.com). They are also allowed one free ATM balance inquiry a month, and five free phone calls a month to check their funds balance. The cardholder has three options for notification: a phone call, text message or e-mail.

The debit card program performs significant outreach to educate our UI claimants of the methodologies by which they can receive their benefits. Collateral documents are mailed to recipients when they receive their cards. Information is also available on our Website. In addition, DETR has received a \$350,000 grant from the U.S. Department of Labor to further educate our UI benefits recipients of the benefits of card usage and how to avoid fees. Shortly, a statewide multi-media campaign, including television and radio spots, will begin to further increase public awareness.

Page 8 of [Exhibit C](#) indicates the behavior of UI benefit recipients since the beginning of the debit card program. The most recent month for which we have data shows that of approximately 1.7 million transactions in October 2010, about 1.2 million were POS transactions, approximately 50,000 transactions were made through a teller at a financial institution and only about 399,000 were ATM transactions.

CHAIR HORSFORD:

How much does the State distribute in UI benefits a week?



MS. JONES:

The State pays out slightly less than \$40 million a week, including regular State benefits and the various federal extension programs.

CHAIR HORSFORD:

Approximately \$160 million a month is distributed as UI benefits. That is a lot of money. The proportion of monthly transactions that can incur fees may be lower, but the amount of money and volume of transactions means that someone is making money from the unemployed of Nevada. I do not understand why Wells Fargo Bank will not come to answer questions about their contract with the State.

MS. JONES:

The debit card system allows UI recipients to receive their funds more quickly than through the traditional paper check method. Funds are deposited to the debit card account within 48 hours of the claim validation. Unbanked UI recipients avoid check cashing fees. The program has saved over \$12 million in check stock, envelope and mailing costs since implementation. These savings have enabled DETR to hire more people to answer telephone inquiries, for example. This is a no-cost contract to the State.

CHAIR HORSFORD:

To be clear, this is a no-cost contract because the direct UI benefits, paid by the employer, but currently loaned by the federal government, are covering the actual cash assistance to the unemployed. The program administered by DETR is a pass-through of those funds to the recipient.

MS. JONES:

That is correct. The State pays no fee to ACS for the administration of this program, nor do any users of the program pay monthly fees for account maintenance. The only fees they may realize are those associated with choices they make in accessing ATMs more frequently or making balance inquiries in ways that incur fees.

CHAIR HORSFORD:

Does ACS make money on the deposits made into their accounts every week? Did Xerox recently acquire or merge with ACS?

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DAVID TURNER (Senior Vice President, ACS, a Xerox Company):  
The Xerox Corporation acquired Affiliated Computer Services on February 5, 2010. We have been a combined company since then.

On any given day, there is a standing balance in that account. That money cannot be invested in any way, but it can earn credits with the federal funds rate. Currently, the federal funds rate is near zero. The money earned on those funds is therefore near zero, just as is the State's money that is sitting idle.

CHAIR HORSFORD:  
What is the federal funds rate? Our Treasurer does not think the rates are that bad.

MR. TURNER:  
The rate is around 25 basis points.

CHAIR HORSFORD:  
What is that in average terms?

MR. TURNER:  
That is approximately 0.25 percent.

CHAIR HORSFORD:  
How much is 0.25 percent of \$160 million a month?

MR. TURNER:  
Because these funds are a government benefit, there are rules that limit how they can be used. They can only be used as interest credits that are redirected back into the program to reduce costs such as these cardholder fees. I can provide you a copy of the guidelines for the use of these funds.

CHAIR HORSFORD:  
It would be helpful if you would provide that information to our Staff. In general, how may the funds be used?

MR. TURNER:  
They can be invested overnight using the federal funds rate. The interest must be redirected back into the program in the form of interest credits.

CHAIR HORSFORD:

Is the money being reinvested back into the UI fund from Wells Fargo?

MR. TURNER:

It allows us to provide the fee schedule you see here.

CHAIR HORSFORD:

That was not my question. Your contract with the Employment Security Division states you will earn money from the \$1.75 charged per ATM transaction. I do not see any reference in this contract to the interest income that is made from the federal funds rate and how those funds can be reinvested into our insurance fund. Ms. Jones, what is our outstanding obligation to the federal government?

MS. JONES:

As of today, we owe approximately \$692 million to the UI Trust Fund. The interest earnings Mr. Turner is referring to are not deposited back into the trust fund, but support the program costs borne by ACS for the administration of this program. There are no costs to the State.

MR. TURNER:

Those fees are used to offset services that directly benefit the cardholder: the physical production of the card and the mailings, the 800 number claimants can call to check their balance, the printing and mailing, the technology system used to administer the program, any fraud that occurs, as well as the banking services. These are all direct costs to ACS.

CHAIR HORSFORD:

The costs to cover the contract are covered by the interest from the float earned from the federal funds rate. Approximately, how much does ACS or Wells Fargo make on the federal funds rate?

MR. TURNER:

I cannot answer that today. I can provide that information. There are three components that help offset the costs of administering the program. The first is the interest credits we just spoke about. The second is the fee schedule, which is primarily designed to offset the costs we have to pay to provide these services. The third component is something called interchange: the small percentage retailers pay for the benefit of being able to accept credit and debit

cards. Interchange is a large component of electronic funds banking. This also enters into the system to help fund this program for Nevadans.

CHAIR HORSFORD:

Why was this approach taken? Why did the State not pay you and keep the interest income?

MR. TURNER:

That is something we could consider.

CHAIR HORSFORD:

Do you have those kinds of provisions in other states?

MR. TURNER:

I am aware of things going on in other states. Some states have elected to take a share of those dollars; they tend to be relatively small.

CHAIR HORSFORD:

For a state that is broke, like Nevada, small means a teacher in the classroom, or a caseworker providing essential services. In the corporate and banking world, it may seem small, but in our world, it is not small.

MR. TURNER:

One of the concerns we have, that some of the states have, is that taking the interest and not redirecting it back to the cardholders could be perceived as a levy upon those receiving benefits. Some concerns have been expressed on that front.

CHAIR HORSFORD:

Concerns have been expressed on which front?

MR. TURNER:

The fact that taking these monies could result in increased fee schedules to the cardholder. Florida and California have structured their programs to obtain the benefit of such a structure.

CHAIR HORSFORD:

Can you give us an estimate of what ACS or Wells Fargo are making off this float in Nevada based on approximately \$160 million in UI expenditures we are paying out each month?

MR. TURNER:

I cannot right now. I will speak to our financial staff and try to get you that information.

CHAIR HORSFORD:

What was the rationale for the increase in the per-ATM transaction fee from \$1.25 to \$1.75?

MS. JONES:

As part of the renegotiation and renewal of the contract, more ATM access was considered most important. There are now four free transactions a month rather than two a month. In exchange, the fee was raised for those who choose not to avail themselves of that option.

CHAIR HORSFORD:

Was Wells Fargo involved in those negotiations?

MR. TURNER:

Wells Fargo is a subcontractor to ACS. They are involved with ACS in those discussions, but not necessarily directly with the State.

CHAIR HORSFORD:

Who initiated the increase in fees to get the additional two free withdrawals each month?

MR. TURNER:

I was not party to those discussions. Typically, we fashion a fee schedule that meets the needs of the given department. We operate about 24 programs throughout the country. Certain elements are more important to different programs. In Florida, the out-of-network ATM fees are much higher than they are here in Nevada because that was important to them. It is a balancing act.

CHAIR HORSFORD:

Over the last two years, Nevada went from one of the lowest unemployment rates in the Nation to the highest unemployment in the Nation, thereby creating a windfall for this contract and the float that comes from it. Why could you not pass along the additional withdrawals without a fee increase to our constituents?

MR. TURNER:

Our goal is to design a program where all Nevadans can get all their money for free. I believe we have done that. Working with the Employment Security Division, we believe the four free ATM withdrawals would help achieve that goal.

SENATOR KIECKHEFER:

Would the same federal rules or guidelines regarding the float interest apply to the State if it retained those dollars?

MR. TURNER:

I am not an expert on banking rules and regulations. However, my understanding is that the State would hold money in a commercial institution and the same rules would apply. I will try to get you background information.

CHAIR HORSFORD:

The issue is the State does not currently receive that benefit, ACS does. And, that covers whatever costs you incur to administer the program. I would argue it is probably more than you should be making based on the fact we have one of the highest unemployment rates in the country. Our unemployed should not pay for the operation of a system that has not really changed. The only change is the amount of money going through those cards. The system, the infrastructure is already in place. There has been an increase in the allocation of dollars. I am not confident I am getting the answers to my questions. You cannot tell me how much you are making on the federal reserve rate. You have given me an explanation of why the free ATM transactions were increased, but no explanation of why the fee was increased. Provide the answers to the following questions to the Committee: what do ACS and Wells Fargo earn on the interest on the float; why was the ATM transaction rate increased; is there a separate sub-agreement with Wells Fargo; what does Wells Fargo do as a subcontractor?

MR. TURNER

Wells Fargo is a banking subcontractor with ACS Xerox in several states. We have a master contract with them at the corporate level.

CHAIR HORSFORD:

This is a public contract. It may not cost the State General Fund money, but the people of Nevada deserve to know the terms of the subcontract. There should be a level of transparency in the subcontract that we can understand and the public can review if they want. The terms of the contract between ACS and Wells Fargo are not included in anything that is part of the contract between the State of Nevada DETR and ACS State and Local Solutions in partnership with Wells Fargo.

If Wells Fargo had showed up today, I would have asked them these questions.

This contract was an amendment to an existing contract. How was that approval process handled? Who was involved?

MS. JONES:

The original contract provided the opportunity for a renewal to ensure program consistency. It would be difficult to change vendors very often on this massive an operation. Several vendors bid on the opportunity to be the State's provider. ACS was selected as it provided the most beneficial contract for Nevada's unemployed workers. It was a public RFP process. Negotiations occurred after the RFP evaluation team recommended a contract. The contract was approved by me and the Director of the Department; it was also approved by the Board of Examiners. Regarding the contract amendment, staff worked closely with ACS to get the two additional ATM withdrawals for additional access. There was not an RFP process for the renegotiated contract. The new contract was approved by me, Director Mosely and the Board of Examiners.

CHAIR HORSFORD:

Was the contract amendment put in place in October 2010?

MS. JONES:

That is correct.

GREG SMITH (Administrator, Division of Purchasing, Department of Administration):

Did the DETR UI contract require a waiver request, or did it go directly to the Board of Examiners?

MS. JONES:

It went directly to the Board of Examiners because a renewal provision was contained within the original contract.

CHAIR HORSFORD:

Although there was an increase in the fee structure, it did not go through the Division of Purchasing because of another provision that allows the renewal of the contract to go directly through to the Board of Examiners.

MR. SMITH:

The Board of Examiners process goes through the Budget Division. There is a heightened level of scrutiny of any amendments through the Budget Office.

CHAIR HORSFORD:

Would any of the concerns raised this morning be addressed in that process?

MR. SMITH:

I cannot speak for the Budget Office, but I can tell you they are very good generally at raising all kinds of issues.

ANDREW CLINGER (Director, Department of Administration):

I can add perspective in general, but not specifically to this contract. Once contracts get to the Budget Office, analysts review them closely before they are sent to the Board of Examiners.

MS. JONES:

I would like to make the point that when the permitted number of no-fee ATM withdrawals was increased from two to four, the potential for two \$1.50 fees each month was eliminated. The cardholder who previously made four withdrawals a month saves \$3.00 a month.

CHAIR HORSFORD:

I appreciate that adjustment for the benefit of the unemployed workers. The Interim Finance Committee heard many complaints about the limited number of



ATM withdrawals. We need to know how the interest rate of 0.25 percent on \$160 million is split between ACS and Wells Fargo. I understand the need for the vendor to cover costs not specified in the master agreement, but perhaps the State of Nevada should not have executed a master agreement in that way. We should explore the options of retaining some of those funds. The State of Nevada owes approximately \$692 million to the UI Trust Fund, and we have a budget hole of about \$2.5 billion. Every dollar matters.

MS. JONES:

We will examine that possibility and determine the impacts to the rest of the system. If the State of Nevada availed itself of receiving those interest funds, there could be adverse impacts to the fee structure elsewhere. We will work with ACS to find out if this is an appropriate model to adopt in Nevada. If it is mutually beneficial, a contract amendment might be made.

CHAIR HORSFORD:

Mr. Turner, how far did you travel to attend this meeting in Carson City?

MR. TURNER:

I came from Fairfax, Virginia.

CHAIR HORSFORD:

Thank you for making the trip. I do not know where the Wells Fargo representatives are, but I doubt they had to travel as far. They were given the same amount of notice. JPMorgan Chase Bank representatives came in from as far away as Chicago. This is not a witch hunt. But, when a company that is making money from a State contract is invited to appear before a Committee and they do not show up, it raises more questions. At a time when people are saying the State budget is bloated, finding out private sector contracts are administering some of our largest expenditures means the terms of these contracts need to be scrutinized.

We will continue with the JPMorgan Chase contract with the Department of Taxation. JPMorgan provides lockbox services to process tax payments. This contract was initially awarded in 2003. It was augmented when the Department of Taxation received approval during the 2007 Legislature for enhancements to the lockbox system. The Department negotiated a contract of approximately \$5.58 million with JPMorgan through June 2011, with an option to extend through 2013 at an annual estimated cost of about \$1.75 million. How was this

contract created initially? Why was this contract not put out to competitive bid after the 2007 augmentation? Without the competitive bidding process, how did the Department determine the profit margin built into the contract? How were the terms decided?

DINO DICIANNO (Executive Director, Department of Taxation):

It is important to understand the Department of Taxation has had a lockbox service for a long time, although not necessarily through JPMorgan Chase. It creates efficiencies and float for the General Fund. It would be cumbersome to do the accounting, processing and depositing of money within the Department and we would not be able to comply with current statutes.

What JPMorgan Chase does for the Department is the processing and depositing of taxpayer payments, imaging and indexing of all transactions, data capture, archival and retrieval services. The initial contract with JPMorgan Chase began in 2003. Prior to that time, the contract was held by Bank of America. Unfortunately, Bank of America informed the Department they would no longer be providing lockbox service to us.

CHAIR HORSFORD:

How was that notification given? Was it within the terms of the existing contract? What reason did Bank of America give for terminating those services?

MR. DICIANNO:

The contract was with the State Treasurer's Office. Bank of America informed the Treasurer's Office and the Department of Taxation they would no longer be providing lockbox services, as they were getting out of that business completely. Therefore, we needed to find a new provider for those services.

The initial RFP was released; a number of bids were received, including several from in-state banks. Upon review, the in-state banks were planning to outsource the lockbox service. We determined that would not have been efficient as the State would have lost significant float on the money processed through the lockbox operation. JPMorgan Chase received the contract valued at approximately \$6 million at that time.

It is important to keep in mind that the Department is required, under statute, to deposit any amount of money greater than \$10,000 no later than the next business day. That is not possible for the Department alone. A bank the size of

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JPMorgan provides the ability to deposit funds as quickly as possible, and to provide float to the General Fund. JPMorgan processes approximately 1 million pieces of paper on an annual basis for the Department, including returns and payments. There is a price determination factor within the contract; the cost to the State is approximately \$1.85 per return.

CHAIR HORSFORD:  
Where is that listed in the contract?

MR. DICIANNO:  
Do you have the entire contract?

CHAIR HORSFORD:  
No, this is the contract summary.

MR. DICIANNO:  
We can provide you a copy of the contract.

CHAIR HORSFORD:  
Is that rate listed in the contract?

MR. DICIANNO:  
Yes.

SENATOR LESLIE:  
How often does this contract get bid out?

MR. DICIANNO:  
Initially, it was a five-year professional services contract. It was not a sole source contract.

CHAIR HORSFORD:  
The initial contract was not sole source, but the contract summary for the amendment is a sole source, professional services exemption.

MR. DICIANNO:  
That is correct. We are in the process of negotiating a new contract that will be reviewed by the Board of Examiners and the Board of Finance for approval. To answer Senator Leslie, the contract was not put out to RFP because the

efficiencies we have been able to gain with JPMorgan Chase mean it would be more costly to reinvent the wheel. The enhancement requested in 2007 was the ability to provide real-time imaging and access to taxpayers' accounts for our staff. If a taxpayer calls about a transaction processed by JPMorgan yesterday, the Department would have the ability to review that account.

SENATOR LESLIE:

Is there a standard time frame within which contracts must be rebid?

MR. DICIANNO:

I do not believe it would be fruitful to rebid this contract.

CHAIR HORSFORD:

How do you know JPMorgan Chase is the only contractor who can perform this work unless you put it out for competitive bid?

MR. DICIANNO:

You are correct; there are other entities that could perform this work for us. But, we have had an excellent working relationship with JPMorgan Chase, and based on the efficiencies created . . .

CHAIR HORSFORD:

Who determines the relationship is excellent?

MR. DICIANNO:

The Board of Examiners and the Board of Finance determine that.

CHAIR HORSFORD:

What standards are used to determine it is excellent? Is there a ranking? Is there a growth model? Do they determine how much money we have saved? Are there improvements they are required to meet as part of the terms of their contract? Are those guidelines the Board of Examiners and the Board of Finance reviews?

MR. DICIANNO:

It is solely based on their ability to perform the functions for the Department.

CHAIR HORSFORD:

It is amazing we would not open it for competitive bid. If JPMorgan Chase, or any other contractor, has the efficiencies and a good track record, those should be part of their bid. That should help determine if they are renewed. To make the judgment beforehand, without getting an idea of what other options may be available, is part of the reason the State of Nevada has not achieved the efficiencies other states have. There is no strategic sourcing in this contract. I receive many complaints from taxpayers who have to send their payments out of state. Are you correcting that? It is an image problem for the State of Nevada that businesses must send their tax forms and payments out of state.

MR. DICIANNO:

I understand the frustration of certain taxpayers who do not want to send their return and their payment to an out-of-state lockbox. But, they have options. They can mail it or walk into one of our district offices. The best solution would be to register on our online system to report and pay electronically. That process does not go through JPMorgan Chase.

CHAIR HORSFORD:

Is it your position that because the relationship with JPMorgan Chase is sound, there will not be a competitive bid process?

MR. DICIANNO:

If JPMorgan Chase decided they no longer wished to provide lockbox service to the State of Nevada, clearly we would have to issue a new RFP. Given the fact they have worked with us for this length of time, it does not make sense to reinvent the wheel.

CHAIR HORSFORD:

I disagree. I am not suggesting JPMorgan cannot win the bid. That is the conclusion you are reaching. We should have a fair, equitable and transparent procurement process that is opened up on a regular basis for every contractor to be able to spell out the terms the State is requesting. If a contractor that has a previous relationship with us can determine, in their response, that they are the strongest bid, they should receive the contract. We, as the public guardians of these resources, should be able to defend why they were awarded it. But, you are describing a different process whereby the fact a relationship is working means the contract will not be put out to bid.

MR. DICIANNO:

I asked staff to calculate the cost for the Department to conduct this process in-house. I would have to hire approximately 70 people at a cost that would be greater than the current contract.

CHAIR HORSFORD:

You are assuming I am suggesting bringing the work in-house. I am talking about a procurement process and whether it is competitively bid in the private sector.

MR. DICIANNO:

If it is the desire of this body and the Board of Finance to require us to go back out to RFP, we would have to do so. Due to the efficiencies of the current contract with JPMorgan, I have not put the contract back out to bid.

CHAIR HORSFORD:

Is that a decision you make?

MR. DICIANNO:

Yes.

CHAIR HORSFORD:

Where is the Department of Administration? Where is the Purchasing Department? Where are the checks and balances? You get to determine if an approximately \$2 million contract is competitively bid. Where are the other agencies in this process?

MR. SMITH:

The State policy requires contracts to be resolicited every four years; 95 percent to 96 percent of all State contracts adhere to this policy. There are exceptions, such as a sole source contract. An example is an agency purchasing a certain software package that then has to contract with the vendor for ongoing maintenance, upgrades and upkeep of the software. It is rarely used, actually. A professional service exemption is used more often. There are several professional services outlined in *Nevada Administrative Code* (NAC) 333.150, but the last one is the catchall: "or any other professional, if the services of that professional are not adapted to competitive selection as determined by the Chief." There are significant start-up costs to this type of project that make it nonadaptive.

We adhere to resoliciting public procurement principals. My counterparts in the private procurement sector have told me we miss opportunities on renegotiating and taking advantage of current contracts. Absent competitive selection, what information do we have to ensure the State is getting a good price? The Procurement Office takes the answers to those questions seriously. Each member of the Board of Examiners receives a copy of those waivers with their contract summary form for review. Generally, there are questions. Out of 80 to 90 contracts sent to the Board of Examiners in a month, 5 to 8 contain a waiver.

CHAIR HORSFORD:

Item 9a of the budget summary contains language regarding justification: "The State Treasurer's Office and the Department of Administration at the conclusion of this section have agreed that we, the Department of Taxation, are in a better position to identify our lockbox needs and should seek to contract with JPMorgan on our own in order to continue forth with the work already in progress versus entering into a new RFP with the State Treasurer's Office and to meet the intent of the 2007 Legislative Session."

This is based on the amendment from 2007. Mr. DiCianno is stating there is still no need for a competitive bid process four years later. The same explanation and the same budget review process will be used without any alternatives being posed, with no additional parameters to the existing contract, and it will likely be approved. Because the sole source professional exemption is so vague and so broad, you can do just about anything, including entering into a General Fund contract of approximately \$5.8 million with one entity.

I do not think the public understands the efficacy, or the benefit to them, of this process. It is not transparent or open. The same justification rhetoric is used repeatedly in these waiver requests. The State is trying to reduce expenditures and balance the budget, and these contracts must be part of the overall reduction strategy. There is no accountability if there is no competitive bidding process.

SENATOR LESLIE:

Do you agree with the private sector assessment that the State does not renegotiate our current contracts well enough? What process exists for renegotiation of existing contracts?

MR. SMITH:

The primary criticism I have heard is that sending contracts out to bid repeatedly is inefficient. In addition, there is a high staff cost to the RFP process. However, private sector procurement offices do not spend public money and do not have to be transparent. I can think of no contract for which waivers were approved for more than a seven- or eight-year period. The renegotiating process cannot continue indefinitely.

SENATOR LESLIE:

What I thought you meant earlier is that renegotiating current contracts to reduce costs, which is being done in the private sector, is not being done as much in the public sector. The 26th Special Session directed State agencies to renegotiate contracts as part of budget reductions.

MR. SMITH:

You are correct. The renegotiation of contracts is one of the most beneficial things the Procurement Office has been engaged in over the last two to three years. We have learned that there is often money left on the table after accepting the low bid.

SENATOR CEGAVSKE:

Is there a difference between the fees charged to the bank's account holders and the fees charged to the UI benefits recipients?

CHAIR HORSFORD:

I do not know if there is a difference. The contracts are not transparent enough to enable that type of analysis. Part of the problem is some of the fees are not clearly communicated in all contracts. They may be buried in a master agreement that is not contained within the budget summary. I agree there needs to be a balance. Why can we not use common sense procedures? In my private business, there are standard operating procedures. All contracts are put out to bid, even if we ultimately remain with the same vendor. My director of purchasing does not get to determine, based on past good experiences, that a contract will not be rebid. The State apparently has a similar policy, but there is a waiver process with a vague and broad sole source provision that allows people to get around that policy. In some cases, there are substantial contracts with private sector entities that are not subject to a public procurement process. While we are trying to maximize every dollar, we have to consider whether the



Legislature is providing policy to the State agencies to achieve those savings we want them to achieve.

MR. DICIANNO:

I have no issue with what you are saying. The Department of Taxation is not trying to hide behind a loophole allowing us to use professional services. We are only trying to administer this lockbox contract in an efficient and fair manner. We will always be transparent.

SENATOR KIECKHEFER:

Regarding the contract renegotiations directed by the 26th Special Session, did the State meet the targets set? If not, what were some of the problems?

MR. SMITH:

For the most part, the targets were met. The Procurement Office met the 15 percent target with its contracts. Other agencies reported back to the Budget Office. I do not know if all were able to achieve the 15 percent reduction, but all seemed to get some reduction, most of them were in the 5 percent to 10 percent range.

CHAIR HORSFORD:

It would be good to have this information. Anecdotally, the information I have heard is that it is the small business that renegotiated and it is the larger, national corporations that did not. In addition to the former Governor's Executive Directive, the 26th Special Session set an amount for savings of about \$10 million. The last report I received was the State had achieved approximately \$7 million in reduced expenditures and contracts toward that goal.

MR. SMITH:

I probably reject nine out of ten sole source requests.

PAT O'DONNELL (Executive Director, Public Sector, JPMorgan Chase):

JPMorgan Chase appreciates our partnership and collaboration with the State of Nevada. We work to achieve transparency to the best level we can.

CHAIR HORSFORD:

If, for whatever reason, this contract is put out to bid, we hope you would apply and leverage your experience in the RFP process. In addition to the

branches you are opening in Nevada, it would be good if you could open a central administrative office for the collection of these taxes. We receive many complaints from constituents about sending their tax payments out of state. Mr. DiCianno is correct, there are other methods of payment. For those who want to pay through the mail, however, it is offensive to send a check out of state for taxes due to the State of Nevada.

There are 15 contracts within DHHS approved by the Board of Examiners at its meeting of December 14, 2010. These contracts total more than \$51 million. The funding source was not included in the contracts approved by the Board of Examiners. The contract states funding sources are to be determined by each agency within DHHS utilizing the services. I do not know, as a Legislator or a member of the public, who is paying to cover the costs for those services. Is it General Fund or federal grants or other non-General Fund revenues? The Committee would like to know more about the contracts and where the funds come from. How can this process be improved in the future? How can a contract be approved without an identified funding source?

PHIL WEYRICK (Administrative Services Officer, Health Division, Department of Health and Human Services):

Within the Health Division, there are approximately 70 different federal grants with about 130 funding sources. Many of the federal grants require needs assessments, community partnerships, coalition building and similar elements. Most of the grants are for a one-year period. The RFP process can take as much as six months. We thought it would be worthwhile to have an umbrella contract, similar to a contract utilized by the Department of Information Technology. Having this contract in place when a needs assessment or a coalition is required for a grant application, we could do so in a timely fashion. In addition, this type of infrastructure makes us more competitive for grant applications. This contract will enable us to bring more money into the State and out into the community more quickly.

CHAIR HORSFORD:

Some of these are not service contracts; they are management or consulting contracts. How can there be accountability if the funding source is not identified? In some cases it is not apparent how much the contracts are worth.

MR. WEYRICK:

The handout titled Master Service Contracts, ([Exhibit E](#)), is a table with the eight categories of Scopes of Work across the top: Marketing, Conference Planning, Facilitation, Community Building, Grant Opportunities, Program Evaluation, Training and Needs Assessment. Many of our grants require community outreach and public awareness, work that is accomplished through Nevada broadcasters. Conference planning is primarily related to coalition building. Most federal grants require needs assessments as part of the bid process and a program evaluation at the conclusion of the program. The total amounts attributed to each vendor in all these scopes of work reflect the complexity of services and frequencies of need anticipated. These amounts are maximum contract amounts. It does not mean any of these companies will receive any award whatsoever. It is a maximum amount based on the funding that becomes available in federal grants. We have made this a Department of Human Resources contract so any other Division with federal or state funds appropriated for these purposes can also utilize these contracts.

CHAIR HORSFORD:

Are these federal grants that come through the State?

MR. WEYRICK:

Yes, that is what the Health Division uses them for.

CHAIR HORSFORD:

Why are these funds not allocated for services? The State is looking at cutting direct services and I see contracts for about \$56 million in expenditures for marketing, conference planning, training and the rest of these categories. Who makes the determination to put money into these categories rather than the direct services category?

MR. WEYRICK:

Many of these federal grants require these scopes of work categories. Many of the grants do not relate to direct public service, they relate to public awareness such as tobacco prevention or diabetes prevention. To ensure productive and successful media campaigns, the Division needs the infrastructure to respond quickly.

CHAIR HORSFORD:

Does this include the purchase of media as well as design and development?

MR. WEYRICK:

It could be a number of things from designing the media awareness campaign to buying television and radio advertising.

CHAIR HORSFORD:

What is the purpose of the nearly \$5 million contract for the Board of Regents?

MR. WEYRICK:

The University of Nevada, Reno Board of Regents does conference planning and training for us.

CHAIR HORSFORD:

I want more explanation. Conference planning is nondescript. I would like to reschedule this to allow you and the Director time to explain what this means.

SENATOR KIECKHEFER:

I was in DHHS when this was being planned. These are prequalifications; they are not funds that have been banked. They are not dollars that are budgeted currently. The purpose is to be able to implement grants more efficiently and effectively once they are obtained.

CHAIR HORSFORD:

I do not know which ones are real and which ones are not. I understand that some of these are a hope and a dream. The State has a contract in place that allows us to have these services provided under these master contracts. But, as a process, there should be transparency and accountability once a grant is issued.

SENATOR CEGAVSKE:

If any of these potential grants require matching funds, we need to know that as well.

MARK KRMPOTIC (Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

I will focus on the contracting process from two perspectives: first is the procurement process involved, second is the approval process. Currently, the State contracting process is governed by chapter 333 of the *Nevada Revised Statutes* (NRS). Additionally, there are requirements under NAC pertaining to

procedures for awarding contracts as well as policy statements in the State Administrative Manual.

Under Chapter 333 of NRS, the Chief of the Purchasing Division is authorized to adopt regulations to award contracts and perform the procurement process. Any contracts with an estimated value of \$100,000 or more must be procured by the Chief of the Purchasing Division, or his designee. A using agency may contract for services valued at less than \$100,000. Current regulations require any contracts exceeding \$25,000 in services per year to be solicited for RFP. Chapter 333.335 of NRS requires each proposal to be evaluated by the Chief of either the using agency or the Purchasing Division or a committee appointed by either in accordance with regulation. This section of statute further states that the chief or committee shall assign a score using the following factors: experience and financial stability of the bidding entity, compliance with minimum requirements, price and any other factors disclosed or discussed in the RFP. It is up to the chief of the review committee to determine the relative weight of these factors and to award the contract based on the best interests of the State.

CHAIR HORSFORD:

The Chief of Purchasing has a great deal of discretion. What guidelines, standards or other factors do you use to determine whether to approve a contract? Are they standardized or do you take it on a case-by-case basis?

MR. SMITH:

It is a case-by-case basis. The great majority of RFPs, perhaps 99 percent, have an evaluation committee comprised of three to seven members who are State experts in the subject of procurement. We now prohibit the creation of committees consisting only of an agency head and his or her subordinates. The scoring methodology is excellent.

CHAIR HORSFORD:

Who selects the members of the evaluation committee?

MR. SMITH:

It is usually worked out between the procurement officer assigned to that project, the representative of the using agency and often the head of the using agency. They submit a committee to me for approval. I often follow up with questions about who someone is or why he has been assigned to the

committee. Sometimes the proposed committees consist of nine to eleven people to increase inclusion. I discourage committees larger than three to five people.

CHAIR HORSFORD

Are there conflict of interest disclosure guidelines?

MR. SMITH:

There is a two-page document we refer to as "jury instructions." It is quite detailed. I recently had to exclude an evaluator who has a romantic relationship with one of the potential vendors who might respond to the RFP. We are diligent in ferreting out possible conflicts of interest as they will cause problems if there is an appeal.

CHAIR HORSFORD:

How do you handle cases in which the applicant is a former State employee?

MR. SMITH:

Only State employees, or a City or County political subdivision employee, are allowed to serve on an evaluation committee. Occasionally, there may be an ex officio consultant to the committee, but they do not score the bids.

CHAIR HORSFORD:

The scenario I am asking about is when a former employee bids on a contract.

KIMBERLEE TARTER, CPPB (Deputy Administrator, Division of Purchasing, Department of Administration):

Currently, a Subcommittee has been convened and is working closely with the Internal Audit Division to develop policies and procedures for state agencies to utilize when they contemplate contracting with a former or current State employee. That will be strictly controlled by the rules of the competitive procurement process. There are specific criteria they meet to be authorized to do business with the State. There is a one-year window in dealing with a terminated employee that these checks and balances will remain in place.

MR. SMITH:

We are all cognizant of the law passed several sessions ago, sponsored by Senator Titus, regarding the cooling-off period. It does not arise as often as many people believe it does, but it is an issue. An individual retires from State

service and the agency wants to bring them back as a consultant because they have the institutional knowledge and history.

MR. KRMPOTIC:

Regarding the sole source contracting process, NRS 333 grants the Chief of the Purchasing Division the authority to draw up regulations governing methods of obtaining the contracts and procedures for awarding contracts. Under that authority, NAC 333.150 has been adopted which includes provisions for sole source contracts for services which may only be contracted from a sole source as determined by the chief, or professional services including: expert witnesses; professional engineers; registered architects; attorneys; accountants or any other professional, if the services of that professional are not adapted to competitive selection as determined by the chief; or those services made necessary by an emergency or national defense initiative. Waivers based on the determination that no other source exists are rare. More common are the professional service waivers. In the case of one of the named professional services, the using agency must identify this on the contract. However, requests for waivers for the open-ended professional services that are not specifically identified are reviewed by the Chief of the Purchasing Division with assistance from staff. They make phone calls and check databases for alternate vendors who may be providing the service. As noted previously by the Chief of Purchasing, few of these are submitted, but Fiscal Staff have not verified that.

CHAIR HORSFORD:

For the sake of openness and competitive bidding, how can we promote those services for which we have sole source contracts? Do you have a Website? Can you notify existing businesses that provide those professional services that the State entered into a sole source contract, but it will be bid again in the future?

MR. SMITH:

The Purchasing Division posts on our Website any approved sole source designations for a period of five days. To be fair, how many people check our Website? However, we do receive five or six calls a year from people responding to these posts.

CHAIR HORSFORD:

What is the process if you get an inquiry during that five-day period?

MR. SMITH:

We pull the approval back and do another review. We talk further with the entity who is contesting the designation. Over the last several years, there has only been one time the contract has been put out to bid.

CHAIR HORSFORD:

Once the contract for sole source is issued, you could keep those contracts on your Website, perhaps in a special section, so companies could prepare to bid in these less competitive areas when they are put out to bid in the future.

MR. CLINGER:

We disclose on the Board of Examiners agenda, and the packet posted on the Budget Division's Website, whether contracts are sole source or professional service. These remain posted on the Website.

CHAIR HORSFORD:

Where is it better for us to make these accessible for the average small business person? I do not know that the Budget Division's Website is the first place most people would look for contract information.

MR. CLINGER:

We could have the Purchasing Division link to that as well.

MR. KRMPOTIC:

Once an award has been made and the contract has been negotiated, statute states the contract does not become effective unless it has been approved by the Board of Examiners. Contracts in excess of \$10,000 require Board approval. The following contracts do not require approval by the Board: those entered into by the Nevada System of Higher Education; those executed by the Nevada Department of Transportation for construction or reconstruction of highways; contracts executed by the State Public Works Board or any other State agency for construction or major repairs of State buildings; if the contracting process was controlled by the rules of open competitive bidding; contracts executed by the Housing Division of the Department of Business and Industry; and contracts executed with business entities for any work of maintenance or repair of office machines and equipment.

By statute, the Board of Examiners must determine if sufficient authority exists to expend the money required by the contract and whether the services could



be provided by a State agency in a more cost-effective manner. If a contract submitted for approval continues an existing contractual relationship, the Board of Examiners shall ask each agency to ensure the State is receiving the services the contract purports to provide.

In the case of sole source contracts, members of the Board of Examiners ask specific questions and are provided with information prior to consideration of the contract by the Board.

CHAIR HORSFORD:

Mr. Clinger, you are both the State Budget Director and the Clerk of the Board of Examiners. What role do you assume in this regard? What checks are there between these two roles? How far in advance are Board of Examiner members provided with the review materials for the contracts that are submitted?

MR. CLINGER:

The packet of information supplied to Board members is distributed, as much as possible, a week in advance. Occasionally, Board members will ask me to brief them on the contents. The packets include the contract summary forms and any solicitations that have been approved by the Purchasing Division. Regarding the process we go through, we rely on several layers. If there is an RFP, we rely on the Purchasing Division and their expertise. Once those contracts are submitted to the Budget Office, they are evaluated by the budget analysts assigned to those agencies. They examine the contracts with respect to budget authority, statutes, and whether the service needs to be contracted out. A recommendation is then made to the Board of Examiners.

CHAIR HORSFORD:

Is that a complete process? Is there room for improvement? I have gone through many of these contract summaries. Some of them are very good, while others are not. The contract summary for the Department of Taxation and JPMorgan Chase from 2007 is only three pages long. The summary for the contract between JPMorgan Chase and DWSS is 53 pages long with supporting materials.

MR. CLINGER:

There is always room for improvement. Comparing the information released to the Board of Examiners five years ago to the information disclosed today, there is a phenomenal improvement. We are continuing to improve that process. It

depends on the members of the Board. Governor Sandoval is diligently involved in the process.

We have long-range plans to put up an electronic database that is searchable, but given the current budget constraints, funds for that have not been allocated. We have an electronic database with all of this contract information. Once we have funding, we can put it on a Website for the public to search the vendors, the agencies, and the spending on those contracts. That is the vision for the future.

CHAIR HORSFORD:

I will appoint a Subcommittee to continue this examination and to report to the Committee with policy recommendations for reform to the contracting process. In addition to the areas covered today, I have questions about the Department of Transportation and some other contracts that do not go through the Board of Examiners process. Senators Leslie, Parks and Kieckhefer will comprise the Subcommittee; Senator Leslie will chair the effort. The hearing today indicates there is room for improvement. We need to hold some of these contracts with private entities to the same high standards as any other part of State government.

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CHAIR HORSFORD:

There being no further business and no public comment, this meeting is adjourned at 10:54 a.m.

RESPECTFULLY SUBMITTED:

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Patricia O'Flinn,  
Committee Secretary

APPROVED BY:

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Senator Steven A. Horsford, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Finance

**Date:** March 7, 2011

**Time of Meeting:** 8:07 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Romaine Gilliland	EBT and Debit Card Fees
	D	Cynthia Jones	DETR Handout
	E	Phil Weyrick	Master Service Contracts