

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

**Seventy-Eighth Session
March 4, 2015**

The Committee on Ways and Means was called to order by Chair Paul Anderson at 8:05 a.m. on Wednesday, March 4, 2015, 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Paul Anderson, Chair
Assemblyman John Hambrick, Vice Chair
Assemblyman Derek Armstrong
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblywoman Jill Dickman
Assemblyman Chris Edwards
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Randy Kirner
Assemblyman James Oscarson
Assemblyman Michael C. Sprinkle
Assemblywoman Heidi Swank
Assemblywoman Robin L. Titus

STAFF MEMBERS PRESENT:

Cindy Jones, Assembly Fiscal Analyst
Stephanie Day, Principal Deputy Fiscal Analyst
Joi Davis, Senior Program Analyst

Minutes ID: 381



Linda Blevins, Committee Secretary
Cynthia Wyett, Committee Assistant

Following the call of the roll, Chair Anderson opened the hearing for public comments. There being none, Chair Anderson opened the hearing for the Office of the Attorney General, Administrative Fund, budget account (BA) 1030.

ELECTED OFFICIALS
ELECTED OFFICIALS
AG - ADMINISTRATIVE FUND (101-1030)
BUDGET PAGE ELECTED-84

Adam Paul Laxalt, Attorney General, Office of the Attorney General (OAG), presented [Exhibit C](#), "Budget Presentation, 2015-2017 Biennium."

Mr. Laxalt stated the mission of the OAG, as shown in the exhibit, was to seek to be a "premier law office that maintains the highest professional and ethical standards, that is a trustworthy member of the law enforcement community, and that makes Nevada a stronger, safer, and freer place for all of its inhabitants."

The vision for the OAG, according to Mr. Laxalt, was to ensure that all actions taken by the state were lawful and legally defensible, to enforce transparency and accountability in government, to enforce laws for the protection and benefit of Nevada citizens, and to work with the Nevada law enforcement community to keep Nevada's families and communities safe.

Mr. Laxalt provided a brief overview of the OAG. The OAG consisted of approximately 370 staff members committed to enforcing Nevada law for the protection and benefit of the citizens. Mr. Laxalt read the following into the record:

As the state's chief law enforcement officer, the Attorney General represents the people of Nevada before trial and appellate courts of Nevada and the United States in criminal and civil matters; serves as legal counsel to state officers, state departments, and most state boards and commissions; and assists the 17 district attorneys of the state. Based on 2014 litigation figures, the Office currently defends the state from approximately \$1.2 billion in potential liabilities.

Mr. Laxalt noted that he wanted to cover the office structure and that later in the presentation he would address the proposed office reorganization within the Governor's recommended budget, decision unit Enhancement (E) 226. He first wanted to discuss the current organizational structure.

The OAG was organized into four major bureaus:

- Bureau of Government Affairs
- Bureau of Litigation
- Bureau of Criminal Justice
- Bureau of Consumer Protection

The four bureaus were composed of 13 legal divisions and units. Additionally, there was an administrative division to cover personnel, fiscal services, information technology, grant administration, media relations, and investigations. For more detail of the duties and responsibilities of the OAG, Mr. Laxalt referenced pages 12-20 of [Exhibit C](#).

Mr. Laxalt said that the OAG was committed to ensuring all actions taken by the state were lawfully and legally defensible for enforcing transparency and accountability in government and in keeping Nevada families and communities safe, holding criminals accountable, and seeking justice for victims.

Mr. Laxalt noted that in January 2015, the OAG provided approximately \$23 million to the State General Fund to assist with mitigation of the fiscal shortfall. The \$23 million accounted for nearly all General Fund dollars allocated to the OAG for the 2013-2015 biennium. He also noted that the OAG was working to be good stewards of taxpayer General Fund dollars. In August 2014, the OAG requested \$32.9 million of General Fund spending. The Governor's recommended budget appropriated approximately \$27.5 million. The OAG had been working with the Budget Division, Department of Administration, to reduce spending by an additional \$500,000 of General Fund dollars.

Mr. Laxalt thought it was important to note that decision unit E-226 was included in the Governor's recommended budget. The OAG worked with the Budget Division to ensure the technical revisions for E-226 were in place to reduce General Fund spending. Decision unit E-226 put staffing recommendations from an independent management review audit by the National Association of Attorneys General in place. Moreover, decision unit E-226 supported findings by Mr. Laxalt following an internal audit in January 2015. By making the structural changes, Mr. Laxalt believed the opportunity was created for short- and long-term office success. In the

short-term, to avoid significant salary increases for the General Fund, the reorganization traded vacancies in the Office to create senior-level positions. For the long-term, the reorganization created opportunities for proactive management, increased visibility, and early intervention in cases by senior staff; provided the ability to coordinate agency training efforts to prevent agencies from making the same mistakes repeatedly; and reduced expenditures on outside counsel.

The current structure of the OAG had 14 divisions reporting directly to the chief of staff for a 14:1 ratio. During the 2015 audit, division chiefs reported that each carried a heavy caseload and often lacked flexibility to manage and advise legal talent on complex issues and litigation. Mr. Laxalt pointed out that significant caseloads for division chiefs prevented time to perform proactive training. The creation of top-level legal advisors, such as bureau chief positions, would help meet this need and reduce potential liability against the state in the future.

Mr. Laxalt was also concerned about using outside legal counsel. This was necessary when the OAG had a conflict of interest, when litigation occurred outside the jurisdiction of Nevada, and in cases involving a specialized area of law, such as bond counsel. Although sometimes necessary to retain outside counsel, the goal of the OAG was to minimize these occurrences. When outside counsel was retained, maximum oversight was necessary to ensure billing was commensurate with the work accomplished.

Mr. Laxalt explained the proposed organizational chart shown in the exhibit changed the reporting ratio to 4:1, which would increase efficiency and save taxpayer dollars. Additionally, the opportunity to reduce recurring litigation settlements through proactive training and case management would save significant dollars. The opportunity to increase management visibility and intervention in individual cases would make the OAG a better office. The opportunity to reduce outside counsel expenditures would create a significant savings.

The Bureau of Consumer Protection (BCP) had historically been one of the most productive units at the OAG. Since 2010, the BCP had obtained several settlements for the OAG amounting to nearly \$139 million. The OAG was able to contribute about \$23 million to the budget through the legal efforts supervised by the chief of BCP. Mr. Laxalt believed the addition of senior level management throughout the OAG would leverage the work of the deputy attorneys general and administrative staff making the OAG run more effectively.

Looking at page 14 of [Exhibit C](#), the Bureau of Government Affairs housed six divisions, more than 100 personnel, and over 75 deputy attorneys general. Mr. Laxalt noted that it was decided to split this bureau into two bureaus, the Bureau of Business and Industry and Bureau of Government Affairs, with two bureau chiefs. The result would be three divisions under each bureau chief as shown in the organizational chart on page 89 of [Exhibit C](#).

The new Bureau of Business and Industry would house the divisions of gaming, business and taxation, and boards and licensing, as shown on page 89 of [Exhibit C](#). Each of these divisions would continue to perform existing core functions, but with the addition of a bureau chief, management would take more proactive steps to improve the agency-client responsiveness and customer service.

The chief of the Bureau of Business and Industry could devote significant time advising personnel on complex legal matters presented by agency clients. The creation of this position would broaden the OAG's source of information for better reporting requirements at lower levels of the bureau.

As shown on the organizational chart on page 89 of [Exhibit C](#), the Bureau of Government Affairs would house the divisions of transportation, government and national resources, and health and human services. Mr. Laxalt believed the reorganization would save the state money and allow the OAG to operate more effectively.

Mr. Laxalt addressed the Bureau of Litigation, which included the personnel, public safety, and appellate division [page 90, [Exhibit C](#)]. This bureau would remain intact but add one bureau chief position.

Mr. Laxalt reiterated that the state faced approximately \$1.2 billion in potential liabilities. Early and proactive assistance from senior-level management could possibly save the state millions of dollars. Having one chief following litigation for the three divisions would provide consistency.

Assemblyman Kirner asked Mr. Laxalt to comment on the request by the Public Employees' Retirement System (PERS) to hire general counsel rather than use counsel from the OAG.

Mr. Laxalt responded that he would gather information and report to the Committee later.

Mr. Laxalt addressed the Bureau of Criminal Justice that currently housed the special prosecutions division and the fraud units. The creation of a chief for this

bureau would help leverage recent efforts to work with law enforcement agencies in keeping Nevada communities and families safe. Although the OAG had successfully raised statewide awareness of problems such as human trafficking, elder abuse, high-tech crimes, and domestic violence, Mr. Laxalt said the capacity to prosecute these cases must be built. Outside of its statutory responsibilities to prosecute fraud and public integrity crimes, the OAG was not structured to investigate and prosecute a broader range of crimes, including transnational crimes. Mr. Laxalt believed the addition of a chief for the Bureau of Criminal Justice would play a critical role in training, oversight, and vision development and application.

Assemblywoman Benitez-Thompson asked how many full-time-equivalent (FTE) employees were involved in the reorganization of the bureaus.

Mr. Laxalt responded that the Bureau of Government Affairs consisted of six divisions or nearly 100 staff. Creating two bureaus would split the FTE employees to about 50 for each bureau. He would be able to report to the Committee when the breakdown was finalized.

Assemblywoman Carlton recalled that Mr. Laxalt mentioned "transnational" and wondered whether there was anything of which the Legislature should be aware. If there was an endeavor planned on a transnational level, the Legislature might need to provide financial support.

Mr. Laxalt assured Assemblywoman Carlton that nothing was being planned. He was referencing such things as human trafficking as a transnational crime. Usually the federal government had to be involved in transnational cases.

Mr. Laxalt continued the presentation, noting that in addition to the bureau chiefs, the Governor's recommended budget included an office of the solicitor general, a general counsel, and an office of the special assistant attorney general.

There was also a request in the proposed office of the solicitor general for a deputy solicitor general. Mr. Laxalt pointed out that the legal profession had become increasingly specialized, and the appellate practice had become a specialized area. It was vital for the state's largest legal firm to have at least two experienced appellate practitioners representing the state's interests before the appellate courts, including the U.S. Supreme Court. The deputy solicitor general would work in tandem with the solicitor general to ensure all briefs filed in the appellate courts had the consistency of positions taken by the OAG. Credibility with the appellate courts could greatly suffer if various

deputies representing different agencies in state government developed different positions.

The 2007 National Association of Attorneys General audit determined the best practice was to have an office of the solicitor general handle all appellate work. Mr. Laxalt said that currently all appellate cases were coming through multiple divisions without centralization.

Mr. Laxalt commented on the general counsel to the Attorney General (AG). The position often referred to as deputy chief of staff in the Governor's recommended budget should be titled general counsel. The general counsel would act on behalf of the AG in all matters related to constitutional, statutory, and ethical obligations of the OAG. The general counsel would formalize the approval process for outside counsel contracts, currently ad hoc. This would ensure consistency of contracts and negotiations. Mr. Laxalt was hopeful this would reduce costs.

The general counsel would also be tasked with ensuring attorneys and staff performed their duties in accordance with the highest professional and ethical standards. The general counsel would serve the OAG as the primary contact for ethics, continuing legal education, and the State Bar of Nevada. The AG sat on many boards with policymaking responsibilities. Mr. Laxalt thought that having a general counsel as a central contact person would assure that the OAG was proactive with the policymaking boards. The general counsel would also handle all public records requests, as well as open meeting law enforcement. The general counsel would be the sole point of contact for conflicts of interest in the OAG. This was a crucial area in the law and should be closely monitored.

The final two positions discussed by Mr. Laxalt were to be housed in the office of the special assistant attorneys general. One position would manage the office of military legal assistance. This office was the first of its kind and was sorely needed in states across the country to provide legal services to the military communities. Having been in the U.S. Navy Judge Advocate General's Corps, Mr. Laxalt said he was aware of where the legal service dropped for military personnel and he was anxious to provide services. The most crucial component for the office would be lawyers willing to donate pro bono hours to the program. He hoped to make Nevada the most military-friendly state.

Assemblywoman Benitez-Thompson recalled the 2013 Legislature approved a position in the Office of the Governor to assist with the enactment of veterans initiatives. She was curious to know whether the position Mr. Laxalt proposed was similar to that position.

Mr. Laxalt explained that the OAG had been working closely with Caleb S. Cage, Director of Military and Veterans Policy, Office of the Governor, and with Katherine Miller, U.S. Army Col. (Ret.), Director, Department of Veterans Services. Huge strides had been made economically; however, the legal area was lacking for veterans. The commanders of the state's military bases were excited about the proposal.

Continuing with the presentation, Mr. Laxalt proposed a position for the management of neighborhood protection. Nevada was a diverse state with many different needs, and the same was true for fighting crime and keeping communities safe. He believed creating a position for the management of neighborhood protection would help coordination with counties, cities, and neighborhoods to ensure the OAG was proactive. A senior point of contact dedicated to researching trends with outreach to all 17 counties in the state would provide faster response to changing crime patterns. The position would be tasked with working with local governments and communities.

Assemblywoman Carlton was curious about the kinds of problems at the county level that would cause the chief law enforcement officer in the state to be involved.

Mr. Laxalt responded that there were currently Nevada residents who believed agencies such as the Bureau of Land Management (BLM), U.S. Department of the Interior, were encroaching on property rights. If the negotiations were not effective, the solicitor general's office would be charged with determining whether or not the state's law had been violated and whether a case should be filed against the federal government.

Assemblywoman Carlton asked whether Mr. Laxalt could foresee imminent litigation against the BLM. If this was a possibility, she suspected the OAG would be requesting additional funding later.

Mr. Laxalt mentioned the sage grouse as a possible litigation concern. There were many people working on a compromise to prevent the sage grouse from being put on the endangered species list. In the event the bird was listed, he was certain the OAG would be heavily engaged in legal defense to protect the state.

Assemblywoman Kirkpatrick commented that when the OAG signed on to a lawsuit, the Interim Finance Committee (IFC) had to provide funding. The sage grouse lawsuit required payment of a fee to sign on to the class-action suit. Assemblywoman Kirkpatrick wanted to ensure that the Legislative Counsel Bureau (LCB), Office of the Governor, and OAG were working toward the same

goal. She asked whether there was a built-in budget to cover the costs of joining the class-action suit. She noted that during the recession it was difficult to provide funding for joining class-action lawsuits.

Mr. Laxalt pointed out that he had been the Nevada Attorney General for 60 days and was working on a case-by-case basis to determine where problems could develop. He planned to continue a working relationship with the Governor's Office and LCB. He hoped that the addition of a deputy solicitor general and the solicitor general would provide better capacity in the OAG to be able to deal with various problems.

Assemblywoman Benitez-Thompson said she was unable to determine where the financial support for the solicitor general activities of appellate work and federal lawsuits would emanate.

Martha Radu, Chief Financial Officer, Office of the Attorney General, responded that the funding for litigation for the solicitor general was from the OAG operating expenses in BA 1030. In BA 1031, Special Fund, there was a category built into the budget that went toward court costs, advertising placement, messenger services, travel, and other expenses.

Assemblywoman Benitez-Thompson pointed out that BA 1031 appeared to be for the Yucca Mountain restart efforts and not for other types of litigation activity.

Mr. Laxalt continued the presentation of [Exhibit C](#), noting the performance measures created to track the OAG activities. He had split the criminal and civil measures. The criminal performance measures consisted of:

1. Ethical prosecutions without misconduct.
2. Reductions in crime based on increased prosecutorial capacity.
3. The timely and efficient administration of investigations and justice.

The civil performance measures consisted of:

1. Comparing last settlement demand versus final judgment to determine financial savings.
2. A reduction of outside counsel expenditures.
3. Increasing the number of court/jury trials to reduce expenses.
4. Correlating the number of trainings provided to agencies and correlation to lawsuits against the state.
5. The timely disposition of cases.

Mr. Laxalt concluded his presentation.

Chair Anderson said the performance measures were a key component in the reorganization and reporting structure of the Office of the Attorney General (OAG).

Assemblywoman Bustamante Adams agreed that the performance measures were important; however, the performance measures from 2014 to 2017 were flat. She requested an adjustment to the measures to reflect positive changes anticipated from the reorganization of the OAG. Mr. Laxalt agreed to make the changes.

Assemblyman Sprinkle expressed concerns regarding funds to join class-action lawsuits. Specifically, he was concerned about the reserve funds and the over \$23 million that would be swept to balance the current budget. He asked whether the OAG was planning to build something into the budget to rebuild the reserves. He wondered whether this was a concern for the OAG should larger lawsuits come to fruition.

As explained by Mr. Laxalt, the class-action lawsuits would be reviewed on a case-by-case basis. There was no way to know when a lawsuit would be filed. Generally, the lawsuits were systematic fraud and there was no way to anticipate future suits.

Martha Radu, Chief Financial Officer, Office of the Attorney General, responded that with respect to the \$23 million reserve fund, the bulk of the money was settlement dollars. Of the \$23 million, \$400,000 was from BA 1038, Bureau of Consumer Protection. This was the only reserve that was being swept by the General Fund for the projected shortfall.

Assemblyman Sprinkle questioned whether the reserve should be swept since there was no way to predict whether the money would be needed to join a class-action lawsuit.

Assemblyman Hambrick mentioned Project NEON in southern Nevada and asked Mr. Laxalt whether he had an estimate of the litigation costs for acquiring the properties associated with the project.

Mr. Laxalt said that the project would be discussed later in the presentation.

Assemblywoman Kirkpatrick expressed confusion regarding settlement of lawsuits versus jury trials and whether there would be increased costs

through litigation. She asked why that was one of the performance measures or whether the thought was to take all cases before a jury.

Mr. Laxalt pointed out that if the state had a reputation for settling every case, the plaintiffs would continue pushing up the cost of settlements. The state needed to sue on winnable cases and not settle on every case.

Assemblywoman Kirkpatrick asked why that was a performance measure. It did not appear to her there was a good way to measure this.

Mr. Laxalt responded that many of the changes the OAG was putting into place were difficult to put into a performance measure. The staff had worked hard to develop a number of measures to include. He requested the chief of staff provide additional information.

Nicholas A. Trutanich, Chief of Staff, Office of the Attorney General, explained that like any entity, Nevada created liability. This performance measure was put into place to ensure that the OAG was doing a good job in determining which cases should go to trial. For example, if there was a suit for \$1 million against the state, and at the last settlement conference the plaintiff asked for \$500,000, the state attorneys would evaluate and determine how much the case was worth. If the state decided the case was worth \$100,000 and went to trial where the jury decided there was property damage giving a determination of \$50,000, the state had obviously made the right decision. There would be a net savings to the taxpayer of \$450,000.

Chair Anderson stated that he did not see that referenced in the performance indicator. He said indicator number three was "Increase number of court/jury trials to reduce expenses" and was not measuring the value of the proposition the AG presented for the taxpayer as presented in Mr. Trutanich's example. He recognized that was what the OAG was trying to measure, and he suggested the OAG should rephrase the indicator to be less confusing.

Mr. Trutanich responded that he was giving an example for indicator number 1. He agreed that indicator number 3 should be rephrased to be less confusing.

Mr. Laxalt also agreed that indicator number 3 should be rewritten. The goal was to save money for the state. In theory, the OAG was taking fewer cases to jury trial. It could be that during the upcoming biennium, fewer cases would be taken to trial because there was less need to do so.

Wesley Duncan, Assistant Attorney General, Office of the Attorney General, addressed the concerns of Assemblywoman Kirkpatrick. There would not

be a policy from the OAG that everything would go to trial. He thought that indicator number 3 was not clear. He believed that with the reorganization and a new management structure, there would be improved evaluation of cases. If so, indicator number 3 could say either increase or decrease. There could be an increase in the cases that were deemed frivolous, but OAG did not have the staff or management oversight to determine the case should go to a three-day jury trial. He hoped it was clear that the OAG did not have a policy to take every trial to jury. The bottom line was to ensure the OAG was properly evaluating each case to do the best for the state.

Chair Anderson thanked Mr. Duncan for the clarification and requested that the OAG review the details of budget account (BA) 1030.

Martha Radu, Chief Financial Officer, Office of the Attorney General, stated that, in the interest of time, she would not be presenting decision units Enhancement (E) 710, E-711, and E-720 for the recommended replacement of information technology equipment and software.

Decision unit E-243 requested the addition of two full-time-equivalent (FTE) transportation counsel positions, two FTE legal researchers, and one FTE legal secretary 2. Two trial teams would be formed to reduce the reliance on outside counsel dedicated to the Department of Transportation (NDOT) Project NEON. The teams could potentially save the state about \$4 million per year.

Assemblywoman Kirkpatrick commented that Project NEON had been discussed in the Legislature for several years. She was surprised to hear that the OAG was requesting personnel for the project. It was her understanding that during the interim, funding was authorized for purchase of the needed parcels of land. She thought there were only two big parcels left for purchase, and she was under the impression the project would be going to the construction phase, not litigation.

Rudy Malfabon, P.E., Director, Department of Transportation, explained that there were several litigation cases. Federal regulations had to be followed for acquisition of private property under the Uniform Act when federal funding was involved. This process started with an appraisal and an offer to the property owner. The property owner could choose to accept or reject the offer. The next step was to determine whether to go to the Board of Directors of NDOT for condemnation, an eminent domain process to acquire the property through the court system. The courts would grant the ability to use the property for the project; however, the value paid to the landowner was determined by the court. There could be settlement before the decision of a judge or jury. More than 100 parcels for Project NEON were waiting

outside counsel assistance. The NDOT supported the OAG goal of having more in-house staff to address the acquisition problems. This was a specialized area of law, and NDOT needed outside counsel to support its efforts. It was not delaying the construction or procurement process for the project. There was a table being given to the design-build teams, and the table and the request for proposals (RFP) had the anticipated dates for acquisition of the parcels. It was a long process, but one Mr. Malfabon believed was fair for the landowners.

Assemblywoman Kirkpatrick was concerned that the OAG would spend time and resources with lawsuits at the federal level when attorneys were needed at the state level. She questioned why the special counsel problem was not discussed before. Assemblywoman Kirkpatrick needed to know how much the outside counsel was going to cost and what would happen to the staff who were hired specifically for Project NEON when the project was completed.

Mr. Malfabon responded that, typically, a contract for outside counsel was less than \$300,000 and the NDOT Board of Directors was advised. If it was necessary to go to court, the contract costs could increase. When there was a legal settlement reached, the State Board of Examiners was notified. Mr. Malfabon opined that opposing attorneys could pose unreasonable demands, in which case it was necessary to go to court to reach a settlement. Settlements reached in the early stages of the acquisition process for this project were \$10 million to \$20 million. There were still many residential properties to acquire, but no problems were anticipated. The acquisition of the commercial properties was still in negotiation. The changes in the eminent domain laws and People's Initiative to Stop the Taking of Our Land [a constitutional amendment approved by the voters as Question 2 in the 2008 General Election] gave property owners more leverage than they had in the past.

Assemblywoman Carlton, noting that she was a big supporter of Project NEON, agreed with Assemblywoman Kirkpatrick, and she asked why NDOT was not using State Highway Fund dollars rather than State General Fund dollars.

Mr. Malfabon explained that the Highway Fund would reimburse for the OAG staff time to support NDOT whether for eminent domain, tort claims, personnel actions, or other lawsuits. The OAG was reimbursed by Highway Funds for outside counsel expenses as part of the right-of-way acquisition process.

Assemblywoman Carlton requested clarification because there were General Fund dollars shown in the budget request.

Ms. Radu said there were General Fund dollars shown in the budget request. It was important to know, she explained, that the positions requested were all the OAG would have to fund with the General Fund. The operating costs, rental, travel, and other costs were supported by the Highway Fund. Over the biennium, the cost was approximately \$800,000 for the five positions, of which 57 percent would be General Fund dollars.

Assemblywoman Carlton and Chair Anderson questioned why General Fund dollars would be used. Chair Anderson stated that this was a temporary project, but the budget requested five permanent positions and nearly \$500,000 in General Funds. He asked whether the OAG projected that the positions would be needed for every project involving eminent domain.

Mr. Malfabon replied that Project NEON was a large project and needed the support. It was going to take several years to work through the acquisitions and pending settlements. He was hopeful that through attrition, the staff would be absorbed into the OAG budget. The NDOT had other projects supported by the OAG, such as Interstate 11, that could require additional support. He anticipated that Project NEON would require OAG support for approximately five years.

Chair Anderson appreciated the information but was concerned that this was a highway project and the state would have to expend \$500,000 in General Fund dollars to support the project. He recognized the OAG jurisdiction for eminent domain; however, it was disconcerting to approve permanent positions for temporary projects. Additionally, when the project was completed, the OAG would need to find work for that staff and would request General Fund dollars to fund the five positions.

Mr. Laxalt commented that the OAG was in a "no-win" situation. Officials were concerned about hiring outside counsellors, so the concept was to bring in a few attorneys for eminent domain work and avoid contracting outside counsel. From a hiring perspective, the OAG would hire personnel with the understanding that they were hired only for Project NEON. The OAG was trying to save the state money.

Chair Anderson acknowledged that this was a difficult decision for all concerned. He understood that hiring someone with the necessary expertise for a five-year period would not be an easy task.

Dennis Gallagher, Chief Deputy Attorney General, Office of the Attorney General, stated that he had originally suggested the possibility of hiring five persons specializing in eminent domain work for Project NEON. There were

approximately 100 parcels remaining to be acquired, including single-family homes, multifamily homes, and businesses. Based on the NDOT proposed construction schedule, he anticipated that any cases not settled within the next two years would go to district court. The cases could be in the district court for another two years, and if matters were appealed, two or three years could be added to the process.

Mr. Gallagher anticipated that in five to seven years the state would be involved in property acquisitions related to Interstate 11, USA Parkway, and other projects. He was not concerned with the prospect of having to keep the five new staff busy.

Assemblyman Armstrong commented that it appeared there would be new projects. He asked how long the state had been working on acquiring properties for Project NEON and how much had been spent on attorney fees to acquire those properties. In addition, he was unclear why five new positions were necessary to acquire 100 additional parcels.

Mr. Gallagher answered that with the limited capacity of the judicial system in Clark County, each condemnation case would require a two-year wait from the file date. With the construction schedule that NDOT had put into place, occupancy of the 100 parcels was required within the next two years. The overall project cost was approximately \$1.5 billion, but the benefits were many. According to Mr. Gallagher, it was important to get the rights of occupancy and for staff to continue litigation. Not all cases would be settled within the two years. A number of property owners had very different ideas of their property value. Because of the changes to the Nevada eminent domain law in 2008 and the People's Initiative to Stop the Taking of Our Land amendment, landowners had the advantage, and it came down not to the fair market value of the property, but to the value of the property for its "highest and best use." That opened a great debate on the highest and best use of the property.

Mr. Malfabon added that the NDOT outside counsel expenditures would be provided to the Committee.

Assemblyman Armstrong remarked that he did not hear an answer as to how many caseloads the five staff could handle and whether that would mean 20 cases each for the next ten years.

Mr. Gallagher responded that, based on case history, he believed each team could take three to four cases to trial each year. Out of the 100 remaining parcels, he could only guess the number that would go to trial.

In response to Assemblyman Armstrong, Mr. Gallagher explained that each team was made up of two attorneys, a legal researcher, and clerical support.

Assemblyman Armstrong inquired whether the five positions were attorneys or a team. Mr. Gallagher answered that the five positions included two attorneys, two legal researchers, and one legal secretary.

Assemblywoman Dickman was curious to know how NDOT was able to get this far along in the acquisition process without the five positions.

According to Mr. Malfabon, NDOT had been working on the acquisitions for several years. The first phase of the project was a "pay-as-you-go" method. Phases three and four were funded through the additional bond revenue, which was not totally expended. Once a certain amount of the design was completed, the amount needed for each parcel was identified. The OAG had been supporting NDOT to this point, but the surge created by the 100-parcel acquisition was driving this request.

Assemblywoman Bustamante Adams was not clear about the details regarding the number of hours expended, anticipated, and total number of parcels left. Mr. Malfabon agreed to provide the information requested.

Chair Anderson suggested the OAG continue with the BA 1030 presentation.

Martha Radu, Chief Financial Officer, Office of the Attorney General, continued the presentation on BA 1030, noting that decision unit E-806 was a salary increase for 2 unclassified supervising legal researchers and 13 legal researchers to a salary comparable to the classified legal research assistants. Ms. Radu said she had worked with the Division of Human Resource Management, Department of Administration, to determine the salary increases for the staff. These staff had not had a pay raise since 2003.

Decision unit E-235 requested funding to provide the fiscal unit of the OAG with one new administrative services officer 2 position. The unit consisted of six fiscal positions and supported 19 budgets. According to Ms. Radu, there was a gap in support and assistance to the chief financial officer concerning budget tracking and preparation; statutory contingency account reconciliation and maintenance; collection reporting; and the distribution of millions of dollars collected as restitution.

Decision unit E-601 eliminated one grants and projects analyst 2 position. The position had been vacant since July 1, 2013, and was no longer necessary.

Assemblywoman Benitez-Thompson wanted to know whether contract costs included in The Executive Budget to assist the fiscal unit could be eliminated if the administrative services officer 2 position requested in decision unit E-235 was approved.

Ms. Radu said the contract costs could be eliminated with the addition of the position.

Assemblywoman Benitez-Thompson asked whether there would be a reduction adjustment for the \$14,893 in contract services each year of the biennium.

Ms. Radu replied there would not. It was hoped the money could be kept in the base in case a contract service was needed because the unit was so small. There were four administrative assistants and one management analyst. With the addition of the administrative services officer 2 position, Ms. Radu believed she could eliminate the approximate 20 hours of unpaid overtime each week.

Assemblywoman Benitez-Thompson wondered whether the money would stay in decision unit E-235 or be shifted to another category.

Ms. Radu responded that the dollars would remain in BA 1030, because this account handled operating costs for most litigation, but the funds would not be tied to a specific decision unit. Throughout the year, the OAG could not predict upcoming litigation costs for such things as advertisement placement, travel for witnesses, or other items. This operating category often had to be augmented from reserves because of unexpected expenditures.

Assemblywoman Benitez-Thompson expressed concern regarding the location of funds for the solicitor general, federal lawsuits, and appellate work since there did not appear to be a budget category for these purposes. She was curious whether Ms. Radu believed there were pots of money, such as the decision unit E-235 fund of \$14,893 and the administrative fund in decision unit E-500 that was moved to decision unit E-900, and whether the funds could be used for federal and appellate work.

Ms. Radu explained that while all the agencies contributed to the OAG cost allocation to help support personnel and operating costs, there were costs not included in that cap. The agencies were billed for costs such as travel, ad placement, messenger service, hard costs for court proceedings. The agencies were not aware of the billings, which had been a problem for a long time.

The OAG was attempting to move funding from BA 1031 into BA 1030 to absorb the costs and not bill the agencies monthly. The cost would be added to the cost-allocation plan. In addition to requesting the \$14,893 remaining in the base budget, Ms. Radu was asking that the appropriation be moved from BA 1031 to BA 1030 to cover litigation costs and money needed for the OAG operating costs.

Assemblyman Edwards commented that Ms. Radu indicated a reduction in the Governor's recommended budget for the OAG from \$27.5 million to \$27 million. He was curious why the OAG did not apply the \$500,000 to decision units E-225, E-500, E-601, E-814, E-235 and part of E-243 to simplify the process.

Ms. Radu explained not all of the decision units were funded the same as personnel costs. When discussing the savings to the Governor's recommended budget, those were personnel savings and not 100 percent General Funds.

Assemblyman Edwards believed that the funds could be easily shifted without having to make changes to the budget. Ms. Radu said she would look into various funding options.

ELECTED OFFICIALS

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AG - SPECIAL FUND (101-1031)

BUDGET PAGE ELECTED-97

Assemblywoman Carlton commented that budget account (BA) 1031, Special Fund, was generally used for any litigation expenses that were not accounted for during the legislative session. This budget account was typically used for Yucca Mountain litigation. She requested information on any upcoming litigation for Yucca Mountain or other special circumstances that could arise.

Marta Adams, Chief, Bureau of Government Affairs, Office of the Attorney General (OAG), explained this budget account was used for funding special litigation, especially Yucca Mountain. For the last four federal budget cycles, there had been no funding for Yucca Mountain. As a result, and to maintain Nevada's 28-year position, Ms. Adams said that the OAG had been in a position to seek state funding for activities to which the state was committed. Because the state was no longer receiving federal funds, the OAG had reached a low estimate to present to the Committee based on the cost of renewed licensing activities in front of the U.S. Nuclear Regulatory Commission.

Assemblywoman Carlton inquired whether the state anticipated spending all of the dollars requested.

Ms. Adams responded that if the Yucca Mountain project ended, which was a possibility, the OAG would be in a position to return the money to the State General Fund.

Assemblywoman Carlton asked whether there were projects other than Yucca Mountain anticipated for BA 1031.

Adam Paul Laxalt, Attorney General, Office of the Attorney General, agreed with Ms. Adams that no other projects were on the horizon, and any money not expended would be returned to the General Fund.

Assemblywoman Benitez-Thompson wanted to know how the OAG intended to fund and support the activities of the solicitor general, which, according to Mr. Laxalt, was suing the federal government and engaging in appellate work. She believed the people of the state deserved to know what General Fund dollars were being used for and the number of lawsuits in which the OAG intended to engage. She said that she had not been able to get an answer to the question although she had asked numerous times.

Mr. Laxalt responded that he would provide the information to the Committee; however, he did not have the information available at this time. There was no cost for the most recent lawsuit filed on behalf of the state because another state was the lead plaintiff. It would be a case-by-case basis as to whether or not the state would join or lead a lawsuit.

Assemblywoman Benitez-Thompson asked whether it would be the best course of action to appear before the Interim Finance Committee (IFC) when planning to initiate a federal lawsuit to have costs determined.

Mr. Laxalt replied that he would have to provide the information to the Committee later because he was not familiar enough with the funding process.

ELECTED OFFICIALS

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AG - WORKERS' COMP FRAUD (101-1033)

BUDGET PAGE ELECTED-102

Martha Radu, Chief Financial Officer, Office of the Attorney General (OAG), provided a review of budget account (BA) 1033 for the Committee. This budget account covered the workers' compensation fraud unit. The major

point for BA 1033 was the elimination of two investigator positions in decision unit Enhancement (E) 600. Ms. Radu noted that the OAG had worked closely with the Insurance Division, Department of Business and Industry, in reviewing the revenue that funded these two positions. It was decided that only one position should be eliminated.

Additionally, Ms. Radu requested to remove the reclassification of the senior deputy attorney general to chief deputy attorney general in decision unit E-817.

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AG - CRIME PREVENTION (101-1036)

BUDGET PAGE ELECTED-108

Martha Radu, Chief Financial Officer, Office of the Attorney General (OAG), provided information to the Committee on budget account (BA) 1036, the Crime Prevention budget. The highlight of this budget account was decision unit Enhancement (E) 241, a request for the addition of a criminal investigator 2 position to perform investigation recovery of exploited children victimized in child sex trafficking.

Chair Anderson requested additional information regarding the decision unit and Assembly Bill No. 67 of the 77th Session (2013), which put this position in place and expanded the enforcement efforts of this unit. He wanted to know whether the OAG had applied for federal grants to assist with the funding of the unit.

Wesley Duncan, Assistant Attorney General, Office of the Attorney General, stated that the OAG had not submitted grant requests for this particular purpose. Assembly Bill No. 67 was a priority of the legislative body; however, there was not a criminal investigator in the OAG solely engaged in human-trafficking crimes. In February 2015, the OAG held a law enforcement summit. It was discovered that Washoe County and Clark County human-trafficking investigations were going well. Unfortunately, the smaller counties had no capacity to investigate human-trafficking crimes. The crux of the position was that the OAG wanted to get the investigator embedded with either the Clark County or Washoe County vice unit and send the investigator to the rural counties to assist with training and investigations. Law enforcement was aware that human trafficking was occurring at truck stops, the Interstate 80 corridor, and other areas.

As far as seeking federal grants, Mr. Duncan was not aware of federal funds available for such a project. He believed that based on Assembly Bill No. 67

and the emphasis put on the problem, the position should be funded with State General Fund dollars, and the OAG should have flexibility relating to human trafficking.

Adam Laxalt, Attorney General, added that federal grant funding had been sought for training and awareness of human trafficking.

Assemblywoman Bustamante Adams inquired about the supervisor for the position and how the \$41,103 travel budget was determined. She was unclear whether the investigator would be handling cases in both the northern and southern areas of the state.

Mr. Laxalt explained the position would function under special prosecutions and allow greater capacity for prosecution of the cases. He asked Ms. Radu to explain the calculations that determined the travel budget.

Ms. Radu agreed the travel budget was large but said that the rural areas had no investigators, and this position would be involved in those areas. She had the calculations to provide to the Fiscal Analysis Division, Legislative Counsel Bureau, staff. Approximately twice a month, the investigator would travel to southern Nevada, work the rural areas for a week, and return to northern Nevada. The out-of-state travel budget was for training and conferences. At this time, there was no investigator designated for this type of investigative work in southern Nevada.

Assemblywoman Swank asked whether the \$41,103 travel budget would be an ongoing expense. Ms. Radu responded that the travel budget should be reduced for the upcoming biennium. Originally, the OAG was requesting two positions, but it was decided that one position could cover statewide investigations for the time being.

Mr. Laxalt was not certain whether the travel would be reduced. It was a specialized area of investigations. It had not been determined whether the individual would be housed in the north or south. There could be more or less human trafficking than anticipated, but that could not be concluded until investigated fully.

Assemblywoman Swank thought that if the investigator spent time in the rural areas, rural law enforcement could be trained, which would reduce the travel costs to the state.

Mr. Laxalt believed training was an important approach and would be offered to all of the law enforcement partners. Most law enforcement agencies agreed

that time and personnel shortages would prevent involvement in the program at the current time. The goal was for local law enforcement to be involved in handling investigations within their areas. The OAG was hopeful that would happen in the future.

Assemblywoman Kirkpatrick was concerned about eliminating an investigator position [in budget account 1033] because often the agency would appear before the Interim Finance Committee (IFC) and request a work program. She preferred the agency keep the position rather than request it in the future. Additionally, she believed the reclassification of a senior deputy attorney general to a chief deputy attorney general was unnecessary since a chief deputy attorney general position already existed. In addition, Assemblywoman Kirkpatrick thought that the Bureau of Consumer Protection, Consumer's Advocate, was one of the most used services for constituents and no additions were requested [in budget account 1038], noting the office had been cut in the past. She was unclear how all of this was going to work.

Mr. Laxalt pointed out that the Bureau of Consumer Protection was self-funded and appeared to be financially secure at this time.

Ms. Radu explained that as far as the elimination of the investigator position in BA 1033 was concerned, the positions were funded from fraud assessment money transferred to the OAG from the Insurance Division, Department of Business and Industry. The revenue was reviewed and a decline was noticed. Some adjustments were made, and the revenue had since increased. This was now a stable revenue source. This precipitated the decision to eliminate one investigator rather than two as originally requested.

For the request in decision unit Enhancement (E) 817, Ms. Radu said that the request would be deleted and the structure in BA 1033 would remain the same. The OAG was working closely with the Budget Division, Department of Administration, to revise the Governor's recommended budget.

According to Assemblywoman Bustamante Adams, a bill had been introduced to close loopholes in the insurance fraud cases. If the bill passed, she was concerned about the workload increase with the elimination of one investigator position.

Mr. Laxalt was hopeful that the income revenue source stabilization would be sufficient to provide the funding for one investigator position; however, there would not be sufficient revenue for two positions.

ELECTED OFFICIALS
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AG - CONSUMER ADVOCATE (330-1038)
BUDGET PAGE ELECTED-117

Martha Radu, Chief Financial Officer, Office of the Attorney General (OAG), provided information to the Committee on budget account (BA) 1038, Bureau of Consumer Protection (BCP), headed by the Consumer's Advocate. Decision unit Enhancement (E) 806 included a salary increase for unclassified legal researcher positions.

Chair Anderson mentioned that the Morgan Stanley settlement funds would expire at some point. He was curious to know whether the OAG had seen a greater demand for services and whether the Office anticipated that the civil mortgage fraud unit would eventually be phased out.

Eric Witkoski, Chief Deputy Attorney General, Consumer's Advocate, OAG, answered that there was \$5.8 million of Morgan Stanley settlement funds remaining. There was about \$23 million in funds transferred to fill the gap, and about \$4.2 million of that was from the Morgan Stanley settlement fund.

Mr. Witkoski proposed keeping approximately \$1.6 million, which would provide funding for the 2015-2017 biennium, which would allow participation in the cases. Because of the National Mortgage Settlement, the OAG was on the executive committee and monitored the performance of that settlement. Meanwhile other settlements were possible. Because no State General Funds were being used, some of the settlement funding could be used to allow Nevada to have a place at the table.

Chair Anderson asked whether there was a decline in demand for the need of the settlement funds.

Mr. Witkoski maintained that there was activity and, therefore, requested to transfer the nearly \$4.2 million to keep both the civil mortgage unit and the consumer protection unit functioning.

Chair Anderson inquired whether these units existed prior to the Morgan Stanley settlement. Mr. Witkoski replied that the units were created in 2010 or 2011 to work on the National Mortgage Settlement and the Bank of America case. The individuals involved with the National Mortgage Settlement and the Morgan Stanley settlement were continuing to assist the OAG with other difficult cases.

It appeared to Chair Anderson that permanent staffing infrastructure was being created with temporary funding sources for temporary problems. He needed to know how this infrastructure would be phased back into normal mode and worked into other units in the OAG.

Mr. Witkoski stated that when there were ongoing investigations, the OAG wanted to be involved and in a position to receive any portion of settlement funds available to the state.

Mr. Laxalt interjected that when or if a phase-out plan was developed, it would be presented to the Committee.

ELECTED OFFICIALS

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AG - COUNCIL FOR PROSECUTING ATTORNEYS (101-1041)

BUDGET PAGE ELECTED-126

Martha Radu, Chief Financial Officer, Office of the Attorney General (OAG), provided information to the Committee on budget account (BA) 1041, Council for Prosecuting Attorneys.

Decision unit Enhancement (E) 806 requested a 7.6 percent salary increase for the unclassified attorney who served as Executive Director of the Advisory Council for Prosecuting Attorneys. In addition to regular duties performed by this special counsel, the position had assumed the duties of the Executive Director of the Technological Crime Advisory Board, which was being eliminated.

According to Ms. Radu, the position had been vacant since September 2013, and the Technological Crime Advisory Board took advantage of the opportunity to name the Executive Director of the Advisory Council for Prosecuting Attorneys to the opening. Thus, the Executive Director served in a dual capacity, aligning the efforts of both entities.

Assemblywoman Carlton questioned the 7.6 percent salary increase when other state employees were taking a decrease.

Nicholas A. Trutanich, Chief of Staff, OAG, responded that the person receiving the 7.6 percent salary increase was performing 100 percent of the work as Executive Director of both the Advisory Council for Prosecuting Attorneys and Technological Crime Advisory Board. By eliminating the Technological Crime Advisory Board position and housing it under one position, there was a sizeable net savings to the General Fund.

In addition, Mr. Trutanich said that as crime became more sophisticated, there was a nexus between the two positions, and consolidating them under one position control number (PCN) funded under this budget made sense. Although this was a significant salary increase, he believed it was commensurate with the amount of work put into this position.

Assemblywoman Carlton remarked that it appeared to be a considerable responsibility for one position. She wondered how the duties would be divided between the two positions.

Mr. Trutanich recalled that in BA 1030 decision unit E-226, the Technological Crimes Advisory Board was eliminated. The OAG had been working under the proposed structure as funded in BA 1041 since September 2013, and there had not been a decrease in the workload capacity. He believed that the needs of both positions could be adequately met under one Executive Director because of the nexus between the two positions.

Assemblywoman Carlton questioned the accounting of time and how the duties for the two positions would be divided.

Mr. Trutanich said that the individual performing the duties of the two positions could prepare a time-allocation study to provide to the Committee.

Assemblyman Armstrong asked how the activities were measured for the Advisory Council for Prosecuting Attorneys and the Technological Crime Advisory Board and whether the state was working toward any criminal or civil forfeitures that could support the consolidated function.

Mr. Trutanich did not believe there were any funding sources related to forfeitures that could support the board. Mr. Trutanich said that the OAG had provided the Fiscal Analysis Division, Legislative Counsel Bureau, staff a listing of duties performed by the Executive Directors of Technological Crimes Advisory Board and the Council for Prosecuting Attorneys. He would also provide performance measures to Fiscal Analysis Division staff.

ELECTED OFFICIALS

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AG - VICTIMS OF DOMESTIC VIOLENCE (101-1042)

BUDGET PAGE ELECTED-130

Martha Radu, Chief Financial Officer, Office of the Attorney General (OAG), provided information to the Committee on budget account (BA) 1042, Victims of Domestic Violence. The OAG was working closely with the Fiscal

Analysis Division, Legislative Counsel Bureau, to eliminate decision unit Enhancement (E) 811 that created the victims services officer. The domestic violence program and ombudsman would continue to exist; however, the request for State General Fund appropriation to create a victims services officer had been deleted. The OAG also requested an amendment to Senate Bill 60.

Assemblywoman Benitez-Thompson believed that the OAG had chosen not to pursue the STOP Violence Against Women grant from the U.S. Department of Justice. She asked why OAG staff indicated that additional grants for this area would not be pursued.

Adam Paul Laxalt, Attorney General, Office of the Attorney General, stated that he was not aware of any such position. The OAG would continue to pursue all grants available for this purpose. Ms. Radu agreed that the OAG applied annually for the STOP Violence Against Women grant.

Chair Anderson suggested that the OAG meet with the Fiscal Analysis Division, Legislative Counsel Bureau, to revise the budget requests before continuing with the remainder of the budget hearings. He requested questions from the Committee.

Assemblywoman Benitez-Thompson requested reconfiguration of the OAG organizational chart for clarification purposes.

Chair Anderson asked for comments on the Victim Information and Notification Everyday (VINE) system in BA 1042.

Brett Kandt, Special Deputy Attorney General, OAG, explained that VINE was a statewide notification system through which victims could sign up anonymously for automated notices via text or phone call when the custody status of offenders changed. This system was important for security and safety of victims. Nevada was one of the last states to institute the VINE system. The OAG obtained federal funding for the statewide system, and a centralized point for billing purposes had saved a considerable sum.

Mr. Kandt said there was sufficient funding available to cover the cost of maintaining the VINE system for the next three fiscal years. A long-term sustainable funding source for maintaining the system would have to be requested in the future.

Responding to Chair Anderson, Mr. Kandt said there were data reports available from the vendor to show the amount of use the system gets. The reports would be supplied to the Committee.

Chair Anderson asked whether there were outreach efforts for the VINE system. In response, Mr. Kandt explained there were extensive outreach efforts. The OAG worked closely with law enforcement, victim's rights groups, the courts, and others to ensure all victims were made aware of the system.

There being no further comments or questions from the Committee members, Chair Anderson requested any public comments. There being none, the hearing was adjourned at 10:20 a.m.

RESPECTFULLY SUBMITTED:

Linda Blevins
Committee Secretary

APPROVED BY:

Assemblyman Paul Anderson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Ways and Means

Date: March 4, 2015

Time of Meeting: 8:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Adam Paul Laxalt, Attorney General, Office of the Attorney General	Office of the Attorney General Budget Presentation