

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Eightieth Session  
February 11, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 1:35 p.m. on Monday, February 11, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/80th2019](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Ellen B. Spiegel, Chair  
Assemblyman Jason Frierson, Vice Chair  
Assemblywoman Maggie Carlton  
Assemblyman Skip Daly  
Assemblyman Chris Edwards  
Assemblywoman Melissa Hardy  
Assemblywoman Sandra Jauregui  
Assemblyman Al Kramer  
Assemblywoman Susie Martinez  
Assemblyman William McCurdy II  
Assemblywoman Dina Neal  
Assemblywoman Jill Tolles  
Assemblyman Steve Yeager

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Rocky Cooper, Legislative Auditor  
Shannon Ryan, Audit Supervisor  
Tammy A. Goetze, Audit Supervisor  
Carol M. Stonefield, Deputy Research Director  
Patrick Ashton, Committee Policy Analyst  
Wil Keane, Committee Counsel  
Karen Easton, Committee Secretary  
Earlene Miller, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

None

**Chair Spiegel:**

[Roll was taken. Committee rules and protocol were explained.] Today we have two presentations by Legislative Counsel Bureau staff regarding an overview of the Legislative Audit Division and certain audits, as well as an overview of the Sunset Subcommittee of the Legislative Commission.

**Rocky Cooper, Legislative Auditor, Audit Division, Legislative Counsel Bureau:**

I will provide you a high-level overview of the Audit Division responsibilities, followed by more detailed information regarding our oversight of state professional licensing boards. Then, we have two audit reports that will be presented. If you have further questions that we cannot answer today, or you want to discuss it in detail later on, we are happy to meet with you.

The main function of the Division is to conduct performance audits. Performance audits provide objective information to improve program performance, contribute to public accountability, and facilitate decision-making. Performance audit objectives vary widely and often include assessments of program effectiveness, efficiency, and compliance. I would like to note that audits conducted during calendar years 2017 and 2018 identified over \$15 million in monetary benefits, cost savings, and revenue enhancements. In addition to the financial aspect of our audits, many of our audits focus on program activities that significantly impact Nevada citizens. The Audit Division is statutorily required to audit all state agencies. Our audits must be approved by the Legislative Commission in the form of a biennial audit plan or a special request to the Commission, and our audits can be approved by legislation during session.

We also contract for the state's single audit. The single audit is required by the federal government to receive over \$5 billion in federal funding each year. This audit involves a review of grant awards and program compliance and a review of the state's financial statements. We actively monitor the contractor's work and performance, which includes

attending meetings at state agencies, reviewing the contractor's work in key areas, and helping the contractor deal with uncooperative agencies.

The Audit Division also has certain responsibilities regarding child welfare. We conduct children's facility reviews. There are approximately 60 facilities throughout the state that have physical custody of approximately 1,800 children pursuant to a court order. We conduct reviews and unannounced site visits to evaluate whether these governmental and private facilities adequately protect the health, safety, and welfare of the children and respect their civil and other rights. We also review child fatalities in the state. Each biennium we review about 100 case files of children that have had prior contact with a welfare agency who suffered a fatality or near fatality. This review is to determine whether the child welfare agency handled the case in accordance with applicable laws and whether the agency could have taken any other reasonable measures in preventing the fatality or near fatality. It is very gruesome work to go through all these cases, but it is a very important function.

We also monitor special license plates. On behalf of the Commission on Special License Plates, the Audit Division reviews financial information and the control process of 30 charitable organizations that receive revenue from the special license plates. The purpose of this is to make sure the money is spent for the intended purpose. After our review, the reports are presented to the Commission on Special License Plates.

The last significant function of the Audit Division is the oversight of the state's professional licensing boards. I have submitted a three-page document dated January 15, 2019, which is our Biannual Status Report on Audits of Certain State Boards ([Exhibit C](#)). These are the professional licensing boards. Page 3 is an attachment which shows the financial information for the 34 occupational licensing boards that we review. It also shows their revenues and expenditures to give an indication of the size of the boards—they vary significantly. These professional licensing boards are not included in the Governor's Executive Budget; therefore, the Legislature does not approve their budget each session.

As indicated in the first paragraph on page 1 of [Exhibit C](#), *Nevada Revised Statutes* (NRS) 218G.400 requires these boards be audited annually or biennially by contract auditors. The audit report must be submitted by the board to the Legislative Auditor on or before December 1. In addition, boards with revenues less than \$200,000 for any fiscal year must complete a self-reported balance sheet and then submit it to the Legislative Auditor. The Audit Division receives and reviews three types of financial reports from the boards.

First is the annual financial statement prepared by contract auditors or certified public accountant (CPA) firms. The primary purpose of a financial statement audit is to provide an opinion as to whether the entity's financial statements are presented fairly in all material respects. Financial auditors also review internal controls and occasionally include findings in their audit reports. Most audits cost between \$4,000 and \$10,000 depending on the size of the board and the CPA firm. However, the costs of a large board exceed far more than \$10,000.

Second is a biennial audit prepared by CPA firms. Instead of an annual audit, biannual audits are performed every two years. Biennial audits are more risky because the board may not receive complete information on its financial activities for a period of two years. However, cost savings can be realized with a biennial audit. About a year ago, we surveyed four CPA firms that estimated the biennial audit saved between 20 and 30 percent in costs over a two-year period. Therefore, the audit costs are not cut in half by the biennial audit, but they were reduced by about one-quarter.

The third type of financial report we receive from the boards is the balance sheet. The smaller boards, with revenues of less than \$200,000, are required to provide self-reported balance sheet information on a form developed by the Division. The balance sheet provides an overview of financial information, but this information is not audited. For example, we do not review invoices or other information to verify their expenditures and revenues. Although the balance sheet is not equivalent to an audit, we do review year-end bank statements, the fund balance, a schedule of revenues and expenditures, and a review of the balance sheet information. We compare them to prior years to identify problems with these entities. For example, in 2014 the State Board of Podiatry had numerous problems because the balance sheet did not make sense based on our review of current and past records. We sent several letters to the board requesting an explanation and supporting documentation. The executive director called me and was screaming, "Your letter makes me look like a thief." A couple of days after that call, the executive director voluntarily confessed to the Office of the Attorney General that she had embezzled \$35,000.

Based on our reviews of financial information, we report areas of concern in our biennial status report issued in January and July of each year. As indicated on the January 15 report ([Exhibit C](#)), we identified two issues—one was with the Nevada State Board of Optometry; they were late in filing their audit report. However, prior audits have not identified significant problems related to this board and the receipt of this audit should be included in our July report. We also noted a reported theft at the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors. The Board's last two audits indicated a former employee stole about \$9,400 over a two-year period. According to our communications with the new board management, the Board is working with the Office of the Attorney General to determine whether to pursue criminal charges.

Embezzlements are not unusual for licensing boards. In 2002, \$760,000 was embezzled from the Board of Dental Examiners of Nevada. In 2005, \$38,000 was embezzled from the Certified Court Reporters' Board of Nevada. In 2006, \$62,000 was embezzled from the State Board of Osteopathic Medicine, and two years later an additional \$11,000 was embezzled. As previously mentioned, \$35,000 was embezzled from the State Board of Podiatry in 2014 and, as shown in our letter ([Exhibit C](#)), there was \$9,000 embezzled from the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors.

The Audit Division conducts performance audits of licensing boards. The *Nevada Revised Statutes* provide that the Audit Division shall audit a board whenever directed by the Legislative Commission. Our most recent audits directed by the Legislative Commission

were in 2006 and 2016. A good example of a performance audit is the audit of the State Board of Dental Examiners in 2016. We were able to address some concerns of the Sunset Subcommittee of the Legislative Commission regarding the disciplinary process and excessive investigation costs paid by licensees. I am not lobbying to do more performance of state boards because many of them are very small and we have a lot of work to do at the big agencies in the state—such as Medicaid or the Division of Health Care Financing and Policy. However, the audit of the State Board of Dental Examiners, and other similar audits, are more than welcome. When there is a specific problem with these boards, we would like to address those. To do routine audits of all the boards would be almost impossible for the Division. That concludes the first part of my presentation and I would be happy to answer any questions at this time.

**Assemblywoman Tolles:**

I remember your presentation in our training as a freshman two years ago. I was so impressed at the lengths you will go to perform these audits—going out to the sites and doing the inspections yourselves. I appreciate how thorough you are in your work and the vast scope of it. However, I was shocked to hear the list of embezzlements. Why are there so many examples of that level of embezzlement on so many different boards? What can we do to prevent personnel from having that ability?

**Rocky Cooper:**

In all the examples, the embezzlement was by the executive director. The boards are small and there is a lack of separation of duties; or they do not know how to adequately segregate these duties. The executive director has access to all the financial information and the board members may or may not be actively involved in the oversight of the board; it is a big expectation for them to oversee the financial activities. Sometimes these executive directors are in the position to commit an embezzlement and believe they can cover it up; but they can only cover it up for a short period of time before it is noticed. It is just the nature of the small boards without the outside oversight, or just oversight in general, looking at their activities. The executive directors often work independently and their work sometimes suffers.

**Assemblyman Yeager:**

On the document you presented ([Exhibit C](#)), there was a theft at the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors. You indicated the Board is working with the Office of the Attorney General to decide whether to pursue criminal charges. Do you have any information regarding the series of embezzlements you listed, and were they criminally prosecuted in any way? Was the state able to recoup any monies in restitution?

**Rocky Cooper:**

The state has prosecuted most of them. They have been in the news and that is why we know the dollar amounts. In certain circumstances, like the one in our report, the Office of the Attorney General is trying to make a decision whether to prosecute or not, and we continue to follow up. Sometimes there are no records available—the executive director may have

destroyed them or did not maintain any records. It is really not cost-effective for the Office of the Attorney General to pursue prosecution if there are no records.

**Assemblyman Edwards:**

Could you send us a list of all the embezzlements and the things you have found wrong over the past few years? I think that might impact another bill or two that we have coming through; it would be helpful to have that information. How much do you actually save versus how much does it actually cost to run the audit agency? It sounds as though you get four to five times the amount of money back than it actually costs to operate the entire audit agency.

**Rocky Cooper:**

In the last two years of our audit reports, the audit summaries identified over \$15 million embezzled. We do track prior years' recommendations, and the last biennium we estimated it was at \$44 million. Any recommendations from prior years that we can measure, we track. We usually stop the tracking after a period of time when the recommendation may no longer be feasible nor applicable. The operating cost of the Audit Division is approximately \$4 million a year.

**Assemblywoman Neal:**

Do you look at how the Board of Dental Examiners of Nevada handles disciplinary actions?

**Rocky Cooper:**

We did look at certain aspects of their grievance process and we have a flow chart, but I really cannot explain it to you in detail. However, we did look at that Board and make several recommendations. I will send you a copy of their audit report.

**Chair Spiegel:**

Are there checks and balances in terms of their spending? What processes do they use to ensure they stay solvent?

**Rocky Cooper:**

Because many of the boards have sizeable reserves, the revenues and expenditures are not always going to match. Sometimes the licenses are renewed for a period of two years and they might have more money coming in in one year compared to another year—or they may need a new information system that they have saved up for—so their revenues and expenditures frequently do not match, but they should come close.

**Shannon Ryan, Audit Supervisor, Audit Division, Legislative Counsel Bureau:**

Today I will present the Performance Audit, Department of Business and Industry, Division of Industrial Relations ([Exhibit D](#)). The mission of the Division of Industrial Relations is to promote the health and safety of Nevada employees and the general public by providing workplace safety, conducting inspections to ensure proper procedures relating to health and safety are followed, and that injured workers are properly cared for.

Page 6 of the exhibit ([Exhibit D](#)) shows the Division operates with four budget accounts and over \$20 million in revenues and expenditures. Another six special-purpose budget accounts record workers' compensation assessments, refunds, and other fees, fines, and claims related to injured workers.

The Mechanical Compliance Section is dedicated to promoting the safe operation of elevators, boilers, pressure vessels, and related equipment by identifying hazards and code violations. The Division states this is done through a comprehensive and thorough inspection and quality control process that promotes safety through a firm, yet fair, application of code standards.

Page 8 shows the total number of active objects subject to regulation. The Mine Safety and Training section was created to establish a safe workplace for Nevada miners. The Division is required by statute to visit each mining county in the state and thoroughly inspect and investigate all mines. The scope of our audit focused on fiscal year 2017. The objective was to determine the adequacy of the Division's regulatory process related to elevators, boilers, and mines.

Our findings show that the Division does not have adequate processes over regulatory activities for elevators and boilers. Specifically, about 5,500 elevators and boilers were operating without safety certificates as of June 30, 2017. Because operating certificates were not issued, the Division did not collect an estimated \$1.4 million in fees for several years. We found operating certificates were not issued for one of three reasons: a routine inspection was not performed; violations were not cleared; or fees were not paid. Page 11 ([Exhibit D](#)) shows the 50 objects we tested and the reason why each object did not have a certificate.

Statutes and regulations require owners of objects to obtain an operating certificate, including a safety inspection, in order to operate an elevator or boiler. While objects tested had varying renewal periods, from six months to four years, no mechanism existed at the Division to identify those with expired, or soon to be expired, certificates. Of the 50 test items, 19 had multiple inspection years where certificates and fees went unassessed.

Our review of information with newly installed and modified objects showed at least 90 installations or modifications back to calendar year 2005 that were not inspected. Page 12 shows the detail of these objects and the related year as of June 30, 2017. Regulations require inspections upon installation or modification of an elevator or boiler and do not allow for the operation of the object under a construction certificate. These policies exist to protect the public from substandard materials and workmanship. This occurred because the Division relies on owners to notify it when an object is complete and the Division did not monitor, review, or follow up on construction and modification certificates that were issued.

The Division did not always ensure code violations related to object operating safety were fixed and cleared in a timely manner. Violations are a clear warning these objects are not operating within normally accepted standards and may be unsafe. Our review of 130 inspection violations found the Division is performing limited, if any, procedures to confirm

violations are addressed. Page 14 shows the results of our testing related to violations and follow-up work done. As it shows, little follow-up was done for elevator violations, regardless of whether they were open or closed. Additionally, the average time outstanding was significant for both elevators and boilers. The Division has not established a process to ensure follow-up is conducted. Best practices recommend agencies follow up as needed to determine whether violations have been corrected or whether additional enforcement is needed.

We also discussed that the oversight of third-party inspectors is lacking. The Division transferred inspection and certain other regulatory responsibilities to third-party agencies, but has not developed sufficient guidance or provided oversight of these activities. Responsibilities were transferred in July 2015 in an effort to reduce the backlog of inspections related to elevators and boilers. We found the Division relied heavily on third-party agencies to perform activities adequately. There are no guidelines and there is limited supervision by the Division. Some examples of deficiencies we noted are listed (pages 15 and 16, [Exhibit D](#)). Without adequate supervision, regulatory duties may not be performed as needed and public safety may be compromised.

We discussed that management information is not adequate for mine safety. Although the Division has an inspection process, management information to monitor inspections is cumbersome and inefficient. Management reports do not provide sufficient detail to readily identify whether required annual inspections are completed. Additionally, the Division is not monitoring whether violations from mine inspections are resolved appropriately or timely. Management indicated the Division does not have a uniform process for identifying open violations with past due deadlines. Files for 3 of 20 mines showed no evidence of corrective measures being taken by mine operators regarding violations. We have nine recommendations to assist with object and mine inspection processes. The Division accepted all of our recommendations ([Exhibit E](#)).

In January 2019, we received the six-month report on the Division's implementation status of these recommendations. That report indicated five recommendations were fully implemented and four were partially implemented. Of the partially implemented recommendations, three were anticipated to be fully implemented on February 1, when the Division instituted a new database for permit functions. The Office of Finance, Office of the Governor, indicated the Division has not yet developed guidelines for the third-party inspection process; therefore, a date of expected implementation was not provided.

Our audit estimated the Division did not collect \$1.4 million in fees over several years. Our review of budgetary information between fiscal year 2017 and fiscal year 2018 indicated an additional \$870,000 was collected in fiscal year 2018 from implementation of our permit fee recommendation.

**Chair Spiegel:**

Are there any questions? [There were none.] What can be done when audit findings and recommendations are not implemented?



**Rocky Cooper:**

If they are having difficulties implementing recommendations, our general practice is to report those to the money committees. In this situation, we just received the six-month report, so we will monitor the recommendations until the next Audit Subcommittee of the Legislative Commission and then we will issue our analysis of those recommendations. Hopefully, they will be fully implemented at that time.

**Assemblywoman Neal:**

You found that 3 of the 20 mines showed no evidence of corrective measures. Is there anything you will do before the next audit?

**Rocky Cooper:**

Normally, we do not call anyone else. We will notify the Audit Subcommittee, and we also report this to the Legislative Commission. If there is an illegal act, we would turn that over to the Office of the Attorney General. We expect the agencies to take immediate action in that situation.

**Assemblywoman Neal:**

During the lapse of time from when the audit is done to when you deliver the report to the subcommittee or Legislature, have there ever been any serious injuries or deaths relating to the violations? I think it is significant that there was no evidence of any corrective measures being taken by the mining operations regarding the violations.

**Shannon Ryan:**

We looked at the agency documentation regarding their follow-up work. The Division documented it on a follow-up form that was supposed to be signed by the mine operator indicating they had implemented corrective action on any of the violations. In this particular instance, the documentation was not signed by the mine operator indicating they had corrected any of the problems. The Division indicated in most instances they are talking with the mine operators and they were aware they were making progress on implementing those but the documentation did not show it was signed by the mine operator.

**Chair Spiegel:**

Any other questions? [There were none.]

**Rocky Cooper:**

The next report is the Performance Audit for the Department of Business and Industry, Division of Financial Institutions.

**Tammy A. Goetze, Audit Supervisor, Audit Division, Legislative Counsel Bureau:**

Today I will present the Performance Audit issued on May 2, 2018 ([Exhibit F](#)). The mission of the Division of Financial Institutions is to maintain a financial institutions system for the citizens of Nevada that is safe and sound, protects consumers, and defends the overall public interest. The primary responsibilities of the Division include: reviewing applications for licensing; issuing new and renewal licenses; examining licensees on an annual basis;

processing written complaints; and conducting investigations of violations. As of June 1, 2017, the Division had 2,666 licensees. Types of licenses are detailed on page 6 of the exhibit, followed by the descriptions of the types of non-depository licensees.

As of June 30, 2017, the Division had 30 filled positions located in Carson City, Las Vegas, and Reno. The Division is self-funded with revenues consisting primarily of assessments on depository and non-depository licensees, and license and examination fees. Page 8 shows assessments, fees, and other revenues during fiscal year 2017. The scope of our audit focused on the Division's regulatory and financial activities for fiscal year 2017. We also included information in certain areas from prior years. Our audit objective was to determine whether the Division's oversight of non-depository financial institutions effectively ensures regulatory compliance.

Our findings indicate the Division's oversight of non-depository financial institutions effectively ensured regulatory compliance; although, enhancements can be made to strengthen certain processes. The Division has adequately administered state laws and regulations concerning non-depository licensees. The Division completed required annual examinations, ensured licensees submitted required fees and reports timely, and took prompt action regarding examination violations and consumer complaints.

We tested 75 non-depository licensees and found all institutions were examined in fiscal year 2017. Examinations were promptly billed, the billings were mathematically accurate, and hourly examination fees agreed with state law. Most annual reports were also submitted on time and violations were promptly addressed with the submittal of a 30-day violation response letter. Furthermore, 27 percent of the 75 non-depository licensees had consumer complaints filed against them during the year. We found that the Division monitored the licensees' response to each complaint ensuring they were addressed within the statutorily defined time frame.

The Division could improve its documentation of the work performed during an examination. Documentation issues included: undocumented loan populations and various review periods. Our testing also found all 53 of the 75 non-depository licensees requiring a loan and/or check cashing review lacked documentation of the methodology used by the examiner to choose their sample. Insufficient policies and procedures led to the documentation issues noted. Adequate documentation should provide support for the work performed and to assist management with their review in ensuring examinations are being completed adequately and consistently.

Examination reports do not always accurately reflect the scope of work performed. Upon completion of an examination, staff use a report template to assist with the writing of the report. Our testing found instances where the standard language in the Division's report template was not revised to reflect the actual work performed. In addition, the Division states in each examination report the total number of licensee loans by type and number of loans reviewed, if applicable. Our testing revealed 19 percent of the examination reports which stated the loan population and sample size reviewed were inaccurate and did not agree

with the reviewed loans documented in the examination work papers. These inaccuracies indicate examination reports lacked a thorough review.

Current procedures could be enhanced to provide additional guidance to assist staff with performing examinations. Examples of Division practices not addressed in existing policies and procedures include:

- Documenting loan and check cashing population and sample selection methodology;
- Documenting the judgment used to determine examination rating based on the number and type of violations cited;
- Follow-up process for 30-day violation response letters on less-than-satisfactory examinations;
- Time frame for new licensees initial examination and existing licensees' follow-up examinations;
- Process for selecting unsatisfactory examinations for review by the Division's Disciplinary Committee;
- Process for assessing administrative fines, and cease and desist orders; and process for granting annual report late fee waivers.

The Division needs to formalize the follow-up process for licensees receiving a less-than-satisfactory examination. The Division considers licensees' violation response letters and other factors when deciding whether its staff will conduct a follow-up examination to verify corrective actions were properly implemented. Considering approximately 33 percent of licensed payday lenders received a less-than-satisfactory examination rating annually over the last five years, performing adequate follow-up on licensees with noted violations of state laws and regulations is important for ensuring consumers are adequately protected against unfair or unlawful financial practices. Furthermore, documenting this process is important because licensees receiving less-than-satisfactory examinations should receive close regulatory supervision due to their increased risk of noncompliance. Follow-up examinations are performed as follows: in 3 months for licensees that receive an unsatisfactory examination rating; in 6 months for licensees that receive a needs improvement examination; and in 12 months for licensees that receive a satisfactory examination rating.

During our audit, we found the Division does not follow the process described for follow-up examinations. The Division can improve its performance measures by reporting an outcome-based measure detailing the result of examinations to the Legislature. Over the last five years, on average only 67 percent of licensees providing loan and check cashing services were in satisfactory compliance with state laws and regulations based on the Division's examinations. Current performance measures provide examination output and workload statistics, but do not show the impact examinations are having on licensees' overall compliance with state laws and regulations.

Page 20 ([Exhibit F](#)) shows the percentage of satisfactory examinations by license type. A centralized tracking system for payday loans can be of significant value to the Division, its licensees, and legislators. During the 2017 Session, a payday loan database was considered

through various bills; however, none of the proposed legislation passed. Appendix B (page 25, [Exhibit F](#)) shows a summary of the Legislative bills relating to a payday loan database. Some of the issues described in this report can be addressed with better information provided to the Division through a centralized database. For example, examinations could be improved with real-time availability of licensee data, including loan inventories and check cashing logs. This would also assist the Division with planning and identifying potential violations prior to performing the on-site examination, which would allow for more efficient and targeted examinations. A payday loan database has many benefits relating to regulatory compliance and statistical information (pages 22 and 23, [Exhibit F](#)).

Out of 36 states that offer payday loans, 14 states are using a centralized database tracking system. We surveyed these 14 states and received 8 responses regarding the benefits and uses a database provides. Appendix C (page 26, [Exhibit F](#)) shows the individual responses to our survey from each state. A common benefit indicated by the states that responded to our survey included statistical information used for preparing internal and external reports. Appendix D (page 28, [Exhibit F](#)) contains excerpts of an external report prepared by the Washington State Department of Financial Institutions.

There were five recommendations to enhance the Division's regulatory processes. The remainder of the report contains supplemental information previously discussed in Appendixes A through D, our audit methodology in Appendix E, and the Division's response in Appendix F. The Division accepted all five audit recommendations. In July 2018, the Division filed its plan for corrective action. In January 2019, the Governor's Finance Office, in accordance with NRS 218G.270, reported on the status of the five recommendations, indicating all have been partially implemented, with full implementation anticipated by February 2019. According to the Governor's Finance Office, the Division has established the appropriate controls, enhanced supervisory oversight, updated examination policies and procedures, and included an outcome-based performance measure in its current biennial budget. Full implementation will occur after the staff receives formal training of these new processes.

**Assemblyman Kramer:**

You mentioned that the Washington State Department of Financial Institutions does these audits of the payday lenders. They put someone in the lender's office to go through the records, and they have found that 33 percent were not in good standing. Is the fee for the audit the same fee for every place they examine, or is the fee based on the amount of time they spend at a place? Does finding one problem cause the auditor to increase the extent of the audit until they find the source of their problems?

**Tammy Goetze:**

In response to your first question, they do charge an hourly fee which varies depending on the type of non-depository institution. When they find the exam needs improvement or is unsatisfactory, they do require the licensee to submit a 30-day response letter. They review those 30-day response letters and any attached documentation, and based upon that judgment they determine if they have to go back and do a reexamination; that is where the three-month

and six-month time frame would come into play. If they are satisfied with the information they were provided, they will just come back a year later and do their standard annual examination, but we will look a little more closely at that area.

**Assemblywoman Neal:**

When you looked at the documentation and the examiners did not place their methodology for their judgment in the actual examination work papers, has that been corrected?

**Tammy Goetze:**

Yes. They have indicated in their policies and procedures, as indicated by the Governor's Finance Office, that they now have to document in their work papers their methodology, which they anticipate having fully implemented this month—once they receive their formal training.

**Chair Spiegel:**

I think we are done with questions.

**Rocky Cooper:**

Thank you for the opportunity to be here. We are finished with our presentations. If you need any additional information, we will get that to you.

**Chair Spiegel:**

We next have a presentation regarding the Sunset Subcommittee of the Legislative Commission.

**Carol M. Stonefield, Deputy Research Director, Research Division, Legislative Counsel Bureau:**

For the past several interims, I have been the committee policy analyst for the Legislative Commission's Sunset Subcommittee. In that capacity, I have been invited here to give you some background information on the Subcommittee and the work it did in this past interim. Most of you probably are aware the Subcommittee was created in 2011. It grew out of a recommendation from the SAGE Commission [Spending and Government Efficiency Commission] to review government operations for the purpose of improving efficiency. The Subcommittee has six legislative members and three additional nonvoting members who are nominated by the governor and appointed by the chair of the Legislative Commission. The Subcommittee is responsible for reviewing all boards, commissions, and similar entities that have been created by the Legislature—there are over 200 of them. The Subcommittee is supposed to recommend to the Legislative Commission whether each should be continued, modified, consolidated with another entity, or terminated. Just to be clear, outside of the purview of the Sunset Subcommittee are those boards and commissions that are established in the *Nevada Constitution*, such as the Board of Regents or the State Board of Examiners; and those that are established by executive order, like the Workforce Investment Board.

Since the first interim in 2011-12, this Subcommittee has reviewed more than 100 entities—so it is about halfway through the whole list of boards, commissions, committees, councils,

and everything else that has been created. In the 2017-18 Interim, the Subcommittee considered 23 licensing boards, and there were two additional entities that were associated with those boards: one was an advisory committee, the other the Commission on Construction Education, associated with the State Contractors Board. In the past, the Subcommittee chairs have allowed the members to select boards and commissions they wished to review, but in the 2017-18 Interim, the members decided to continue to review the remaining occupational and professional licensing boards. They had quite an experience with the examination of the Board of Dental Examiners of Nevada, so it was decided to go ahead and look at the rest of the licensing boards. In conducting the reviews, the Subcommittee gives each entity a public hearing with an opportunity for representatives of the board or commission to comment. Each board or commission must complete a questionnaire, which is available on the Subcommittee's website, and submit copies of their most recent minutes, budgets, financial statements, and other items they may have, such as a strategic plan or administrative regulations that are pending. Each entity is also invited to make recommendations for revisions to its own NRS governing provisions. Today I will focus the rest of my comments on the licensing boards.

Some of these boards go back to the 1890s, so their statutes are quite old. Most of them are located in Title 54 of the NRS. You will hear people talk about the Title 54 boards. Each board's chapter is called the practice act. The members of these boards are appointed by the governor. The membership ranges anywhere from a small board of 4 to 11—the most common is 7. Most boards include one member of the public, and the remaining members are practitioners of that profession or occupation. A few have advisory members and some have ex officio members as well; usually those people do not vote.

In creating the licensing boards through statute, the Legislature grants specific authority to the boards. Generally the members are empowered to elect their own officers, employ certain professionals and support staff, and contract for certain professional services. They are also empowered to promulgate regulations to implement the duties that have been assigned to them, including authorizing them to determine educational and training requirements, issue licenses, discipline licensees, assess fees, levy fines, and manage their financial affairs. Some have the authority to monitor working establishments.

The licensing boards all have similar general functions, governance, and regulations. Within governance, the functions include management of staff and management of finances. Governance also includes the way the board conducts its meeting, including compliance with the Open Meeting Law. Financial management includes setting fees, contracting for professional services—such as legal counsel—and lobbying. Within the regulatory functions, the boards are authorized to set licensing qualifications, examinations, and continuing education requirements; they are also permitted to discipline licensees and investigate complaints. The degree of responsibility shown in exercising these duties and prerogatives varies among the boards. These are the issues that were examined by the Subcommittee in this last interim. Mr. Cooper mentioned that the boards are no longer in the executive budget, which is codified in NRS Chapter 353.

In the 2001 Session, the Legislature enacted Assembly Bill 569 to exempt the professional occupational licensing boards. This bill was proposed by the Budget Division, Department of Administration. The Deputy Director, Don Hataway, testified the reason for the recommendation was that the licensing boards are self-funded. They maintain their own payroll and accounting systems, hire their own staff, and are completely independent from the state systems. The Deputy Director also indicated, according to the minutes [meeting of 2001], there have only been a handful of budget hearings on those boards. The agreement was that the boards would continue to submit their financial audits to the Legislative Auditor and the Budget Division, as required by NRS Chapter 218, which has been recodified to NRS Chapter 218G.

This leads us to the Subcommittee findings and recommendations to the Legislature. The Sunset Subcommittee is a subcommittee of the Legislative Commission. As such, it reports directly back to the Legislative Commission—it does not have any bill draft requests of its own. The Subcommittee reported to the Legislative Commission their concerns, findings, and observations which are provided in Bulletin 19-17 ([Exhibit G](#)). If you want to see general findings and observations from this Subcommittee, they are near the end of the bulletin (Page 31). No single board exemplified all of the 12 observations that are listed. These 12 occurred often enough that the members felt it was important to report these back to the Legislature and make some recommendations.

The first one is qualifications for hearing officers. Most of the boards have been granted the authority to delegate to a hearing officer their investigation of a complaint, yet we were not able to find any qualifications set out in the NRS for who it is that can receive this delegation of authority from a board.

The Office of the Attorney General is required to offer board training in the responsibilities of the board and how to conduct procedures according to the Open Meeting Law, but there is no requirement that board members, including new board members, participate in such training.

Financial audits and balance sheets are not available for public inspection. This is a concern that grew out of receiving the information from the auditor. Mr. Cooper can give you some background information as to why these are not available for public inspection.

**Rocky Cooper:**

I think it would be important to have the boards' information public. We do oversee all the special license plates and their financial balance sheets that are submitted to the Audit Division. In 2015, the law was changed to make the special license plate information public—so if I receive a phone call or concerns, I can give that information out. With the boards, I do not have that specific authority; I have discussed that with our legislative counsel. Unless it is specifically stated in the statute, we cannot make this information public. It would not be extra work for our Division, because we already scan every document into our systems; it is all in electronic format. If it was declared public information, we could put it on our website very easily. Otherwise, agencies would have to

try to find information on the websites to gain any information. With all the balance sheet boards we review, that information would not be available on any type of license organization website.

**Carol Stonefield:**

Mr. Cooper had mentioned biennial audits—some of the boards receive their information only once every two years. The lack of oversight reduces board accountability and that can lead to undetected fraud and embezzlement. Mr. Cooper went through a list of the most recent ones. The next item of concern to the Subcommittee is that many boards lack a reserve policy to cover operating expenses.

**Rocky Cooper:**

I had the opportunity to go through every financial statement and present the concerns to the Sunset Subcommittee. The board reserves vary from zero reserves up to almost four years' worth of reserves. I do not know if any of the boards had a reserve policy in place regarding what reserves they should have. I think to be effective stewards of the licensees' money you need to manage reserves, so we did a variety of analyses of these reserves and found that 27 of 34 boards had reserves of over 6 months and over half the boards had reserves over 12 months, but then there are other boards that have up to four years in reserves. I think some of the difficulties regarding reserves is the understanding of what a reserve really is.

The Governmental Accounting Standards Board (GASB) Statement No. 68 requires all boards to now recognize their proportionate share of the Public Employees Retirement System (PERS) unfunded liability of \$13 billion. This liability is placed into their financial statements and it distorts what they really have on hand. During the hearings I was able to explain that, but there still is a lot of confusion on how you would actually calculate a reserve for these boards. It is very difficult; you almost need to be a CPA to understand how these reserves are calculated. When we did our calculations we started with their fund balance and added in the GASB Statement No. 68 adjustment for their unfunded liability.

I would like to read our statement on the GASB Statement No. 68. We found:

... some boards' reserves were significantly reduced by recording the boards' share of the Public Employees' Retirement System of Nevada (PERS) pension liability in their financial statements. However, this liability is not under the boards' control and there is no process for immediate payment by the boards.

This is just an accounting entry that really distorts how much they have on hand.

As a result, the implementation of GASB 68 understates the funds available for use by the boards to conduct its operations, and some of the boards have a negative fund balance solely because of the GASB 68 implementation. Therefore, we have added back the GASB 68 adjustments to the boards' reserves to provide a more accurate picture of available funds.



The Division of Internal Audits did its own independent analysis of boards and did it differently than we did; it started with cash and made some adjustments from there. They came up with a wide range of reserves for all the boards. So there is a very wide range of reserves that are held, but I do think the CPA firms are now understanding how these reserves are calculated.

One financial statement stated that the board's financial condition remains strong, and the prior year the board implemented certain requirements for its share of the PERS liabilities. The impact of this implementation is to include certain deferred revenue inflows and outflows of resources and reflect a net pension liability for the PERS retirement program as it relates to the board. It should be noted that actual payment of the liability is only applicable if there is a change in Nevada law as it relates to PERS and the funding of the program. It is very unfortunate that GASB Statement No. 68 went down to the board level. I think the unfunded liability at PERS is a significant and very important thing to know at the state level. They tacked on this liability that these boards have no control over. They cannot pay it. There is no mechanism to pay it, and boards really do not fully understand their financial position.

I want to just provide two examples: the unrestricted fund balance on one board we looked at had \$2.3 million in reserves. When we added back the GASB Statement No. 68 adjustment that they would not have to pay out of their liabilities, their reserves went to \$5.6 million—that is a hefty reserve when you take out the GASB Statement No. 68 adjustment. Another board had a negative reserve of \$755,000. We added back the \$2.6 million GASB Statement No. 68, and they ended up with \$1.9 million in reserves. It is a little bit complex, but most of the boards have indicated they are going to establish policies on what their reserve policy is. In my opinion, many of the boards are just going to create a policy to establish exactly what they are doing right now and continue justifying their reserves.

**Assemblywoman Carlton:**

This has always been a confusing issue for me. It has always been a little disconcerting to see that much money in the board reserves when you know that is licensing money and people are actually paying to hold that license. If you consider some of the larger boards and some very complicated cases, they could be put in a position like the Nevada State Board of Medical Examiners with the Dr. Dipak Desai case, or the State Contractors' Board with some of the construction defects that were going on years ago. They always felt they needed a little larger reserve because they needed the money to be able to make their case; to be able to hold licensees accountable if they were working outside the bounds. Sometimes those can be very complicated cases. When did the GASB rule end up becoming an impact to the boards? The state actually picks that up, because some of those are state employees. It really is our liability, not their liability, most of the time, not in every single board. Is that correct?

**Rocky Cooper:**

I believe the GASB Statement No. 68 was implemented in the last three years. I do not know exactly which year it was. You are right. It is never going to be paid by the board. There is no mechanism of payment. In my opinion, it should just be reflected on the state's financial

statements. Fortunately, there is an independent audit of the retirement system annually, which does track the liability overall. There are 105,000 members in PERS right now and there is about a \$13 billion liability. At the state level it is great; it just does not work well for the boards that have state employees.

**Assemblywoman Carlton:**

That was a federal directive that we needed to do it this way, correct?

**Rocky Cooper:**

This is an accounting standard by the Government Accounting Standards Board. There is no absolute that they have to prepare it this way. If agencies decide not to implement GASB Statement No. 68, they would receive a qualified opinion stating that they did not follow such standards and that is all that would happen. There would be no penalty on them, as long as the CPA firm did its job and stated appropriately that they were not following standards. It is not a federal rule.

**Assemblywoman Jauregui:**

I was reading some of the recommendations and was wondering if you have any authority to make the boards take corrective actions of these findings?

**Carol Stonefield:**

If the Subcommittee recommends legislation and the Commission agrees to it, then it will advance back to the legal division for drafting. In this particular interim, the Subcommittee actually made specific requests or recommendations to boards to address certain issues, sent them letters, and told them to plan to report back to the Subcommittee in the next interim. I would assume that at that point, if there is still concern, there might be some recommendation for legislation at that time. In this past interim, most of the boards were interested in adjusting whatever concerns the Subcommittee had. The Subcommittee tends to monitor an entity from one interim to the next to see that its interests or recommendations are carried out, and we would assume that if they are not, then something else would happen in the next interim.

**Assemblywoman Neal:**

Since the NRS did not provide for qualifications for the hearing officers, what did you find were the qualifications of the hearing officers?

**Carol Stonefield:**

When the Committee members inquired how the people obtained the services of hearing officers, some said the same people had been hearing officers working for that board for a long time, and others said they would put out a request for proposal (RFP), receive replies, interview people, and that was how they acquired their hearing officers. There is the Hearings Division in the Department of Administration, but I do not believe any of the boards avail themselves of the services of that division.

**Assemblywoman Neal:**

They never answered why they did not avail themselves of that free service?

**Carol Stonefield:**

I do not believe it is free. I believe they have to pay for services and contract with the Hearing Division.

**Assemblywoman Neal:**

Is it less than getting an RFP and having their own person?

**Carol Stonefield:**

I think that would vary from board to board, how much they are willing to pay for a hearing officer, and what contract arrangements they would make with those individuals.

**Assemblywoman Neal:**

Why were some of the boards charging more for fingerprint and background checks? How many boards were doing that?

**Carol Stonefield:**

I would have to get you that board by board. We did ask each of the boards to give us the fees of the neighboring states and set that up in some way so that we could compare the results. Very often our fees were higher than the neighboring states. Some of the boards had higher fingerprint and background check fees, but they did not have a particular reason. I believe the fee had decreased from the FBI, so some of them had not adjusted those fees.

**Assemblyman Daly:**

Are you referring to GASB versus the Financial Accounting Standards Board (FASB)? Those are rules that are set up by auditors. They have a national board and they go through their standards and say, This is what you have to do in order to be in compliance with your requirements or the requirements that the national board puts on the auditors when they perform an audit. If they do not follow all of those standards, then you have to give a qualified opinion on the standard. Is GASB different than FASB? I know there was a push to try to have similar rules for private pension plans versus what companies would have to put in if they were participating in a multiemployer plan. People have been able to stop them from requiring that, at least on the private side, so why is it different on the federal side? Essentially, if you do not follow it they will give a qualified opinion, but there would be a footnote on what that qualification is. Could we handle things that way so there would be no accounting nightmare that shows false numbers? Can you confirm where we get the GASB and FASB rules? It is from a national board of auditors that says these are the standards you have to use and those auditors are then required to follow that, otherwise they would not be in compliance with their licenses.

**Rocky Cooper:**

I think your explanation was clearer than mine. Yes, if the boards did not follow them they would be given a qualified opinion. Maybe it would save these boards some money because

the financial statements with all the footnotes grow tremendously in size. There may be one or two boards that have not bothered to implement the GASB Standard No. 68, and I would not try to force them to.

**Assemblyman Daly:**

In my job as a trustee on the trust fund we deal with all these footnotes, and I talk to a lot of auditors. We want to get a qualified opinion, but we do not have to put down that liability, and neither do the employers that participate. I just wanted to explain it that way. I had a couple of questions from some colleagues, so I was hoping to get a chance to explain where those rules come from, what the consequences are, and maybe put an idea out for people that might be able to do something different.

**Chair Spiegel:**

Are there any additional questions? [There were none.] You listed some suggested legislation from the Sunset Subcommittee. Can we expect to see some of the recommendations incorporated into Bill Draft Request 54-518 (Senate Bill 128)?

**Carol Stonefield:**

Bill Draft Request 54-518 has been introduced in the Senate (S.B. 128) and relates to specific individual boards. There are various small changes that this Subcommittee recommended regarding certain boards; then a general recommendation that all of the boards have access to electronic transfer of funds. I mentioned earlier that some of their practice acts are quite old. There are boards that are specifically required to accept transfer of funds through cashier's checks, money orders, and things like that. That is one of the provisions that is in BDR 54-518. Bill Draft Request R-520 has not been introduced yet. It is a recommendation from the Sunset Subcommittee for an interim study to continue looking at the operations of the licensing boards. I will not go into the rest of the general findings and recommendations, except for the last one. As we mentioned, they are self-funded and do not receive any State General Fund money; some have quite a bit more money than others. Because the boards are all independent, they all have to have offices and information technology services. They employ executive directors. They incur legal fees and lobbying expenses, and they have office overhead. The Subcommittee has suggested to the Legislature that it explore the idea of central personnel consolidation. There might be some way that some of these boards can share expenses, and it may even reduce their fees for some of their professional licensees.

In addition to the Sunset Subcommittee, the Governor's Finance Office, Division of Internal Audits, prepared an Audit Report of the Boards and Commissions Occupational and Professional Licensing Boards, Report No. 18-05 (Exhibit H). This document has some interesting information about executive director salaries and reserves and some of their other expenses.

**Chair Spiegel:**

Are there any additional questions? [There were none.] Is there any public comment?  
[There was none.] This meeting is adjourned [3:01 p.m.].

RESPECTFULLY SUBMITTED:

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Karen Easton  
Committee Secretary

APPROVED BY:

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Assemblywoman Ellen B. Spiegel, Chair

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

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a letter dated January 15, 2019, regarding Biannual Status Report on Audits of Certain State Records, submitted by Rocky Cooper, Legislative Auditor, Audit Division, Legislative Counsel Bureau.

[Exhibit D](#) is a document titled "Performance Audit, Department of Business and Industry, Division of Industrial Relations 2018," presented by Shannon Ryan, Audit Supervisor, Audit Division, Legislative Counsel Bureau.

[Exhibit E](#) is a letter dated February 8, 2019 from Ray Fierro, Administrator, Division of Industrial Relations, Department of Business and Industry.

[Exhibit F](#) is a document titled "Performance Audit, Department of Business and Industry, Division of Financial Institutions 2018," presented by Tammy A. Goetze, Audit Supervisor, Audit Division, Legislative Counsel Bureau.

[Exhibit G](#) is a document titled "Bulletin 19-17, Sunset Subcommittee of the Legislative Commission (NRS 232B.210), Legislative Counsel Bureau, September 2018," submitted by Carol Stonefield, Deputy Research Director, Research Division, Legislative Counsel Bureau.

[Exhibit H](#) is a document titled "Boards and Commissions, Occupational and Professional Licensing Boards, Report No. 18-05, June 14 2018," submitted by Carol Stonefield, Deputy Research Director, Research Division, Legislative Counsel Bureau, prepared by the State of Nevada, Governor's Finance Office, Division of Internal Audits.