

SUPREME COURT OF NEVADA

Case No. 79669

GREENMART OF NEVADA NLV LLC,; and
NEVADA ORGANIC REMEDIES, LLC
Appellants/Cross-Respondents,

Electronically Filed
Apr 15 2020 09:46 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

ETW MANAGEMENT GROUP LLC; GLOBAL HARMONY LLC; GREEN
LEAF FARMS HOLDINGS LLC; GREEN THERAPEUTICS LLC; HERBAL
CHOICE INC.; JUST QUALITY LLC; LIBRA WELLNESS CENTER LLC;
ROMBOUGH REAL ESTATE INC. D/B/A MOTHER HERB; NEVCANN LLC;
RED GARDENS LLC; THC NEVADA LLC; ZION GARDENS LLC; and
MMOF VEGAS RETAIL INC.,
Respondents/Cross-Appellants,

and

THE STATE OF NEVADA DEPARTMENT OF TAXATION,
Respondent,

Appeal from the Eighth Judicial District Court,
Clark County, Nevada
District Court Case # A-19-797004-B
The Honorable Elizabeth Gonzalez

APPELLANT'S APPENDIX – VOLUME 10

David R. Koch (NV Bar #8830)
Brody R. Wight (NV Bar #13615)
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Telephone: (702) 318-5040
Email: dkoch@kochscow.com, bwight@kochscow.com
Attorneys for Appellant Nevada Organic Remedies, LLC

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29	Notice of Entry of Order and Order Regarding Nevada Wellness Center, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	11/6/19	AA 007058 - AA 007067
20	Order Granting in Part Motion to Coordinate Cases for Preliminary Injunction Hearing	7/11/19	AA 004938 - AA 004940
22	Order Granting Preliminary Injunction (Findings of Fact and Conclusions of Law)	8/23/19	AA 005277 - AA 005300
46, 47	Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report	n/a	AA 011408 - AA 011568
47	Preliminary Injunction Hearing, Defendant's Exhibit 2018 List of Applicants for Marijuana Establishment Licenses 2018	n/a	AA 011569 - AA 011575

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47	Preliminary Injunction Hearing, Defendant's Exhibit 5025 Nevada Organic Remedies, LLC's Organizational Chart	n/a	AA 011576 - AA 011590
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter	n/a	AA 011591, AA 011592
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter as Contained in the Application	n/a	AA 011593 - AA 011600
47	Preliminary Injunction Hearing, Defendant's Exhibit 5038 Evaluator Notes on Nevada Organic Remedies, LLC's Application	n/a	AA 011601 - AA 011603
47	Preliminary Injunction Hearing, Defendant's Exhibit 5045 Minutes of ther Legislative Commission, Nevada Legislative Counsel Bureau	n/a	AA 011604 - AA 011633
47	Preliminary Injunction Hearing, Defendant's Exhibit 5049 Governor's Task Force for the Regulation and Taxation of Marijuana Act Meeting Minutes	n/a	AA 011634 - AA 011641
47	Register of Actions for Serenity Wellness Center, LLC v. State of Nevada, Department of Taxation, Case No. A-18-786962-B	n/a	AA011642 - AA 011664
27	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006506 - AA 006508
2	Serenity Wellness Center, LLC et al.'s Complaint	1/4/19	AA 000343 - AA 000359
0	Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint	7/11/19	AA 004907 - AA 004924
5, 6	Serenity Wellness Center, LLC et al.'s Ex Parte Motion for Leave to file Brief in Support of Motion for Preliminary Injunction in Excess of Thirty Pages in Length	4/10/19	AA 001163 - AA 001288

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40	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/20/19	AA 003603 - AA 003636
23	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Objection to Court's Exhibit 3	8/27/19	AA 005540 - AA 005543
27	Serenity Wellness Center, LLC et al.'s Joinder to Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/7/19	AA 006528 - AA 006538
4	Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	3/19/19	AA 000769 - AA 000878
18	Serenity Wellness Center, LLC et al.'s Reply in support of Motions for Summary Judgment	5/22/19	AA 004395 - AA 004408
29	Serenity Wellness Center, LLC et al.'s Second Amended Complaint	11/26/19	AA 007131 - AA 007153
5	Serenity Wellness Center, LLC et al.'s Summons to State of Nevada, Department of Taxation	3/26/19	AA 001031 - AA 001034
19	Serenity Wellness Center, LLC et al.'s Supplemental Memorandum of Points and Authorities in Support of Preliminary Injunction	6/10/19	AA 004564 - AA 004716
6	State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Amended Complaint	4/17/19	AA 001313 - AA 001326
19	State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Second Amended Complaint	6/4/19	AA 004513 - AA 004526
5	State of Nevada, Department of Taxation's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint	4/10/19	AA 001150 - AA 001162

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15	State of Nevada, Department of Taxation's Answer to Serenity Wellness Center, LLC et al.'s Complaint	5/20/19	AA 003637 - AA 003648
20	State of Nevada, Department of Taxation's Answer to Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint	7/15/19	AA 004949 - AA 004960
11	State of Nevada, Department of Taxation's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/20/19	AA 002704 - AA 002724
11-14	State of Nevada, Department of Taxation's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix	5/20/19	AA 002725 - AA 003444
24	State of Nevada, Department of Taxation's Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/23/19	AA 005984 - AA 005990
28	State of Nevada, Department of Taxation's Opposition to Motion to Nevada Wellness Center, LLC's Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/24/19	AA 006827 - AA 006832
28	State of Nevada, Department of Taxation's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	10/24/19	AA 006889 - AA 006954
10	State of Nevada, Department of Taxation's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/9/19	AA 002273 - AA 002534
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5	Stipulation and Order to Continue Hearing and Extend Briefing Schedule for Motion for Preliminary Injunction	4/8/19	AA 001144 - AA 001149
46	Transcripts for Hearing on Objections to State's Response, Nevada Wellness Center, LLC's Motion Re Compliance Re Physical Address, and Bond Amount Set	8/29/19	AA 011333 - AA 011405
29	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 1	5/24/19	AA 007170 - AA 007404
30	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 2 Volume 1	5/28/19	AA 007405 - AA 007495
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34, 35	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 6	6/10/19	AA 008370 - AA 008594
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36, 37	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 8 Volume 2	6/18/19	AA 008960 - AA 009093
37	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 9 Volume 1	6/19/19	AA 009094 - AA 009216
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39	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 11	7/1/19	AA 009624 - AA 009727
39, 40	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 12	7/10/19	AA 009728 - AA 009902
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42, 43	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 15 Volume 2	7/15/19	AA 010415 - AA 010593
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43, 44	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 17 Volume 1	8/13/19	AA 010699 - AA 010805
44	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 17 Volume 2	8/13/19	AA 010806 - AA 010897
44, 45	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 18	8/14/19	AA 010898 - AA 011086
45	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 19	8/15/19	AA 011087 - AA 011165
45, 46	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 20	8/16/19	AA 011166 - AA 011332

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT NEVADA ORGANIC REMEDIES, LLC'S OPENING BRIEF** was filed electronically with the Nevada Supreme Court on the 17th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Adam Fulton and Maximilien D. Fetaz
Brownsein Hyatt Farber Shreck, LLP

Counsel for Respondents,

ETWManagement Group LLC; Global Harmony LLC; Green Leaf Farms Holdings LL; Green Therapeutics LLC; Herbal Choice Inc.; Just Quality LLC; Libra Wellness Center LLC; Rombough Real Estate Inc. d/b/a Mother Herb; NEVCANN LLC; Red Gardens LLC; TH Nevada LLC; Zion Gardens LLC; and MMOF Vegas Retail Inc.

Ketan D. Bhirud, Aaron D. Ford, Theresa M. Haar, David J. Pope,
and Steven G. Shevorski

Office of the Attorney General

Counsel for Respondent,

The State of Nevada Department of Taxation

David R. Koch, Steven B. Scow, Daniel G. Scow, and Brody R. Wight

Koch & Scow, LLC

Counsel for Appellant,

Nevada Organic Remedies, LLC

Margaret A. McLetchie, Alina M. Shell

McLetchie Law

Counsel for Appellant,

Counsel for GreenMart of Nevada NLV LLC

/s/ David R. Koch

Koch & Scow

A recent article in the Las Vegas Review-Journal ("Nevada's legal marijuana industry faces banking problem," April 1, 2017) discussed issues in Nevada. These include:

- There will be an influx of cash that has no bank to utilize due to federal law.*
- Companies cannot get loans or take debit or credit cards.*
- Companies cannot pay taxes without using cash.*
- Companies may not be able to get financing.*
- There may be banking and other solutions being pioneered by other recreational marijuana states.*

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

No dissent.

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

Nevada legislative and administrative actions will be necessary to adopt the recommendation.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

Unsure, but likely nothing.

Clean Air Act

1. Working group name:

Consumer Safety, Education and Health

2. Individual sponsor(s):

Joe Hardy, Nevada Senate

Joe Iser, Chief Health Officer, Southern Nevada Health District

Dr. John DiMuro, Chief Medical Officer, NV Dept. of Health and Human Services

3. Describe the recommendation:

Marijuana smoke, along with vapors and other tobacco products, needs to be included in the Nevada Clean Indoor Air Act.

4. Which guiding principle(s) does this recommendation support?

Guiding Principle 1 - Promote the health, safety, and well-being of Nevada's communities

Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments and the industry

Guiding Principle 3 - Ensure the youth are protected from the risks associated with marijuana, including preventing the diversion of marijuana to anyone under the age of 21

Guiding Principle 4- Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome

Guiding Principle 6 - Establish regulations that are clear and practical, so that interactions between law enforcement (at the local, state and federal levels), consumers, and licensees are predictable and understandable

5. What provision(s) of Question 2 does this recommendation apply to?

Section 5. Powers and duties of the Department.

6. What issue(s) does the recommendation resolve?

A safer and healthier indoor air in businesses and public areas.

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

No dissent.

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

Open the NCIAA and add in these provisions.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

Unsure, but likely nothing.

Edible Marijuana

1. Working group name:

Consumer Safety, Education and Health

2. Individual sponsor(s):

Joe Hardy, Nevada Senate

Joe Iser, Chief Health Officer, Southern Nevada Health District

Dr. John DiMuro, Chief Medical Officer, NV Dept. of Health and Human Services

3. Describe the recommendation:

All marijuana edibles need to be regulated by the proper authorities to assure a safer product for consumer consumption.

We recommend that NRS authorize the health authorities in Nevada to regulate the production and labeling of edible marijuana products for safety of consumption. Each regulatory authority (Carson City Health and Human Services, Washoe County Health District, the Division of Public and Behavioral Health, and the Southern Nevada Health District) needs to develop and have approved regulations consistent with their current authorities and regulations related to edible marijuana. This includes both medical and recreational marijuana products.

4. Which guiding principle(s) does this recommendation support?

Guiding Principle 1 - Promote the health, safety, and well-being of Nevada's communities

Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments and the industry

Guiding Principle 3 - Ensure the youth are protected from the risks associated with marijuana, including preventing the diversion of marijuana to anyone under the age of 21

Guiding Principle 4 - Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome

Guiding Principle 6 - Establish regulations that are clear and practical, so that interactions between law enforcement (at the local, state and federal levels), consumers, and licensees are predictable and understandable

5. What provision(s) of Question 2 does this recommendation apply to?

Section 5. Powers and duties of the Department.

6. What issue(s) does the recommendation resolve?

Health and safety of consumers.

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

No.

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

Statute must authorize the health authorities to create regulation. Regulatory agencies should work together to assure regulations are consistent, clear, concise, and appropriate. These authorities have a history of working together on other matters and can do so again on this issue.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

The cost of implementation is the time and cost of developing regulations and getting them approved through the regulatory authorities. There are several models of jurisdictions that have already developed regulations that the regulatory authorities in Nevada can use. These include the State of Colorado, the City of San Francisco, the County of San Mateo, and more recently, the State of California.

Health and Safety – Medical and Clinical Issues

1. Working group name:

Consumer Safety, Education and Health

2. Individual sponsor(s):

Dr. Joe Hardy, Nevada Senate

Dr. Joe Iser, Chief Health Officer, Southern Nevada Health District

Dr. John DiMuro, Chief Medical Officer, NV Dept. of Health and Human Services

3. Describe the recommendation:

There are a variety of medical and clinical issues that health providers need to understand that are related to the implementation of the recreational marijuana program. In addition, the Division of Public and Behavioral Health needs to review many of these to provide programs as needed by health professionals.

Some of these issues include the following:

A) Treatment Programs

Treatment programs for individuals needing substance abuse treatment will need to be assessed to ensure they will meet the needs of the State once recreational marijuana begins being sold. Marijuana, in some research, has been shown to be an effective adjunctive treatment for opioid treatment. There needs to be a routinely updated list on the internet of providers who can recommend medical marijuana and counseling, addiction specialists, and referrals to treatment programs. DPBH and the other health authorities should develop public workshops for the general public with an emphasis for the non-user.

B) Poison Control Centers

*Poison control centers will need to be made aware of intoxication issues and where professional expertise is available in various parts of the State. **Currently, the poison control center hotline is maintained by a private, out of state entity. It should be anticipated that the State costs for maintaining the call center will increase at least in the next year with an anticipated increase in call volume.*

C) Routine Medical Check-ups

Medical providers will need to consider incorporating THC levels into routine patient blood work for chronic users (this will help obtain data as well as have people begin to understand their own body's metabolism of THC).

D) Website for Treatment and Outcomes

The State should create a website as an information repository with appropriate links to research articles and relevant links to health, treatment, and outcomes.

These are a sampling of medical and clinical issues. We recommend that the professional societies work to address these within their respective memberships and professions. Some of these are issues that CME and other professional education should consider going forward.

4. Which guiding principle(s) does this recommendation support?

Guiding Principle 1 - Promote the health, safety, and well-being of Nevada's communities

Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments and the industry

Guiding Principle 3 - Ensure the youth are protected from the risks associated with marijuana, including preventing the diversion of marijuana to anyone under the age of 21

5. What provision(s) of Question 2 does this recommendation apply to?

Section 5. Powers and duties of the Department.

6. What issue(s) does the recommendation resolve?

Health and safety of consumers, medical professional education for healthcare providers, issues that need to be considered for healthcare providers.

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

No dissent.

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

Not applicable.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

There should be an anticipated increase in cost to the State due to the anticipated increase in call volume to poison control centers (as seen in Colorado). These primarily are issues that both healthcare providers and public health authorities need to consider.

Workers Compensation

1. Working Group Name:

Consumer Safety, Education and Health

2. Individual Sponsor(s):

*Dr. John DiMuro, Chief Medical Officer, DHHS
With input from Nevada Attorney's for Injured Workers (NAIW)*

3. Describe the Recommendation:

This working group recommends the following related to ensuring worker's compensation and employer/employee safety:

A. PROVIDE UPDATES TO NRS LANGUAGE REGARDING DENIAL OF INSURANCE CLAIMS FOR EMPLOYEES WORKING UNDER THE INFLUENCE OF MARIJUANA

1) Revision of current language in NRS 616C.230

Insert language to NRS 616C.230 (1) (d) as follows:

NRS 616C.230 Grounds for denial, reduction or suspension of compensation; evidence of and examination for use of alcohol or controlled substance.

1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(d) That occurred while the employee was under the influence of a controlled or prohibited substance, unless the employee can prove by clear and convincing evidence that his or her being under the influence of a controlled or prohibited substance was not the proximate cause of the injury. For the purposes of this paragraph, an employee is under the influence of a controlled or prohibited substance if the employee had an amount of a controlled or prohibited substance in his or her system at the time of his or her injury that was equal to or greater than the limits set forth in subsection 3 of NRS 484C.110 and for which the employee did not have a current and lawful prescription issued in the employee's name. Every employer shall provide an employee with a copy of the employer's workers' compensation policy and a copy of the employer's drug and alcohol policy including the employer's policy on the use of medical and recreational Marijuana, thereby giving notice of the employer's policies. An employer, insurer or their third-party administrator shall not deny workers' compensation claim if the employer has not complied with forgoing notice requirement.

(e) Metabolites should be excluded as grounds for denial, and/or reduction or suspension of compensation The grounds for denial should be limited to the measurement of THC only.

NRS 616C.230 presumes that if an injured person is under the influence of a controlled-prohibited substance in the amount set forth in the DUI statute (NRS 484C.110(3)) that compensation is not payable. Current statute allows a worker's compensation claim to be denied if the injured individual tests positive for certain substances, including marijuana and its metabolites. We provide these recommendations to protect both the employer and employee regarding Worker's Compensation claims which may involve Working Under the Influence (WUI).

2) Revision of current language in NRS 484.110

NRS 484C.110 Unlawful acts; affirmative defense; additional penalty for violation committed in work zone

Remove language in NRS 484C.110 (3) (h) as follows:

3. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his or her blood or urine that is equal to or greater than:

(g) Marijuana 10 2

~~*(h) Marijuana metabolite 15 5*~~

Metabolite is not correlated with intoxication, and metabolite of a legal substance is not significant.

Add language in NRS 484C.110 as follows:

Should the injured worker have levels below this threshold regardless of clinical symptomology, the WC carrier must cover the claim. If the injured worker has levels that meet or exceed 2ng/ml, then the WC carrier has the right to deny the claim.

We recommend that statute be consistent regarding thresholds for intoxication between traffic laws and worker's compensation laws. The same levels for DUI (blood levels =2ng/ml or as they are amended).

3) Update the expectation of the Administrator of current language in NRS 616.400

The Administrator of the Department of Industrial Relations in accordance with NRS 616A.400 shall create a standard form to be used by employer as evidence of compliance of the notice requirement proposed in the language changes to 616C.230.

NRS 616A.400 Duties of Administrator: Regulations. The Administrator shall:

- 1. Prescribe by regulation the time within which adjudications and awards must be made.*
- 2. Regulate forms of notices, claims and other blank forms deemed proper and advisable.*

4) Define new language of "WUI" for Working Under the Influence in statute

B. OUTLINE RESPONSIBILITIES OF WORKER'S COMPENSATION CARRIER, PRIVATE INSURANCE CARRIER, AND HEALTH CARE PROVIDER

Per NRS 616C.230, Workman's Compensation benefits may be denied, reduced or suspended on the basis of evidence of and examination for use of alcohol or controlled substances. While blood alcohol concentration is determined by several factors, primarily the amount of alcohol consumed, blood THC levels vary based upon multiple factors including primarily the route of consumption (oral vs inhaled). Blood concentrations will vary depending upon the potency of the marijuana and the manner in which the drug is smoked (or consumed). This difference in pharmacokinetics presents a dilemma for employers, employees and workman's compensation insurance carriers. Upon querying other states which have enacted marijuana legislation, this issue remains open to interpretation by the parties involved in the industrial accident including the injured worker, employer, primary health insurer and the workman's compensation insurance carrier.

Issues that remain to be resolved include the following:

- whether WC carriers can offer a 'rider' to employers,*
- whether primary health insurers will be mandated to cover the medical costs for those injured at work if the WC claim is denied,*
- define how the providers will be compensated should the claim be denied.*

1) Carriers to offer a 'rider' to employers

Allow Insurance companies to charge a 'rider' to those employees/employers who use marijuana. If a 'rider' is in force, the health insurer must cover the claim. If there is no 'rider', the primary health insurer can deny the claim and the injured worker is responsible for their medical care

2) Creation of a THC Superfund or Fund of Last resort

We must consider those individuals who may be injured by the actions of a worker under the influence of THC. Programs such as the Crime Victims Fund are federally funded and therefore will likely not assist with needed financial support to crime victims' secondary to marijuana intoxication. This fund could be created with a 1% tax at the retail level (or TBD level) which would only tax those purchasing THC-containing products. This program would have no financial impact to the non-consumer (much like cigarettes and alcohol) and all costs to maintain the program as well as payment of claims could be made to 5% of the total fund value. Creation of such a fund could potentially financially support the injured person and keep them from entering Medicaid. This fund will obviously grow on a go-forward basis and could serve as a THC general fund in the future (if managed correctly).

3) Create criteria for employer/employee liability for Industrial Injuries

We must establish the criteria for which an industrial accident is considered employment-related versus employee related. This would then mandate the workman's compensation insurance carrier to cover the injured worker. However, should the clinical evaluation determine the injured worker was under the influence, the worker's compensation insurance carrier could deny the claim. The obvious objective criteria would be a blood test for THC, not metabolites.

4) *Define employee's understanding of marijuana policy and implications to health insurance.*

To ensure that workers understand their coverage and to further ensure that there is adequate compensation for injuries that may increase due to increased accessibility. We offer the following recommendations:

a. *Create criteria around the need for a blood draw*

Because blood is the most accurate way of measuring THC or other substances, we recommend establishing criteria for which the injured worker must undergo a blood draw. Because time is of the essence when testing THC levels, the standards set forth in NRS 484C.170 and 484C.180 may not suffice in this circumstance. This should be an objective criteria so as not to discriminate against any injured worker (such as by inquiring about a history of MJ use and using that information to decide whether to perform a blood draw. This could be construed as a discriminatory practice).

- 1. All injured workers must undergo blood draw for THC upon presentation for medical care due to injuries sustained during employment.*
- 2. We must provide resources for those injured due to the negligence of THC-intoxicated individuals. This becomes necessary because there will likely be no federal financial support forthcoming.*

5) *Collaboration between Worker's Compensation and Insurance Companies*

Bring Workman's Insurance companies together in a forum to discuss rules and regulations pertaining to injuries suffered while under the influence to make sure there are no lapses in coverage for the injured.

4. Which Guiding Principle(s) does this recommendation support?

Guiding Principle 1 - Promote the health, safety, and well-being of Nevada's communities

Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments and the industry

Guiding Principle 4- Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome

Guiding Principle 6 - Establish regulations that are clear and practical, so that interactions between law enforcement (at the local, state and federal levels), consumers, and licensees are predictable and understandable

5. What provision(s) of Question 2 does this recommendation apply to?

Section 5. Powers and duties of the Department.

6. What issue(s) does the recommendation resolve?

Workplace injuries and possible denial of coverage on claims

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

No.

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

Discussions and alternative solutions with both Workman's Compensation Insurance carriers and primary healthcare insurers. Possible insurance regulatory changes. Creating an "Expert Panel" for review prior to adopting regulations including input from the NAIW (Nevada Attorney's for Injured Workers).

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

*Will need to be addressed amongst business associations and the insurance industry.
Consider input from Nevada Attorney's for Injured Workers.*

E. Summary of Task Force and Working Group Dissents

Recommendation	Working Group	Dissent
Regulatory Structure		
Regulatory Organizational Structure	Cultivation	No dissent
Transfer of Medical Program to Department of Taxation	Retail	No Task Force dissent Working group dissent: J. DeLett-Snyder
Inspection Requirements	Production/ Manufacturing	No Task Force dissent Working group dissent: A. Thornley
Local Government Regulation	Production/ Manufacturing	Task Force dissent: J. Tolles, D. Stapleton and W. Henderson No Working group dissent
Marijuana Control Board	Law Enforcement	No dissent
Ownership Interest	Labs	No dissent
Advisory Committee	Labs	No dissent
Ancillary Marijuana Business Licensing	Labs	Task Force dissent: A. Zeller No Working group dissent
Co-Location	Production/ Manufacturing	No dissent
Dual Use Medical and Retail	Retail	No dissent
Taxation and Revenue		
Taxation – 15% Excise Tax	Taxation/Revenue/ Regulatory Structure	No dissent
Taxation – Retail Tax 10%	Taxation/Revenue/ Regulatory Structure	No dissent
Fees – Local Government Share	Taxation/Revenue/ Regulatory Structure	Task Force and Working group dissent: D. Contine
Application and Licensing Requirements		
Application Process	Taxation/Revenue/ Regulatory Structure	No dissent
Rating Criteria on Applications	Taxation/Revenue/ Regulatory Structure	No dissent
Ownership Issues/ Licensing Requirements	Taxation/Revenue/ Regulatory Structure	Task Force dissent: W. Henderson and C. Callaway No Working group dissent
Monopolies - Limitations on the Number of Marijuana Establishments	Taxation/Revenue/ Regulatory Structure	No dissent

Recommendation	Working Group	Dissent
Agent Card Requirements	Taxation/Revenue/ Regulatory Structure	Task Force dissent: C. Callaway No Working group dissent
Retail Store Allocation	Taxation/Revenue/ Regulatory Structure	No dissent
Inventory Tracking		
Inventory Control	Production/ Manufacturing	No dissent
Centralized Inventory Tracking	Production/ Manufacturing	No dissent
Inventory Tracking and Separation of Product	Retail	No Task Force dissent Working Group dissent: J. DeLett-Snyder
Operational Requirements - Retail Stores		
Operations – Service	Retail	No dissent
Retail Regulations	Retail	No dissent
Operational Requirements - Cultivation		
Outdoor Cultivation - Buffer Zone	Cultivation	No dissent
Home Cultivation	Cultivation	No dissent
Pesticide Application and Worker Protection Standards	Cultivation	No dissent
Pesticides	Cultivation	No dissent
Outdoor Cultivation - Security Requirements	Cultivation	Task Force dissent: W. Robinson and W. Henderson Working group dissent: L. Hettrick
Product Acquisition	Cultivation	No dissent
Cultivation Supply Management	Cultivation	Task Force dissent: J. DiMuro, A. Zeller and W. Henderson No Working group dissent
Microbial Testing Limits	Cultivation	No dissent
Internal Product Evaluation Standards and Procedures	Cultivation	No dissent
Operational Requirements - Production/Manufacturing		
Production Outside of Licensed Facilities	Production/ Manufacturing	Task Force dissent: C. Callaway No Working group dissent
Disposal of Marijuana Products and Waste	Transportation/ Storage/Disposal	No dissent
Operational Requirements - Labs		

Recommendation	Working Group	Dissent
Accreditation, Validation and Auditing	Labs	No dissent
Proficiency Testing	Labs	No dissent
Inventory Control - Labs	Labs	No dissent
Sample Sizes for Testing and Retention	Labs	Task Force dissent: J. Ritter No Working group dissent
Homogeneity Testing and Adulterants	Labs	Task Force dissent: J. Pollock No Working group dissent
Operational Requirements - Distribution and Transportation		
Commercial Transportation and Storage – Operational Requirements	Transportation/ Storage/Disposal	No dissent
Storage Requirements	Transportation/ Storage/Disposal	No dissent
Application Process for a Distributor License	Transportation/ Storage/Disposal	No Task Force dissent Working group dissent: K. Brown and M. Arquilla.
Local Jurisdiction Involvement in Transportation	Transportation/ Storage/Disposal	No dissent
Delivery	Retail	No dissent
Packaging, Labeling, Potency Limitations		
Packaging Requirements	Production/ Manufacturing	Task Force dissent: J. Ritter No Working group dissent
Serving Sizes and Packaging Limitations	Production/ Manufacturing	No dissent
Product Types and Their Equivalencies	Production/ Manufacturing	Task Force dissent: C. Callaway No Working group dissent
Serving Size and Labeling of Edibles	Labs	No dissent
Uniform Potency Labeling	Consumer Safety/ Education/Health	No dissent
Signage, Marketing and Advertising		
Signage, Marketing and Advertising	Retail	No Task Force dissent Working group dissent: The Consumer Safety, Education and Health Working group and J. DeLett-Snyder

Recommendation	Working Group	Dissent
Literature Shared with the Patient/Consumer	Retail	No dissent
Education and Research		
Education	Consumer Safety/ Education/Health	No dissent
Research	Consumer Safety/ Education/Health	No dissent
Data Collection	Law Enforcement	No dissent
Oversight and Responsible Agent Training	Consumer Safety/ Education/Health	Task Force dissent: J. Ritter Working group dissent: R. Durrett
Federal Property and Funding	Consumer Safety/ Education/Health	No dissent
Law Enforcement		
Driving Under the Influence of Drugs (DUID)	Law Enforcement	Task Force dissent: T. Robinson No Working group dissent
Statutory Changes for Persons Under 21 Years of Age	Law Enforcement	No dissent
Marijuana in Correctional Facilities	Law Enforcement	No dissent
Open Container and Personal Transport	Law Enforcement	No dissent
Request for Evidentiary Testing	Law Enforcement	No Task Force dissent Working group dissent: J. Piro
Fees for Chemical Testing Associated with DUID	Law Enforcement	No dissent
Restrictions and Minimum Security Standards Regarding Firearms	Law Enforcement	Task Force dissent: J. Tolles and L. Hettrick No Working group dissent
Public Safety		
Preventing Distribution to Minors	Law Enforcement	No dissent
Preventing Diversion to Other States	Law Enforcement	No dissent
Revenue for Public Safety	Law Enforcement	Task Force dissent: J. DiMuro, J. Pollock, W. Henderson, K. Schiller and M. Pawlak No Working group dissent
Dispensing Machines	Law Enforcement	No dissent
Banking	Consumer Safety/ Education/Health	No dissent
Clean Air Act	Consumer Safety/ Education/Health	No dissent
Edible Marijuana	Consumer Safety/ Education/Health	No dissent

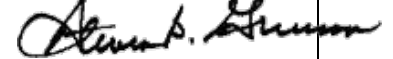
Recommendation	Working Group	Dissent
Health and Safety – Medical and Clinical Issues	Consumer Safety/ Education/Health	No dissent
Workers Compensation	Consumer Safety/ Education/Health	No dissent

F. Cross Reference Working Group and Topic

Recommendations by Working Group	Category in Appendix D Where Recommendation is Located
Production / Manufacturing	
Co-Location	Regulatory Structure
Packaging Requirements	Packaging, Labeling, Potency Limitations
Serving Sizes and Packaging Limitations	Packaging, Labeling, Potency Limitations
Inventory Control	Inventory Tracking
Inspection Requirements	Regulatory Structure
Production Outside of Licensed Facilities	Operational Requirements - Production/Manufacturing
Centralized Inventory Tracking	Inventory Tracking
Local Government Regulation	Regulatory Structure
Product Types and Their Equivalencies	Packaging, Labeling, Potency Limitations
Cultivation	
Regulatory Organizational Structure	Regulatory Organizational Structure
Outdoor Cultivation - Buffer Zone	Operational Requirements - Cultivation
Home Cultivation	Operational Requirements - Cultivation
Pesticide Application and Worker Protection Standards	Operational Requirements - Cultivation
Pesticides	Operational Requirements - Cultivation
Outdoor Cultivation - Security Requirements	Operational Requirements - Cultivation
Internal Product Evaluation Standards and Procedures	Operational Requirements - Cultivation
Product Acquisition	Operational Requirements - Cultivation
Cultivation Supply Management	Operational Requirements - Cultivation
Microbial Testing Limits	Operational Requirements - Cultivation
Law Enforcement	
Driving Under the Influence of Drugs (DUID)	Law Enforcement
Statutory Changes for Persons Under 21 Years of Age	Law Enforcement
Dispensing Machines	Public Safety
Marijuana in Correctional Facilities	Law Enforcement
Preventing Distribution to Minors	Public Safety
Preventing Diversion to Other States	Public Safety
Revenue for Public Safety	Public Safety
Open Container and Personal Transport	Law Enforcement
Data Collection	Education and Research
Request for Evidentiary Testing	Law Enforcement
Fees for Chemical Testing Associated with DUID	Law Enforcement

Recommendations by Working Group	Category in Appendix D Where Recommendation is Located
Marijuana Control Board	Regulatory Structure
Restrictions and Minimum Security Standards Regarding Firearms	Law Enforcement
Labs	
Accreditation, Validation and Auditing	Operational Requirements - Labs
Proficiency Testing	Operational Requirements - Labs
Inventory Control - Labs	Operational Requirements - Labs
Ownership Interest	Regulatory Structure
Advisory Committee	Regulatory Structure
Sample Sizes for Testing and Retention	Operational Requirements - Labs
Homogeneity Testing of Edible Marijuana Products	Operational Requirements - Labs
Ancillary Marijuana Business Licensing	Regulatory Structure
Serving Size and Labeling of Edibles	Packaging, Labeling, Potency Limitations
Transport/Storage/Disposal	
Commercial Transportation and Storage – Operational Requirements	Operational Requirements – Distribution and Transportation
Storage Requirements	Operational Requirements – Distribution and Transportation
Application Process for a Distributor License	Operational Requirements – Distribution and Transportation
Disposal of Marijuana Products and Waste	Operational Requirements - Production/Manufacturing
Local Jurisdiction Involvement in Transportation	Operational Requirements – Distribution and Transportation
Taxation/Revenue/Regulatory Structure	
Taxation – 15% Excise Tax	Taxation and Revenue
Taxation – Retail Tax 10%	Taxation and Revenue
Fees – Local Government Share	Taxation and Revenue
Application Process	Application and Licensing Requirements
Retail Store Allocation	Application and Licensing Requirements
Rating Criteria on Applications	Application and Licensing Requirements
Monopolies - Limitations on the Number of Marijuana Establishments	Application and Licensing Requirements
Agent Card Requirements	Application and Licensing Requirements
Ownership Issues/ Licensing Requirements	Application and Licensing Requirements
Retail	
Transfer of Medical Program to Department of Taxation	Regulatory Structure

Recommendations by Working Group	Category in Appendix D Where Recommendation is Located
Dual Use Medical and Retail	Regulatory Structure
Operations – Service	Operations - Retail Stores
Inventory Tracking and Separation of Product	Inventory Tracking
Retail Regulations	Operations - Retail Stores
Signage, Marketing and Advertising	Signage, Marketing and Advertising
Literature Shared with the Patient/Consumer	Signage, Marketing and Advertising
Delivery	Operational Requirements - Distribution and Transportation
Consumer Safety/Education/Health	
Federal Property and Funding	Education and Research
Education	Education and Research
Banking	Public Safety
Clean Air Act	Public Safety
Research	Education and Research
Edible Marijuana	Public Safety
Uniform Potency Labeling	Packaging, Labeling, Potency Limitations
Health and Safety – Medical and Clinical Issues	Public Safety
Workers Compensation	Public Safety
Oversight and Responsible Agent Training	Education and Research



OPPM

Ketan D. Bhirud (Bar No. 10515)
Chief Litigation Counsel
Steve Shevorski (Bar No. 8256)
Head of Complex Litigation
David J. Pope (Bar No. 8617)
Chief Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave, Suite 3900
Las Vegas, NV 89101
(775) 684-1100 (phone)
(775) 684-1108 (fax)
dpope@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, GIG,
LLC, a Nevada limited liability company,
NULEAF INCLINE DISPENSARY, LLC, a
Nevada limited liability company, NEVADA
HOLISTIC MEDICINE, LLC, a Nevada
limited liability company, TRYKE
COMPANIES SO NV, LLC, a Nevada
limited liability company, TRYKE
COMPANIES RENO, LLC, a Nevada
limited liability company, PARADISE
WELLNESS CENTER, LLC, a Nevada
limited liability company, GBS NEVADA
PARTNERS, LLC, a Nevada limited
liability company, FIDELIS HOLDINGS,
LLC, a Nevada limited liability company,
GRAVIT AS NEVADA, LLC, a Nevada
limited liability company, NEVADA PURE,
LLC, a Nevada limited liability company,
MEDIFARM, LLC, a Nevada limited
liability company, DOE PLAINTIFFS I
through X; and ROE ENTITY PLAINTIFFS
I through X,

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant.

Case No. A-19-786962-B
Dept. No. 11

**OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

The State of Nevada ex. rel. the Department of Taxation (Department), by and through its counsel, oppose Plaintiffs' motion for preliminary injunction.

INTRODUCTION

This Court should deny Plaintiffs’ motion. Under Nevada’s nascent marijuana laws, the legislature empowered the Department with vast discretion to formulate rules for a licensure program that would allow sales of recreational marijuana. As part of its obligations, the Department had to develop and administer a competitive bidding process for awarding licenses for marijuana retail stores. Its only constraint was that it had to “use an impartial and numerically scored competitive bidding process to determine which application or applications among those competing will be approved.” NRS 453D.210(6). It did. Plaintiffs present no evidence to the contrary. Confounded with this statute’s plain language and their lack of evidence, Plaintiffs endeavor to find conflict between the Nevada Revised Statutes and the Department’s regulations where none exists.

At the outset, the Department notes that Plaintiffs cannot seek judicial review here because the Department’s licensing application process was not a contested case. But Plaintiffs’ legal arguments supporting their mandamus claim also lack merit. Their textual argument that NRS 453D.200(1)(b) somehow limits the criteria that the Department could consider ignores that its phrase “shall include” is a term of illustration, not limitation. The term simply means that Department must—in addition to other criteria—consider qualifications related to the operation of a marijuana establishment. Similarly, Plaintiffs’ argument that NRS 453D.210(6) limited the Department’s discretion to ranking applications countywide fails because nothing in the statute’s text prevents the Department from further subdividing countywide applications before ranking them. Notably, because of that subdivision, the Department ended up awarding licenses to more entities—not less. Finally, Plaintiff’s argument that the Department violated NAC 453D.272(5)’s requirement that not more than 10% of available licenses in a county go to one entity relies on the incorrect, conclusory allegation that only 79 retail licenses were allocated in Clark County. It fails legally because NAC 453D.272(5) states that the

1 limitation applies to “allocable” licenses, not “allocated” licenses. It fails factually because
2 the Department actually allocated the required 80 licenses.

3 Plaintiffs various constitutional theories fare no better. First, Plaintiffs’ federal
4 constitutional claims deserve dismissal because a state agency is not a “person” under 42
5 U.S.C. §1983, even for purposes of prospective injunctive relief. Second, Plaintiffs lack the
6 prerequisite of a property interest to support a procedural due process claim. NRS
7 453D.210 does not require that licenses go to any particular applicant. Third, Plaintiffs’
8 conclusory equal protection claim is not supported by any facts (or even conclusory
9 statements) suggesting the Department treated Plaintiffs differently than other
10 applicants, let alone in a way that violates equal protection law. Fourth, the Department’s
11 regulations pass the rational basis test for purposes of economic regulations, which only
12 requires that there be a “conceivable” reason for the subject regulations’ enactment.

13 **BACKGROUND**

14 When seeking a preliminary injunction, the “moving party bears the burden of
15 providing testimony, exhibits, or documentary evidence to support its request for an
16 injunction.” *Hosp. Int’l Grp. v. Gratitude Grp., LLC*, 387 P.3d 208 (Nev. 2016). “To sustain
17 a preliminary injunction, ‘[e]vidence that goes beyond the unverified allegations of the
18 pleadings and motion papers must be presented.’” *Id.*

19 Rather than provide facts, Plaintiffs make legal arguments disguised as factual ones
20 through the use of phrases like “bias” and “abuse of discretion” without demonstrating how
21 the Department, in fact, acted with bias or abused its discretion.

22 **I. Unsupported by Evidence, the Motion Must Be Construed as a Facial** 23 **Challenge**

24 Plaintiffs have not provided any admissible facts. Rather than support their motion
25 with testimony, declarations, or documentary evidence, Plaintiffs submitted the following
26 materials. Their Exhibit A is the Ballot Initiative. Their Exhibit B consists of various
27 materials from the Department concerning the application process, but no documents
28 concerning Plaintiffs’ actual applications. Their Exhibit C is a publicly available document

1 detailing how applicants can view score information in the competitive bidding process.
2 Finally, their Exhibit D consists of a putative expert disclosure concerning statistics.

3 In sum, Plaintiffs do not (1) discuss their specific applications; (2) identify the scoring
4 system they believe should have been used; (3) allege—let alone demonstrate with
5 evidence—that they would have achieved a qualifying score under the scoring system they
6 propose; or (4) provide citation to any evidence to support their various conclusions about
7 deficiencies in the process. Instead, Plaintiffs simply allege “on information and belief” that
8 the Department *may* have somehow improperly scored applications, and that if something
9 were done differently, then they *may* have received a license.

10 **II. Plaintiffs’ Conclusory Factual Allegations Are Incorrect**

11 Plaintiffs argue that the Department violated NAC 453D.272(5) because it allocated
12 8 licenses in Clark County to a company called “Essence” when only 79 total licenses were
13 allocated countywide. Plaintiffs make their conclusory allegation without citation to any
14 evidence. They then argue this resulted in Essence having more than 10% of the licenses
15 “allocated” in Clark County because 8 is greater than 7.9. Apart from this being legally
16 wrong as NAC 453D.272(5)’s 10% limitation applies to “allocable,” not “allocated” licenses,
17 it is also factually wrong. The Department allocated 80 licenses in Clark County.

18 After the Initiative to Ballot Initiative passed, the Department issued Temporary
19 Regulations so retail marijuana sales could start on July 1, 2017.¹ Under Section 12 of those
20 regulations, an entity holding a medical dispensary registration certificate could apply for
21 a retail store license. This type of application became known as a “one-for-one” application.
22 Through the May 2017 one-for-one application period, the Department issued 47 retail
23 store licenses in Clark County.² The Department then issued 2 additional licenses in 2018
24 in Clark County—a conditional retail store license to NuLeaf CLV Dispensary, LLC and a
25 . . .

26 ¹ May 8, 2017, Temporary Regulations, attached as **Ex. D**.

27 ² Declaration of Damon Hernandez, attached as **Ex. A**.
28

1 retail store license to Wellness Connection of Nevada LLC dba Cultivate Dispensary.³
2 Thus, there were ultimately 49 one-for-one retail store licenses granted in Clark County—
3 not the 48 that Plaintiffs presumably claim in support of their argument that 1 license
4 remains unallocated.

5 **III. Plaintiffs' Expert Report Is Deficient Under Rule 26**

6 Plaintiffs' expert disclosure does not comply with Nevada Rule of Civil Procedure
7 16.1(a)(2)(B)(ii), (v), or vi). It fails to disclose a list of cases where the expert has testified
8 at trial or deposition in the last four years. It fails disclose the facts or data the expert
9 considered, instead alleging—without citation or production—that the purported expert
10 considered some completely unidentified (1) sample of applicant scores; (2) list of retail
11 store licenses; and (3) list of licenses awarded pursuant to the 2018 applications. Finally,
12 it fails to disclose the compensation paid to the expert.

13 **I. Because Plaintiffs Offer No Evidence to Support Their Various Theories,** 14 **the Department Provides a Background on the Initiative and Regulations**

15 On November 8, 2016, Nevada voters passed the Ballot Initiative, which became
16 effective on January 1, 2017.⁴ Although it immediately legalized use of recreational
17 marijuana, it required the adoption of regulations before marijuana could legally be sold.
18 Specifically, under Section 5(1), the Department was to “adopt all regulations necessary or
19 convenient to carry out the provisions of” the Ballot Initiative. Among other things, this
20 required the Department to create a licensing process to grant the limited retail licenses
21 authorized by NRS 453D.210(5)(d).

22 On May 8, 2017, the Department issued Temporary Regulations so retail marijuana
23 sales could start on July 1, 2017.⁵ Under Section 12 of those regulations, an entity holding
24 a medical dispensary registration certificate could apply for a retail store license. This type

25 ³ Declaration of Damon Hernandez, **Ex. A**.

26 ⁴ Ballot Initiative, attached as **Ex. C**. Under NRS 47.140, laws, such as statutes and
27 regulations, are subject to judicial notice.

28 ⁵ May 8, 2017, Temporary Regulations, attached as **Ex. D**.

1 of application became known as a “one-for-one” application. During that period, holders of
2 existing medical licenses applied for and received recreational licenses, thus receiving some
3 of the total retail marijuana licenses authorized by NRS 453D.210(5)(d). The Department
4 then drafted proposed Permanent Regulations and conducted Public Workshops.⁶ The
5 Department held its workshops between July 24 and 27, 2017. After the workshops, the
6 Department submitted the draft Permanent Regulations to the Legislative Counsel Bureau
7 for review on September 6, 2017.

8 Because the Temporary Regulations were set to expire in November, the Governor
9 enacted Emergency Regulations on November 1, 2017.⁷ The Emergency Regulations kept
10 the program operational while the Permanent Regulations were returned from the
11 Legislative Counsel Bureau, adopted by the Tax Commission, placed before the Legislative
12 Committee for approval, and submitted to the Secretary of State for filing.

13 The Permanent Regulations not only took into account the written and public
14 comments during the public workshops and meetings, but also incorporated
15 recommendations from the Final Report from Governor’s Task Force on the
16 Implementation of Ballot Initiative. The Legislative Counsel Bureau returned the proposed
17 Permanent Regulations on December 11, 2018. Thus, by the time Permanent Regulations
18 were adopted, there had been significant input made from the industry, the public, and
19 various levels of government in the promulgation in what would become NAC Chapter
20 453D. The Permanent Regulations were filed with the Secretary of State on February 27,
21 2018.⁸

22 ⁶ Information regarding those proposed regulations and workshops is publicly available
23 at https://tax.nv.gov/FAQs/Marijuana_Proposed_Temporary_Regulation_T002-17/ or
24 <https://bit.ly/2J3FCgu>. See *Johnson v. Cate*, No. 1:10-CV-00803-AWI, 2015 WL 5321784,
25 at *10 (E.D. Cal. Sept. 10, 2015) (explaining that “courts routinely consider records
26 from government websites to be self-authenticating” by relying on Federal Rule of
27 Evidence 902(5), which is the Federal equivalent of NRS 52.135).

28 ⁷ November 1, 2017 Emergency Regulations, attached as **Ex. E**.

⁸ Those permanent regulations which have now been codified at NAC 453D are publicly
available at <https://www.leg.state.nv.us/Nac/NAC-453D.html>.

1 In March of 2018, the Department began preparing for the limited application
2 period—which is the application period at issue in this lawsuit. During the limited
3 application period, *any* marijuana license holder—as opposed to only holders of a medical
4 dispensary registration certificate—could apply for a retail store license. For example, a
5 medical cultivator could apply for a retail store license. By contrast, in the one-for-one
6 application period, only a medical license holder could apply for a similar retail license. In
7 June 2018, the matter was presented to the Interim Finance Committee which included
8 budgeting for hiring application graders from outside the Department—just as had been
9 done in 2014 for the review of medicinal marijuana applications.⁹

10 Within days of the IFC approving the budget for the use of application graders, the
11 Department worked on the application and weighting of the scores.¹⁰ In doing so, the
12 Department reviewed the process that was used for scoring medical marijuana applications
13 in 2014, the regulations, and the statutes to determine application scoring and ranking
14 criteria.¹¹ The Department then edited the language in the application instructions
15 accordingly. On July 5, 2018, the Department posted the application and provided notice
16 that the limited application period for retail store licenses would be open from September
17 7 until September 20, 2018, with results being issued on December 5, 2018.¹²

18 The application included the scoring categories, the maximum number of points in
19 each category, the authority for the scoring categories, a timeline, and other relevant
20 information. The applications also indicate the “Evaluation committee” would consist of
21 “state officers or employees **and contracted professionals**” to evaluate and score

22 ⁹ See June 20, 2018 Interim Finance Committee Meeting Minutes, attached as **Ex. F**,
23 at p. 23. They are also publicly available at
24 <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/13373> .

25 ¹⁰ Declaration of Steve Gilbert, **Ex. B**.

26 ¹¹ Declaration of Steve Gilbert, **Ex. B**.

27 ¹² See Application, attached as **Ex. G**. It is also publicly available at
28 [https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/Recreational-Marijuana-Establishment-Application-7-2-18\(3\).pdf](https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/Recreational-Marijuana-Establishment-Application-7-2-18(3).pdf) or <https://bit.ly/2J1fhj6> .

1 applications. The application also informed the applicants “**No applicant may be**
2 **awarded more than 1 (one) retail store license in a jurisdiction/locality unless**
3 **there are less applicants than licenses allowed in the jurisdiction.**” (Emphasis in
4 original). The Department also indicated the number of licenses available in each local
5 jurisdiction and notified the local jurisdiction of this allocation on August 16, 2018. The
6 application packet included Attachment I, which instructed the applicants to mark the
7 jurisdictions in which licenses were being requested.

8 After the Department received the application materials, administrative assistants
9 logged the application with arrival date, assigned a unique number and saved them into a
10 shared drive under the unique assigned numbers.¹³ The administrative assistants would
11 then supply evaluators with applications to be evaluated in a manner similar to the process
12 used for scoring medical marijuana applications in 2014.¹⁴ On December 5, 2018, the
13 Department sent physical letters and e-mail notifications to the retail store applicants
14 regarding whether they were granted conditional licenses.

15 LEGAL STANDARD

16 NRS 33.010 authorizes an injunction only when it appears from the complaint that
17 the plaintiff is entitled to relief requested and at least part of the relief consists of
18 restraining the challenged act. The district court has sound discretion to grant or deny a
19 preliminary injunction. *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev.
20 712, 721, 100 P.3d 179, 187 (2004). “Before a preliminary injunction will issue, the
21 applicant must show (1) a likelihood of success on the merits; and (2) a reasonable
22 probability that the non-moving party’s conduct, if allowed to continue, will cause
23 irreparable harm for which compensatory damage is an inadequate remedy.” *A Cab Taxi*
24 *Serv., LLC v. Murray*, 415 P.3d 16 (Nev. 2018) (internal quotations omitted).

25 . . .

27 ¹³ Declaration of Steve Gilbert, Ex. B.

28 ¹⁴ Declaration of Steve Gilbert, **Ex. B.**

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1 retail store licensing process did not constitute a contested case under the APA and a right
2 to a review of the process is not available pursuant to a petition for judicial review.

3 Plaintiffs' request for mandamus relief also lacks merit. Plaintiffs ignore the rule
4 that mandamus cannot be used to control a discretionary act. *Gragson v. Toco*, 90 Nev. 131,
5 133, 520 P.2d 616, 617 (1974). Plaintiffs also forget that it is their burden of proof to
6 demonstrate an exception to this rule by proving that the Department's discretion was
7 exercised arbitrarily or capriciously. *Id.* Here, Plaintiff's lack of evidence is revealing.
8 Rather than meet their burden of proof, Plaintiffs offer statutory construction arguments
9 seeking to have this Court declare that the Department's regulations are invalid because
10 they exceed the Department's statutory authority. The Department will demonstrate that
11 the text of Nevada Revised Statutes 453D.210 does not compel Plaintiffs' statutory
12 construction and Plaintiffs' wholly ignore the deference that Nevada's Supreme Court has
13 stated that the Department is entitled to receive.

14 **B. Plaintiffs Ignore the "Great Deference" that the Department is**
15 **Entitled to Receive When Determining a Regulation's Validity**

16 Plaintiff cite case law to argue that courts will not hesitate to invalidate a regulation
17 that exceeds the administrative agency's enabling statute. Br. 17:17-25. Plaintiffs do
18 correctly cite those portions of those cases, but Plaintiffs' salad bar approach to argument
19 ignores an inconvenient legal principle applicable to administrative law also cited in those
20 cases. "When determining the validity of an administrative regulation, courts generally
21 give great deference' to an agency's interpretation of a statute that the agency is charged
22 with enforcing." *State of Nev. ex. rel. Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev.
23 290, 293, 995 P.2d 482, 485 (2000) (internal quotations omitted). None of Plaintiffs'
24 statutory arguments are compelled by the statute under review's text, especially when
25 viewed under this deferential principle.

26 ...

27 ...

28 ...

1 **1. The Department’s Process Was Not Arbitrary and Capricious**
2 **Because It Used an Impartial and Numerically Scored**
3 **Competitive Bidding Process**

4 The Department’s numeric scoring system was within the broad discretion granted
5 to the Department by the legislature. NRS 453D.210(6) provides that “[w]hen applications
6 are submitted for a proposed retail marijuana store within a single county, the Department
7 shall use an impartial and numerically scored competitive bidding process to determine
8 which application or applications among those competing will be approved.” No other
9 provision of NRS 453D addresses the process that the Department must use when ranking.
10 The Legislature did not mandate that a particular scoring system be used. Accordingly, so
11 long as the Department used “an impartial and numerically scored bidding process,” it had
12 broad discretion to adopt and apply regulations regarding the ranking of applications.

13 There is no dispute here that the Department used a numerically scored system.
14 Although Plaintiffs make generalized arguments that the process was not impartial, there
15 is no evidence to support such a claim. To begin, Black’s Law Dictionary defines “impartial”
16 to mean “[n]ot favoring one side more than another; unbiased and disinterested; unswayed
17 by personal interest.” BLACK’S LAW DICTIONARY (10th ed. 2014). Here, the Department’s
18 process was impartial without any preference for any applicant. The Department developed
19 its scoring criteria prior to the receipt of any applications and did not develop those criteria
20 to favor any particular applicant or group of applicants. To the extent any particular groups
21 benefited from the scoring system, it was not the result of partiality but simply caused by
22 the inherent nature of a scoring system—regardless of the system used, some parties will
23 score higher than others. Because any advantage any party received was not the product
24 of favoritism, bias, or personal interest, the system is impartial.

25 **2. NRS 453D.200(1)(b) Does Not Require the Department to**
26 **Consider *Only* Qualifications Related to the Operation of a**
27 **Marijuana Establishment**

28 Unable to escape the Department’s wide discretion in carrying out the competitive
bidding process, Plaintiffs pivot to arguing that the ranking system was constrained by
NRS 453D.200(1)(b), which provides that the regulations relating to the implementation of

1 NRS 453D “shall include ... [q]ualifications for licensure that are directly and demonstrably
2 related to the operation of a marijuana establishment.” Plaintiffs ask this Court to read
3 that provision as a limitation upon the Department’s discretion to evaluate a variety of
4 factors that are of consequence to the State. That argument fails for several reasons.

5 **First**, NRS 453D.200(1) specifically states that the Department has the authority to
6 “adopt all regulations necessary or convenient to carry out the provisions of this chapter.”
7 This broad grant of authority to adopt all regulations “necessary or convenient” vests the
8 Department with wide discretion to promulgate regulations.

9 **Second**, the canon of statutory construction regarding “the presumption of
10 nonexclusive ‘include’” provides that the “verb to *include* introduces examples, not an
11 exhaustive list.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts*,
12 Canon #15 (2012). The “term ‘including’ is not one of all embracing definition, but connotes
13 simply an illustrative applicant of the general principle.” *Fed. Land Bank of St. Paul v.*
14 *Bismarck Lumber Co.* 314 U.S. 95, 100 (1941). For purposes of interpreting administrative
15 regulations, “include” is a term of illustration, not limitation. *Richardson v. Nat’l City Bank*
16 *of Evansville*, 141 F.3d 1228, 1232 (7th Cir. 1998). Accordingly, the simple fact that the
17 regulation must include certain qualifications does not mean it cannot include other
18 qualifications.

19 **Third**, as the Nevada Supreme Court recognized in *Nevada Department of Wildlife*
20 *v. Bentz*, Nevada, through NRS 233B.090, has codified the statutory canon that regulations
21 are presumed to be valid. 106 Nev. 294, 298, 792 P.2d 28, 30 (1990) (“We note that NRS
22 233B.090 states that there is a rebuttable presumption that a regulation by an
23 administrative agency is valid.”). Under that canon, “an interpretation that validates
24 outweighs one that invalidates” (*ut res magis valeat quam pereat*). A. Scalia & B. Garner,
25 *Reading Law: The Interpretation of Legal Texts*, Canon #5 (2012). When a provision “is
26 reasonably susceptible of two interpretations, by one of which it is unconstitutional and by
27 the other valid, the court prefers the meaning that preserves to the meaning that destroys.”
28 *Panama Refining Co. v. Ryan*, 293 U.S. 388, 439 (1935). Here, although the Plaintiffs

1 proffered interpretation is incorrect for other reasons, it also would invalidate several
2 regulations. Given the choice between an interpretation that validates the regulations and
3 one that invalidates, this Court should choose the one that validates.

4 **Finally** and similarly, the constitutional-doubt canon requires that a “statute
5 should be interpreted in a way that avoids placing its constitutionality in doubt.”
6 A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts*, Canon #38 (2012);
7 *see also United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408
8 (1909). This canon is not a restatement of the presumption canon, but goes even further. It
9 militates against not only those interpretations that would render the statute
10 unconstitutional but also those that would *even raise serious* questions of constitutionality.
11 *Id.* Here, if Plaintiffs legal arguments were to be accepted—which they should not—their
12 proffered reading of NRS 453D.200(1)(b) would, by their own admission, raise questions
13 regarding the constitutionality of the various statutes and regulations. The constitutional-
14 doubt canon requires that such an interpretation be avoided.

15 **3. The Department had Discretion to Establish Criteria for**
16 **Ranking Applicants in its Competitive Bidding Process**

17 The Department used its discretion to develop its scoring criteria in good faith with
18 good reasons. Plaintiffs generally complain that (a) the Department subdivided the
19 rankings by local jurisdictions and limited each applicant to one license per locality; (b)
20 considered “irrelevant” criteria like diversity; (c) failed to issue the 80 required licenses in
21 Clark County; and (d) exceeded the 10% cap per jurisdiction of licenses that could be
22 awarded to a single company. For the following reasons, Plaintiffs arguments all fail.

23 **a. The Department Had Discretion to Rank Applicants by**
24 **Local Jurisdiction**

25 Plaintiffs argue that NAC 453D272(1)—which allows the Department to allocate
26 licenses within local jurisdictions rather than countywide—somehow conflicts with NRS
27 453D.210(6)—which requires the Department to use a competitive bidding process when
28 competing applications are received within a single county. Br. at 18-21. Contrary to

1 Plaintiffs’ argument, however, there is no conflict between NAC 453D.272(1) and NRS
2 453D.210(6). In deciding whether NRS 453D.210 conflicts with NAC 453.272, this Court
3 should be guided by the deference that is due to the Department under Nevada law. “An
4 agency’s interpretation of a statute that it is authorized to execute is entitled to deference
5 ‘unless it conflicts with the constitution or other statutes, exceeds the agency’s powers, or
6 is otherwise arbitrary and capricious.” *Nuleaf CLV Dispensary, LLC v. State Dep’t of*
7 *Health & Human Servs., Div. of Pub. & Behavioral Health*, 134 Nev. Adv. Op. 17, 414 P.3d
8 305, 308 (2018) (quoting *Cable v. State ex rel. Emp’rs Ins. Co. of Nev.*, 122 Nev. 120, 126,
9 127 P.3d 528, 532 (2006)).

10 Here, Plaintiffs are reading conflict into these provisions where none exists.
11 NRS 453D.210(6) simply provides that “[w]hen applications are submitted for a proposed
12 retail marijuana store within a single county, the Department shall use an impartial and
13 numerically scored competitive bidding process to determine which application or
14 applications among those competing will be approved.” Nothing textually prohibited the
15 Department from enacting NAC 453D.272(3) and ranking applications within local
16 jurisdictions rather than countywide. Because the statute does not prohibit the
17 Department from further subdividing the rankings into local jurisdictions, the Department
18 was allowed to do so and this Court’s inquiry should end there.

19 Far from acting arbitrarily, the Department had good reason for further subdividing
20 the rankings by local jurisdictions and limiting each applicant to one license per locality.
21 The Governor’s Task Force Report recommended this exact action. It suggested that “the
22 retail marijuana store licenses allocated to the counties . . . be distributed to the local
23 jurisdiction(s) within those counties based on the population in the jurisdiction(s).” NAC
24 453.272(3) tracks that language, requiring the Department to “allocate the licenses for
25 retail marijuana stores . . . to [local] jurisdictions within each county and to the
26 unincorporated area of the county proportionally based on the population of each
27 jurisdiction and of the unincorporated area of the county.”

28 . . .

1 Subdividing into localities serves to prevent monopolistic practices. Unless the
2 Legislature removes the license cap or greatly increases the number of licenses, future
3 application periods will likely involve only a very limited number of licenses being available
4 owing to revocation, surrender, or return after a wind-down of operations (such as in a
5 receivership). The Limited Application Period, by contrast, posed a great risk of giving a
6 limited number of applicants a distorted market share, as roughly half of the available
7 licenses in each local jurisdiction were available for distribution during the Limited
8 Application Period.

9 For example, in Clark County, 80 licenses are available. These licenses were
10 allocated as follows: 35 in Unincorporated Clark County, 22 in Las Vegas, 11 in Henderson,
11 11 in North Las Vegas, and 1 in Mesquite. Thus, under the monopoly rules, up to 8 retail
12 store licenses could be held in Clark County. In 2018, only 31 licenses remained available
13 in Clark County. The 31 licenses were to be allocated as follows: 10 in Unincorporated Clark
14 County, 10 in Las Vegas, 6 in Henderson, and 5 in North Las Vegas.

15 To show the need for the stated limitation in this application period, assume the
16 applicants with the four highest scores in Clark County only held cultivation licenses. By
17 holding such a license, this meant each license holder was eligible to apply for a retail store
18 license, but the cultivation facility would not count towards the monopoly limit on retail
19 stores. Without the limitation listed in the application, the four highest ranked applicants
20 could each request 7 or 8 of the conditional retail store licenses available in Clark County.
21 All told, under this scenario, all the new store licenses in Clark County could go to 4
22 applicants who would then control almost 40% of the retail store licenses in Clark County—
23 even though they held no retail store licenses before this application period. Even if each
24 applicant already held a store license in Clark County, all the licenses could go to as few as
25 five applicants. These 5 applicants would control up to 45% of the licenses in Clark County.
26 Such an uneven distribution would not comply with the intent or spirit of the Ballot
27 Initiative, the Governor’s Task Force Report, or the regulations. Instead, through
28 . . .

1 subdivision and limitations, the Department awarded the 31 licenses available in Clark
2 County to 12 different applicants.

3 Finally, even if there were something improper about limiting the applications by
4 locality—which there is not—there is no admissible evidence that the Plaintiffs have
5 standing to complain about this issue. They have not demonstrated that but for this
6 provision, they would have scored any higher or received a license. Indeed, given that these
7 procedures expanded the pool of successful applicants, it is not possible that Plaintiffs
8 would have had received a license without these limitations. Removing these limitations
9 simply would have further concentrated licenses among those already successful licensees,
10 to the exclusion of other successful licensees.

11 **b. The Department Had Discretion to Develop Scoring**
12 **Criteria for the License Applications**

13 As explained above, NRS 453D.200(1)(b) did not limit the Department’s discretion
14 to consider factors it determined to be relevant. Nonetheless, Plaintiffs complain that the
15 Department considered (1) operating experience of another kind of business; (2) the
16 diversity and educational achievements of the owners, officers, and board members; and
17 (3) the financial resources of the applicant; and (4) the amount of taxes paid and other
18 beneficial financial contributions. Brief at 22:7-10. The Department, however, was not
19 arbitrary or capricious in considering these criteria. Indeed, the Department is now
20 **required** by statute to consider these criteria when deciding whether issue a medical
21 marijuana license. Under NRS 453A.328, the Department must consider:

22 1. The total financial resources of the applicant, both liquid and
23 illiquid;

24 2. The previous experience of the persons who are proposed to
25 be owners, officers or board members of the proposed medical
26 marijuana establishment at operating other businesses or
27 nonprofit organizations;

28 3. The educational achievements of the persons who are
proposed to be owners, officers or board members of the proposed
medical marijuana establishment;

4. The amount of taxes paid to, or other beneficial financial
contributions made to, the State of Nevada or its political
subdivisions by the applicant or the persons who are proposed to

1 be owners, officers or board members of the proposed medical
2 marijuana establishment;

3 10. The diversity on the basis of race, ethnicity or gender of the
4 applicant or the persons who are proposed to be owners, officers
5 or board members of the proposed medical marijuana
6 establishment; and

7 11. Any other criteria of merit that the Department determines
8 to be relevant.

9 As a result, Plaintiffs cannot argue that the Department's consideration of these
10 criteria in the recreational marijuana context is irrational and arbitrary without also
11 arguing that the Nevada legislature is also irrational and arbitrary or that medical and
12 recreational marijuana are so different that it somehow renders these criteria relevant to
13 medical, but not recreational marijuana.

14 Moreover, the Department had good independent reasons for considering these
15 criteria. **First**, individuals who have experience operating one kind of business are likely
16 to fare better operating another kind of business. **Second**, there is wide agreement—aside
17 from arguments regarding the methods for achieving it—that more diversity within an
18 industry helps both individual companies and the industry as a whole better service
19 customers and the community. Similarly, educational achievements are routinely
20 considered by employers and business when hiring and recruiting talent because it is
21 believed that—even if an imperfect measure—educational achievements are a predictor of
22 success in business. It is likely for this reason that the Nevada legislature added NRS
23 453A.328 which mandates that the Department consider diversity and educational
24 achievements with regard to the issuance of medical marijuana licenses. **Third**, the
25 financial resources of an applicant are relevant in a nascent and growing industry because
26 it is important that the initial market entrants be sufficiently capitalized to both grow their
27 business, service clients, and withstand individual and general downturns. **Fourth**, the
28 Department is justified in seeking out business owners who contribute both financially and
otherwise to their communities.

...

...

1 **c. The Department Did Not Exceed the Cap on Licenses**
2 **That Can Be Issued to a Single Company and Did Issue**
3 **the Required 80 Licenses in Clark County**

4 NAC 453D.272(5) provides that:

5 5. To prevent monopolistic practices, the Department will
6 ensure, in a county whose population is 100,000 or more, that
7 the Department does not issue, to any person, group of persons
8 or entity, the greater of:

- 9 (a) One license to operate a retail marijuana store; or
10 (b) More than 10 percent of the licenses for retail marijuana
11 stores allocable in the county.

12 Plaintiffs argue that the Department violated this provision when it issued 8 total
13 licenses in Clark County to Essence and only 79 licenses in Clark County total, resulting
14 in Essence having more than 7.9 licenses (10% of the allocated licenses). This argument
15 fails for two reasons. First, NAC 453D.272(5) states that the 10% limitation applies to
16 “allocable” licenses, not “allocated” licenses. There is no dispute that under NRS
17 453D.210(5)(d)(1), there are 80—not 79—allocable licenses in Clark County. Second, the
18 Department actually allocated 80 licenses in Clark County. It allocated 49 during the one-
19 for-one application period and 31 during the Limited Application Period.

20 **d. Plaintiffs’ Expert Provides No Helpful Opinion**

21 Plaintiffs attempt to use an alleged expert report from Dr. Amei, an Associate
22 Professor in Statistics at UNLV, to support two arguments. Both attempts fail.
23 Preliminarily, Dr. Amei has provided a report which purports to critique the Department’s
24 scoring without having actually analyzed or reviewed the underlying applications or
25 scoring process. Indeed, not only has Dr. Amei not reviewed the scored applications, her
26 report does not indicate she has even reviewed the blank application. As such, it is
27 impossible to know whether she knows what the various scoring criteria is. That being said,
28 whatever general statistical value that Dr. Amei’s report may have, it is not helpful to
29 Plaintiffs.

30 Plaintiffs first attempt to use Dr. Amei’s report to argue that the Department
31 violated NAC 453D.272(5)(b)’s limitation that no entity receive “[m]ore than 10 percent of
32 the licenses for retail marijuana stores allocable in the county.” They claim that

1 Department's awarding of 8 licenses in Clark County to an entity called Essence was
2 inappropriate because each entity was limited to 7 licenses because the Department has
3 only allocated 79 licenses in Clark County (and 10% of 79, which is 7.9, rounds down to 7).
4 This argument fails both factually and legally. First, the Department issued 80 licenses in
5 Clark County—not 79.¹⁵ Second, NAC 453D.272(5)(b) does not place a 10% limit based upon
6 the number of licenses “allocated.” It places the limit based on the number of licenses
7 “allocable”—and there is no dispute that there were 80 licenses allocable in Clark County.
8 Plaintiffs alternatively argue that the 10% limit somehow applies to the licenses allocated
9 in each period, rather than the total licenses allocable. They say this limited the
10 Department to issuing only 10% of the licenses awarded in each application period to one
11 entity. Such a reading of the regulation is not consistent with any method of interpretation
12 and would be absurd as it would allow the Department to issue *every* single license to one
13 entity so long as it did so through separate application periods. By that interpretation, the
14 Department could have had successive small rounds of applications with all or the majority
15 of the licenses going to one or a few entities. Such a provision could hardly be called an
16 anti-monopoly provision.

17 Plaintiffs then try to use Dr. Amei's report to argue that it was statistically
18 impossible for some entities to receive similar scores across jurisdictions and, as a result,
19 the Department could not have scored the applications objectively and fairly. Apart from
20 being pure speculation given that she has not reviewed the underlying applications, Dr.
21 Amei's conclusions regarding the likelihood of an applicant receiving such similar scores
22 across jurisdictions relies on the incorrect assumption that the score in each jurisdiction
23 was random and completely independent of the applicant's other score. There is no basis
24 for this assumption, and it makes no sense. An applicant who submits a high scoring
25 application in one jurisdiction and receives a high score for jurisdiction specific criteria is
26 likely going to be the type of applicant who submits good applications. In short, while Dr.
27 . . .

28 ¹⁵ See generally Exs. A and B.

1 Amei's analysis of random probability may or may not be accurate—it is of not relevant to
2 this matter.

3 **C. Plaintiffs' Constitutional Claims All Fail as a Matter of Law**

4 Preliminarily, the Department notes that it is not the correct party for a suit under
5 42 U.S.C. §1983. The United State Supreme Court held in *Will v. Mich. Dep't of State Police*
6 that states and their agencies are not “persons” capable of being sued under §1983. 491
7 U.S. 58, 64-70, 71 (1989). The Court then explained that a plaintiff to use §1983 for
8 prospective injunctive relief would have to sue the responsible state officer in his official
9 capacity. *Id.* at n.10. The Department simply is not a “person” under §1983, even where
10 Plaintiffs seek prospective injunctive relief. Even if Plaintiffs could overcome this hurdle,
11 which they cannot, their constitutional theories for procedural due process, substantive due
12 process, and equal protection fail as a matter of law.

13 Plaintiffs' constitutional theories, properly considered, arise under administrative
14 law and not constitutional law. Plaintiffs' constitutional theories are but a re-casting of
15 their administrative law arguments that the Department's regulations are improper in
16 light of the NRS 453D.210. Br. at 31:15-20. However, that does not turn those allegations
17 into a constitutional question. To be sure, Nevada courts could invalidate regulations on
18 constitutional grounds. *Meridian Gold Co. v. State ex rel. Dep't of Taxation*, 119 Nev. 630,
19 635, 81 P.3d 516, 519 (2003). But, Plaintiffs only assume a constitutional question because
20 they argue the Department's scoring criteria regulations exceeded the Department's power
21 delegated by the legislature. Br. 39:18-27. In other words, Plaintiffs are improperly relying
22 on administrative law to create a constitutional question. *See generally Brown v. Holder*,
23 763 F.3d 1141, 1148 (9th Cir. 2014) (collecting cases).

24 Plaintiffs' procedural due process theory fails for other reasons. Plaintiffs waste
25 nearly 10 pages of their brief to support the unremarkable proposition that a statutory
26 entitlement can support a sufficiently concrete interest to be protected by procedural due
27 process. Br., pp. 31-40. However, Plaintiffs fail to cite a single case where a property
28 interest was recognized where a party had a mere right to apply for a license, which would

1 only be awarded after a competitive bidding process. A procedural due process right may
2 ripen after a benefit, for example, such as welfare benefits, have already been issued to
3 prevent the arbitrary discontinuance of those benefits. *See Goldberg v. Kelly*, 397 U.S. 254,
4 260-66 (1970).

5 Contrary to Plaintiff's argument, the Department does not need to demonstrate that
6 it has "unfettered discretion." Br., 40:1-5. Plaintiffs have the burden of proof and persuasion
7 backward. It is Plaintiffs' burden to demonstrate that a statute "greatly restrict[s] the
8 discretion" of the government officials who administer the licensure process. *See Griffeth v.*
9 *Detrich*, 603 F.2d 118, 121 (9th Cir. 1979). In other words, Plaintiffs can meet their burden
10 to show a property interest if the statute "mandates a benefit when specific non-
11 discretionary factual criteria are met." *Doyle v. City of Medford*, 606 F.3d 667, 673 (9th Cir.
12 2010). Here, there is no such language in 453D.210(6). Rather, Plaintiffs only have a right
13 to participate in a competitive bidding process. NRS 453D.210(6).

14 The Department's reading of 453D.200 and 453D.210 is by far the best reading. The
15 legislature gave the Department broad discretion to adopt regulations "necessary or
16 convenient to carry out the provisions of this chapter." NRS 453D.200(1). The legislature
17 then further delegated authority to the Department to create an impartial and numerically
18 scored competitive bidding process..." NRS 453D.210(6).

19 The Departments' discretion is not limited by NRS 453D.210(5). This statute is a
20 procedural directive which states that the Department shall approve a license application
21 when certain conditions are met, but only "if . . . there are not more than" the capped
22 number of licenses already issued in that county. Although NRS 453D.210(5) creates a
23 mandatory duty on the part of the Department to issue a specific number of applications if
24 certain criteria are met, it does not dictate who receives those licenses. Instead, consistent
25 with the harmonious-reading canon, NRS 453D.210(5) dovetails with NRS 453D.210(6),
26 which requires the Department to use a competitive bidding process to determine which
27 applicant receives a license when there are more qualified applicants than there are
28 licenses to issue. A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts*,

1 Canon #27 (2012). As a result, the only mandatory duty that the Department has under
2 NRS 453D.210 is to issue a certain number of licenses—which it did. The Department,
3 however, has broad discretion to decide how to distribute those licenses among a
4 superabundance of applicants.

5 Plaintiffs’ attempt to constrain the discretion the legislature imparted to the
6 Department runs square against the lack of “particularized standards or criteria” from the
7 legislature. *See e.g. Allen v. City of Beverly Hills*, 911 F.2d 367, 370 (9th Cir. 1990)
8 (quoting *Fid. Fin. Corp. v. Fed. Home Loan Bank of S.F.*, 792 F.2d 1432, 1436 (9th Cir.
9 1986)). In *Allen v. City of Beverly Hills*, the Ninth Circuit held that an ordinance providing
10 that a city “may abolish any position” when “in the judgment of the Council it becomes
11 necessary in the interests of economy or because the necessity for a position no longer
12 exists,” gave the government “broad discretion,” rather than imposing “particularized
13 standards or criteria that *significantly* constrain.” *Id.* at 370–71 (emphasis added) (internal
14 quotation marks and alteration omitted). Thus, it did not create a protected property
15 interest. *Id.* at 372. Similarly, in *Shanks v. Dressel*, the Ninth Circuit held that a statute
16 containing several open-ended criteria, as well as one that looked to “other factors of public
17 interest,” did not contain “particularized standards” that significantly constrained
18 discretion. 540 F.3d 1082, 1091 (9th Cir. 2008) (internal quotation marks omitted).

19 Plaintiffs’ substantive due process argument is not persuasive. The Fourteenth
20 Amendment confers substantive due process rights, but these unenumerated rights are
21 limited to fundamental rights and liberty interests. *Wash. v. Glucksberg*, 521 U.S. 702,
22 720-21 (1997); *see also Does v. Munoz*, 507 F.3d 961, 965 (6th Cir. 2007) (holding that
23 substantive due process protects only “certain fundamental rights and liberty interests”).
24 Generally, substantive due process does not apply to economic and property interests.
25 *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 n. 4 (9th Cir. 1998). “The protections of
26 substantive due process have for the most part been accorded to matters relating to
27 marriage, family, procreation, and the right to bodily integrity.” *Albright v. Oliver*, 970 510
28 U.S. 266, 272 (1994) (citations omitted).

1 Plaintiffs argue that the pursuit of an occupation is a fundamental right. Br. 41:8-
2 27. Plaintiffs again ignore the test of whether substantive due process is offended where
3 the government activity in question arises in the economic sphere. Although the Supreme
4 Court has not defined the boundaries of an individual's right to pursue his chosen
5 profession, it has state that there is "some generalized due process right to choose one's
6 field of private employment." *Conn v. Gabbert*, 526 U.S. 286, 291-92 (1999). The Court has
7 emphasized, however, that all cases recognizing such a right have "deal[t] with a *complete*
8 *prohibition* on the right to engage in a calling." *Id.* at 292. Plaintiffs however can show no
9 such complete prohibition. Indeed, every single plaintiff in every single lawsuit suing the
10 Department over this application period was previously granted a license relating to
11 medical marijuana. As a result, they are all participating in the marijuana field.

12 Apart from this, even if Plaintiffs could prove they were unable to purse an
13 occupation, they would still need to prove that this is due to actions that substantively were
14 "clearly arbitrary and unreasonable, having no substantial relation to the public health,
15 safety, morals, or general welfare." *FDIC v. Henderson*, 940 F.2d 465, 474 (9th Cir.1991)
16 (citing *Sinaloa Lake Owners Ass'n v. City of Simi Valley*, 882 F.2d 1398, 1407 (9th
17 Cir.1989), cert. denied, 494 U.S. 1016, (1990) (quoting *Village of Euclid v. Ambler Realty*
18 *Co.*, 272 U.S. 365, 395 (1926))). Plaintiffs cannot hope to meet either element.

19 That Plaintiffs were unsuccessful in the competitive bidding process is not a
20 complete bar to entry into a profession. Plaintiffs do not and cannot point to any language
21 in either a Nevada statute or regulation that gave them an entitlement to a license. At
22 most, Plaintiffs had an expectation of success, like other applicants, but nothing that had
23 ripened under state law into an entitlement. *See e.g. Board of Regents v. Roth*, 408 U.S.
24 564, 577 (1972).

25 Absent a fundamental right, Nevada courts "'scrutiniz[es] the challenged legislation
26 for foundational support containing an ingredient of rational basis.'" *Barrett v. Baird*, 111
27 Nev. 1496, 1509, 908 P.2d 689, 698 (1995) (quoting *Allen v. State Pub. Emp. Ret. Bd.*, 100
28 Nev. 130, 136, 676 P.2d 792, 795–96 (1984)). No fundamental right is at issue here based

1 on a statutory right to participate in competitive bidding. There is a conceivable basis for
2 considering operating experience, diversity, educational experience, amount of taxes paid,
3 and the resources of the applicant. Br. at 12:1-16. It is rational to believe that all of these
4 characteristics have a nexus to the operational and educational skills of the applicant, the
5 potential economic stability of the applicant. Further, it is beyond peradventure that the
6 government can use diversity among other factors in government programs. *See e.g. Univ.*
7 *and Comm. Coll. Sys. of Nev. v. Farmer*, 113 Nev. 90, 97-98, 930 P.2d 730, 734-35 (1997).

8 Plaintiffs' equal protection clause argument is also not persuasive. The Equal
9 Protection Clause of the Fourteenth Amendment guarantees, "No state shall ... deny to any
10 person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, §
11 1. "The standard for testing the validity of legislation under the equal protection clause of
12 the state constitution is the same as the federal standard." *Barrett v. Baird*, 111 Nev. 1496,
13 1509, 908 P.2d 689, 698 (1995), *overruled on other grounds by Lioce v. Cohen*, 124 Nev. 1,
14 174 P.3d 970 (2008).

15 Plaintiffs allege that the Department intentionally treated them differently from
16 other similarly situated applicants under a "class of one" theory. To succeed on a "class of
17 one" claim, Plaintiffs must demonstrate that the Department: "(1) intentionally (2) treated
18 [Plaintiffs] differently than other similarly situated applicants, (3) without a rational
19 basis." *Gerhart v. Lake Cty., Mont.*, 637 F.3d 1013, 1022 (9th Cir. 2011). When analyzing
20 the rational basis requirement, the Court looks at whether there was a rational basis for
21 treating Plaintiffs differently, not whether there was a rational basis for denying Plaintiffs'
22 application. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (explaining that a class
23 of one claim requires plaintiff to show that "there is no rational basis for the difference in
24 treatment"). As pled, this claim is virtually indistinguishable from Plaintiffs' generalized
25 request for a writ of mandamus challenging the Department's scoring.

26 The Department, however, did not treat Plaintiffs differently than similarly situated
27 applicants. As to their claim of unconstitutional discrimination, Plaintiffs' allegations are
28 entirely conclusory. They complain without explanation that they were subject to

1 “disparate treatment” but the nature of the alleged “disparate treatment” remains a
2 mystery. As a result, Plaintiffs’ equal protection claim fails and is not a proper basis for
3 injunctive relief.

4 **III. The Balance of Harms and Public Interest Weigh Against an Injunction**

5 As they do not have a right to a conditional license, Plaintiffs will suffer no harm
6 absent an injunction. The State, on the other hand, would be harmed by an injunction
7 because retail licenses are a significant source of potential tax revenue. Indeed, this is often
8 cited as the major reason Ballot Initiative 2 passed. Numerous conditional licenses will
9 become active by December 4, 2019, unless an injunction is ordered. The operations from
10 those retail stores would provide the State with tax revenue beginning in 2019 as the
11 licenses were perfected and the businesses became operational.

12 **IV. Plaintiffs’ Motion Ignores the Bond Requirement**

13 Plaintiffs fail to address the amount of the bond that would be required should an
14 injunction issue. *Strickland v. Griz Corp.*, 92 Nev. 322, 323, 549 P.2d 1406, 1407 (1976)
15 (“[w]here a bond is required by statute before the issuance of an injunction, it must be
16 exacted or the order will be absolutely void.”) (quoting *Shelton v. Dist. Ct.*, 64 Nev. 487,
17 494, 185 P.2d 320, 323–24 (1947)). *See also* NEV. R. CIV. P. 65(c) (“no restraining order or
18 preliminary injunction shall issue except upon the giving of security by the applicant”). The
19 Department, however, does not insist on a large bond. Although the Department does not
20 believe an injunction should issue because the Department acted in good faith, it has no
21 goal other than defending its process, statutes, and regulations. The Department intends
22 to demonstrate that every decision it made was guided by a good faith desire to implement
23 the laws and the will of the voters without any prejudice for or against any party.

24 **CONCLUSION**

25 Plaintiffs received precisely what they bargained for in the competitive bidding
26 process—a chance to compete for but not an entitlement to a license. The Department acted
27 well within its discretion to promulgate regulations to foster a healthy, fair competitive
28 environment where many succeeded even if Plaintiffs did not. This Court should not

1 disrupt this new Nevada industry to favor those that failed. This Court should deny
2 Plaintiffs' motion for preliminary injunction.

3 DATED this 9th day of May, 2019.

4 AARON D. FORD
5 Attorney General

6 By: /s/ Ketan D. Bhirud

Ketan D. Bhirud (Bar No. 10515)
7 Chief Litigation Counsel
Steve Shevorski (Bar No. 8256)
8 Head of Complex Litigation
David J. Pope (Bar No. 8617)
9 Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of the Court by using the electronic filing system on the 9th day of May, 2019.

I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

Dominic P. Gentile	Eric D. Hone
Michael V. Cristalli	Jamie L. Zimmerman
Ross Miller	Moorea L. Katz
Vincent Savarese, III	H1 Law Group
Gentile, Cristalli, Miller, Armeni, Savarese	701 N. Green Valley Pkwy., Ste. 200
410 S. Rampart Blvd., Ste. 420	Henderson, NV 89074
Las Vegas, Nevada 89145	<i>Attorneys for Intervenor</i>
<i>Attorneys for Plaintiffs</i>	<i>Lone Mountain Partners, LLC</i>
David R. Koch	Jared Kahn
Steven B. Scow	JK Legal & Consulting, LLC
Brody R. Wight	9205 W. Russell Rd., Ste. 240
Daniel G. Scow	Las Vegas, NV 89148
Koch & Scow LLC	<i>Attorneys for Intervenor</i>
11500 S. Eastern Ave., Ste. 210	<i>Helping Hands Wellness Center, Inc.</i>
Henderson, NV 89052	
<i>Attorneys for Intervenor</i>	Margaret A. McLetchie
<i>Nevada Organic Remedies, LLC</i>	Alina M. Shell
	McLetchie Law
Jason R. Maier	701 E. Bridger Ave., Ste. 520
Joseph A. Gutierrez	Las Vegas, NV 89101
Maier Gutierrez & Associates	<i>Attorneys for Intervenor</i>
8816 Spanish Ridge Ave.	<i>GreenMart of Nevada NLV LLC</i>
Las Vegas, NV 89148	
<i>Attorneys for Intervenor</i>	Brigid M. Higgins
<i>Integral Associates LLC d/b/a Essence</i>	Rusty J. Graf
<i>Cannabis Dispensaries, Essence Tropicana,</i>	Black & Lobello
<i>LLC, Essence Henderson, LLC, CPCM</i>	10777 W. Twain Ave., 3 rd Fl.
<i>Holdings, LLC d/b/a Thrive Cannabis</i>	Las Vegas, NV 89135
<i>Marketplace, Commerce Park Medical, LLC,</i>	
<i>and Cheyenne Medical, LLC</i>	

/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A

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1. I am currently employed by the State of Nevada and serve as the Chief Compliance Audit Investigator for the Nevada Department of Taxation (Department) relating to recreational marijuana.

3. In 2018, the Department issued 2 additional licenses in Clark County - a conditional retail store license was issued to NuLeaf CLV Dispensary, LLC and a retail store license was issued to Wellness Connection of Nevada LLC dba Cultivate Dispensary.


Damon Hernandez
Chief Compliance Audit Investigator

EXHIBIT B

EXHIBIT B

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EXHIBIT C

EXHIBIT C

APR 23 2014

SECRETARY OF STATE

INITIATIVE TO REGULATE AND TAX MARIJUANA

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Short Title. Sections 1 to 18, inclusive, of this act may be cited as the Regulation and Taxation of Marijuana Act.

Sec. 2. Preamble.

In the interest of the public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses.

The People of the State of Nevada declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and to the enforcement of the regulations in this act.

The People of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol so that:

- (a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;
- (b) Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
- (c) Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;
- (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- (e) Individuals will have to be 21 years of age or older to purchase marijuana;
- (f) Driving under the influence of marijuana will remain illegal; and
- (g) Marijuana sold in the state will be tested and labeled.

Sec. 3. Definitions. As used in sections 1 to 18, inclusive, of this act, unless the context otherwise requires:

1. "Community facility" means a facility licensed to provide day care to children, a public park, a public playground, a public swimming pool, a center or facility the primary purpose of which is to provide recreational opportunities or services to children or adolescents, or a church, synagogue, or other building, structure, or place used for religious worship or other religious purpose.

2. "Concentrated marijuana" means the separated resin, whether crude or purified, obtained from marijuana.

3. "Consumer" means a person who is 21 years of age or older who purchases marijuana or marijuana products for use by persons 21 years of age or older, but not for resale to others.

4. "Department" means the Department of Taxation.

5. "Dual Licensee" means a person or group of persons who possess a current, valid registration certificate to operate a medical marijuana establishment pursuant to Chapter 453A of NRS and a license to operate a marijuana establishment under sections 1 to 18, inclusive, of this act.

6. "Excluded felony offense" means a conviction of an offense that would constitute a category A felony if committed in Nevada or convictions for two or more offenses that would constitute felonies if committed in Nevada. "Excluded felony offense" does not include:

(a) A criminal offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed more than 10 years ago; or

(b) An offense involving conduct that would be immune from arrest, prosecution, or penalty pursuant to Chapter 453A of NRS, except that the conduct occurred before the effective date of Chapter 453A of NRS, or was prosecuted by an authority other than the State of Nevada.

7. “Locality” means a city or town, or, in reference to a location outside the boundaries of a city or town, a county.

8. “Marijuana” means all parts of any plant of the genus *Cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” does not include:

(a) The mature stems of the plant, fiber produced from the stems, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stems (except the resin extracted therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination; or

(b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

9. “Marijuana cultivation facility” means an entity licensed to cultivate, process, and package marijuana, to have marijuana tested by a marijuana testing facility, and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

10. “Marijuana distributor” means an entity licensed to transport marijuana from a marijuana establishment to another marijuana establishment.

11. “Marijuana establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.

12. “Marijuana product manufacturing facility” means an entity licensed to purchase marijuana, manufacture, process, and package marijuana and marijuana products, and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

13. “Marijuana products” means products comprised of marijuana or concentrated marijuana and other ingredients that are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

14. “Marijuana paraphernalia” means any equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repacking, storing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

15. “Marijuana testing facility” means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.

16. “Process” means to harvest, dry, cure, trim, and separate parts of the marijuana plant by manual or mechanical means, such as sieving or ice water separation, but not by chemical extraction or chemical synthesis.

17. “Public place” means an area to which the public is invited or in which the public is permitted regardless of age. “Public place” does not include a retail marijuana store.

18. “Retail marijuana store” means an entity licensed to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities and retail marijuana stores, and to sell marijuana and marijuana products to consumers.

19. “Unreasonably Impracticable” means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

Sec. 4. Limitations. 1. Sections 1 to 18 do not permit any person to engage in and do not prevent the imposition of any civil, criminal, or other penalty for:

(a) Driving, operating, or being in actual physical control of a vehicle, aircraft, or vessel under power or sail while under the influence of marijuana or while impaired by marijuana;

(b) Knowingly delivering, giving, selling, administering, or offering to sell, administer, give, or deliver marijuana to a person under 21 years of age, unless:

(1) The recipient is permitted to possess marijuana pursuant to Chapter 453A of NRS; or

(2) The person demanded and was shown bona fide documentary evidence of the majority and identity of the recipient issued by a federal, state, county, or municipal government, or subdivision or agency thereof;

(c) Possession or use of marijuana or marijuana paraphernalia on the grounds of, or within, any facility or institution under the jurisdiction of the Nevada Department of Corrections;

(d) Possession or use of marijuana on the grounds of, or within, a school providing instruction in preschool, kindergarten, or any grades 1 through 12; or

(e) Undertaking any task under the influence of marijuana that constitutes negligence or professional malpractice.

2. Sections 1 to 18 do not prohibit:

(a) A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under sections 1 to 18, inclusive, of this act;

(b) A state or local government agency that occupies, owns, or controls a building from prohibiting or otherwise restricting the consumption, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana in that building;

(c) A person who occupies, owns, or controls a privately owned property from prohibiting or otherwise restricting the smoking, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana on that property; or

(d) A locality from adopting and enforcing local marijuana control measures pertaining to zoning and land use for marijuana establishments.

3. Nothing in the provisions of sections 1 to 18, inclusive, of this act shall be construed as in any manner affecting the provisions of Chapter 453A of NRS relating to the medical use of marijuana.

Sec. 5. Powers and duties of the Department. 1. Not later than 12 months after the effective date of this act, the Department shall adopt all regulations necessary or convenient to carry out the provisions of sections 1 to 18, inclusive, of this act. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:

(a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;

(b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;

(c) Requirements for the security of marijuana establishments;

(d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;

(e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;

(f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;

(g) Requirements for record keeping by marijuana establishments;

(h) Reasonable restrictions on signage, marketing, display, and advertising;

(i) Procedures for the collection of taxes, fees, and penalties imposed by sections 1 to 18, inclusive, of this act;

(j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location;

(k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and marijuana establishments at the same location;

(l) Procedures to establish the fair market value at wholesale of marijuana; and

(m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of section 13 of this act.

2. The Department shall approve or deny applications for licenses pursuant to section 9 of this act.
3. The Department may by motion or on complaint, after investigation, notice of the specific violation, and an opportunity for a hearing, pursuant to the provisions of Chapter 233B of NRS, suspend, revoke, or fine a licensee for the violation of sections 1 to 18, inclusive, of this act or for a violation of a regulation adopted by the Department pursuant to this section.
4. The Department may immediately suspend the license of any marijuana establishment if the marijuana establishment knowingly sells, delivers, or otherwise transfers marijuana in violation of sections 1 to 18, inclusive, of this act, or knowingly purchases marijuana from any person not licensed pursuant to sections 1 to 18, inclusive, of this act or to Chapter 453A of NRS. The Department must provide an opportunity for a hearing pursuant to the provisions of NRS 233B.121 within a reasonable time from a suspension pursuant to this subsection.
5. To ensure that individual privacy is protected:
 - (a) The Department shall not require a consumer to provide a retail marijuana store with identifying information other than government-issued identification to determine the consumer's age; and
 - (b) A retail marijuana store must not be required to acquire and record personal information about consumers other than information typically acquired in a financial transaction conducted at a retail liquor store.
6. The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.
7. The Department shall inspect marijuana establishments as necessary to enforce sections 1 to 18, inclusive, of this act or the regulations adopted pursuant to this section.

Sec. 6. Personal Use and Cultivation of Marijuana. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, it is lawful, in this State, and must not be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:

1. Possess, use, consume, purchase, obtain, process, or transport marijuana paraphernalia, one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana;
2. Possess, cultivate, process, or transport not more than six marijuana plants for personal use and possess the marijuana produced by the plants on the premises where the plants were grown, provided that:
 - (a) Cultivation takes place within a closet, room, greenhouse, or other enclosed area that is equipped with a lock or other security device that allows access only to persons authorized to access the area; and
 - (b) No more than 12 plants are possessed, cultivated, or processed at a single residence, or upon the grounds of that residence, at one time;
3. Give or otherwise deliver one ounce or less of marijuana, other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana without remuneration to a person provided that the transaction is not advertised or promoted to the public; or
4. Assist another person who is 21 years of age or older in any of the acts described in this section.

Sec. 7. Marijuana Paraphernalia Authorized. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, it is not unlawful and shall not be an offense or be a basis for seizure or forfeiture of assets for persons 21 years of age or older to manufacture, possess, use, transport, or purchase marijuana paraphernalia, or to distribute or sell marijuana paraphernalia to a person who is 21 years of age or older.

Sec. 8. Lawful operation of marijuana establishments. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, or the regulations adopted pursuant to section 5 of this act, it is lawful and must not, in this

State, be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:

1. Possess marijuana and marijuana products, purchase marijuana from a marijuana cultivation facility, purchase marijuana and marijuana products from a marijuana product manufacturing facility, return marijuana or marijuana products to a facility from which they were purchased, transport marijuana and marijuana products to or from a marijuana testing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, or sell marijuana and marijuana products to consumers, if the person conducting the activities described in this subsection has a current, valid license to operate a retail marijuana store or is acting in the person's capacity as an agent of a retail marijuana store.

2. Cultivate, harvest, process, package, or possess marijuana, sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store, transport marijuana to or from a marijuana cultivation facility, a marijuana product manufacturing facility, or a marijuana testing facility, use the services of a marijuana distributor to transport marijuana to or from marijuana establishments, or purchase marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an agent of a marijuana cultivation facility.

3. Package, process, manufacture, or possess marijuana and marijuana products, transport marijuana and marijuana products to or from a marijuana testing facility, a marijuana cultivation facility, or a marijuana product manufacturing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, sell marijuana and marijuana products to a retail marijuana store or a marijuana product manufacturing facility, purchase marijuana from a marijuana cultivation facility, or purchase marijuana and marijuana products from a marijuana product manufacturing facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana product manufacturing facility or is acting in his or her capacity as an agent of a marijuana product manufacturing facility.

4. Possess marijuana and marijuana products and transfer and transport marijuana and marijuana products between marijuana establishments, if the person transporting the marijuana and marijuana products has a current, valid license to operate as a marijuana distributor or is acting in his or her capacity as an agent of a marijuana distributor.

5. Possess, process, repackage, transport, or test marijuana and marijuana products if the person has a current, valid license to operate a marijuana testing facility or is acting in his or her capacity as an agent of a marijuana testing facility.

6. Lease or otherwise allow property owned, occupied, or controlled by any person, corporation, or other entity to be used for any of the activities conducted lawfully in accordance with this section.

Sec. 9. Contracts pertaining to marijuana enforceable. It is the public policy of the People of the State of Nevada that contracts related to the operation of marijuana establishments under sections 1 to 18, inclusive, of this act should be enforceable, and no contract entered into by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, or by those who allow property to be used by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, shall be deemed unenforceable on the basis that the actions or conduct permitted pursuant to the license are prohibited by federal law.

Sec. 10. Certification of marijuana establishments. 1. No later than 12 months after the effective date of this act, the Department shall begin receiving applications for marijuana establishments.

2. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall only accept applications for licenses for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities pursuant to sections 1 to 18, inclusive, of this act,

from persons holding a medical marijuana establishment registration certificate pursuant to Chapter 453A of NRS.

3. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall issue licenses for marijuana distributors pursuant to sections 1 to 18, inclusive, of this act, only to persons holding a wholesale dealer license pursuant to Chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.

4. Upon receipt of a complete marijuana establishment license application, the Department shall, within 90 days:

- (a) Issue the appropriate license if the license application is approved; or
- (b) Send a notice of rejection setting forth the reasons why the Department did not approve the license application.

5. The Department shall approve a license application if:

(a) The prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department and the application fee required pursuant to section 12;

(b) The physical address where the proposed marijuana establishment will operate is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property;

(c) The property is not located within:

(1) 1,000 feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten through grade 12 and that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department; or

(2) 300 feet of a community facility that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department;

(d) The proposed marijuana establishment is a proposed retail marijuana store and there are not more than:

(1) 80 licenses already issued in a county with a population greater than 700,000;

(2) 20 licenses already issued in a county with a population that is less than 700,000 but more than 100,000;

(3) 4 licenses already issued in a county with a population that is less than 100,000 but more than 55,000;

(4) 2 licenses already issued in a county with a population that is less than 55,000;

(5) Upon request of a county government, the Department may issue retail marijuana store licenses in that county in addition to the number otherwise allowed pursuant to this paragraph;

(e) The locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality; and

(f) The persons who are proposed to be owners, officers, or board members of the proposed marijuana establishment:

(1) Have not been convicted of an excluded felony offense; and

(2) Have not served as an owner, officer, or board member for a medical marijuana establishment or a marijuana establishment that has had its registration certificate or license revoked.

6. **Competing applications.** When competing applications are submitted for a proposed retail marijuana store within a single county, the Department shall use an impartial and numerically scored competitive bidding process to determine which application or applications among those competing will be approved.

Sec. 11. Expiration and renewal. 1. All licenses expire one year after the date of issue.

2. The Department shall issue a renewal license within 10 days of receipt of the prescribed renewal application and renewal fee from a marijuana establishment if its license is not under suspension or has not been revoked.

Sec. 12. Fee schedule. 1. The Department shall require each applicant for a marijuana establishment license to pay a one-time application fee of \$5,000.

2. The Department may require payment of an annual licensing fee not to exceed:

For the initial issuance of a license for a retail marijuana store.....	\$20,000
For a renewal license for a retail marijuana store.....	\$6,600
For the initial issuance of a license for a marijuana cultivation facility.....	\$30,000
For a renewal license for a marijuana cultivation facility.....	\$10,000
For the initial issuance of a license for a marijuana product manufacturing facility.....	\$10,000
For a renewal license for a marijuana product manufacturing facility.....	\$3,300
For the initial issuance of a license for a marijuana distributor.....	\$15,000
For a renewal license for a marijuana distributor.....	\$5,000
For the initial issuance of a license for a marijuana testing facility.....	\$15,000
For a renewal license for a marijuana testing facility.....	\$5,000

Sec. 13. Marijuana establishment operating requirements. In addition to requirements established by rule pursuant to section 5 of this act:

1. Marijuana establishments shall:

- (a) Secure every entrance to the establishment so that access to areas containing marijuana is restricted to persons authorized to possess marijuana;
- (b) Secure the inventory and equipment of the marijuana establishment during and after operating hours to deter and prevent theft of marijuana;
- (c) Determine the criminal history of any person before the person works or volunteers at the marijuana establishment and prevent any person who has been convicted of an excluded felony offense or who is not 21 years of age or older from working or volunteering for the marijuana establishment.

2. All cultivation, processing, and manufacture of marijuana must take place at a physical address approved by the Department and within an area that is enclosed and locked in a manner that restricts access only to persons authorized to access the area. The area may be uncovered only if it is enclosed with security fencing that is designed to prevent unauthorized entry and that is at least 8 feet high.

3. All cultivation, processing, and manufacture of marijuana must not be visible from a public place by normal unaided vision.

4. All cultivation, processing, and manufacture of marijuana must take place on property in the marijuana establishment's lawful possession or with the consent of the person in lawful physical possession of the property.

5. A marijuana establishment is subject to reasonable inspection by the Department, and a person who holds a marijuana establishment license must make himself or herself, or an agent thereof, available and present for any inspection required by the Department. The Department shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection.

Sec. 14. Penalties. 1. Restrictions on personal cultivation.

(a) Except as otherwise provided in 453A of NRS, any person who:

- (1) Cultivates marijuana plants within 25 miles of a retail marijuana store licensed pursuant to sections 1 to 18, inclusive, of this act, unless the person is a marijuana cultivation facility or a person acting in his or her capacity as an agent of a marijuana cultivation facility;**
- (2) Cultivates marijuana plants where they are visible from a public place by normal unaided vision; or**
- (3) Cultivates marijuana on property not in the cultivator's lawful possession or without the consent of the person in lawful physical possession of the property;**

(b) Is guilty of:

- (1) For a first violation, a misdemeanor punished by a fine of not more than \$600.**
- (2) For a second violation, a misdemeanor punished by a fine of not more than \$1,000.**
- (3) For a third violation, a gross misdemeanor.**
- (4) For a fourth or subsequent violation, a category E felony.**

2. A person who smokes or otherwise consumes marijuana in a public place, in a retail marijuana store, or in a moving vehicle is guilty of a misdemeanor punished by a fine of not more than \$600.
3. A person under 21 years of age who falsely represents himself or herself to be 21 years of age or older to obtain marijuana is guilty of a misdemeanor.
4. A person under 21 years of age who knowingly enters, loiters, or remains on the premises of a marijuana establishment shall be punished by a fine of not more than \$500 unless the person is authorized to possess marijuana pursuant to Chapter 453A NRS and the marijuana establishment is a dual licensee.
5. A person who manufactures marijuana by chemical extraction or chemical synthesis, unless done pursuant to a marijuana product manufacturing license issued by the Department or authorized by Chapter 453A of NRS, is guilty of a category E felony.
6. A person who knowingly gives marijuana to any person under 21 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 21 years of age is guilty of a misdemeanor.
7. A person who knowingly gives marijuana to any person under 18 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 18 years of age is guilty of a gross misdemeanor.
8. Notwithstanding the provisions of sections 1 to 18, inclusive, of this act, after the effective date of this act, the legislature may amend provisions of this act to provide for the conditions in which a locality may permit consumption of marijuana in a retail marijuana store.

Sec. 15. Marijuana excise tax. 1. An excise tax is hereby imposed and must be collected by the State respecting wholesale sales of marijuana in this State by a marijuana cultivation facility at a rate of 15 percent of the fair market value at wholesale of the marijuana. The tax imposed pursuant to this subsection:

- (a) Is the obligation of the marijuana cultivation facility; and
- (b) Is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.

Sec. 16. Any tax revenues, fees, or penalties collected pursuant to sections 1 to 18, inclusive, of this act, first must be expended to pay the costs of the Department and of each locality in carrying out sections 1 to 8, inclusive, of this act and the regulations adopted pursuant thereto. The Department shall remit any remaining money to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.

Sec. 17. Severability. If any provision of this act, or the application thereof to any person, thing, or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 18. Effective Date. This act shall become effective on October 1, 2015 if approved by the legislature, or on January 1, 2017 if approved by the voters.

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

The initiative proposes statutory amendments that would regulate and tax marijuana similar to alcohol. If passed, persons at least 21 years old would be allowed to possess and use a limited amount of marijuana. Giving or selling marijuana to minors, driving under the influence of marijuana, and marijuana use in public would remain prohibited.

The Nevada Department of Taxation would issue licenses to marijuana retailers, suppliers, testing facilities, and distributors. The Department would determine the qualification for licensure, security, packaging, labeling and testing of marijuana. Counties, cities, and towns would control marijuana business locations. Marijuana businesses would not be able to operate near schools, childcare facilities, houses of worship, or certain other community facilities. Retail licenses will be limited in number. The Department would oversee marijuana businesses and licensees. Licensees who engage in certain conduct, including selling marijuana to minors, allowing minors on their premises, or permitting on-site marijuana consumption would be subject to penalties.

An excise tax of 15% would be imposed on wholesale sales of marijuana. The existing sales tax would apply to retail sales of marijuana. Net revenue generated under this proposal would be deposited in the Distributive School Account and used for support of K-12 education.

County of _____

(Only registered voters of this county may sign below)

Petition District: _____

(Only registered voters of this petition district may sign below)

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Office Use Only

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AFFIDAVIT OF CIRCULATOR

(To be signed by circulator in the presence of a notary public)

STATE OF NEVADA)

)

County of _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

____ day of _____, _____, by _____.

Notary Public

EXHIBIT D

EXHIBIT D

PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION

LCB File No. T002-17

May 8, 2017

EXPLANATION - Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: NRS 453D.200 authorizes the Department to adopt all regulations necessary or convenient to carry out the provisions of NRS Chapter 453D.

Section 1. Chapter 453D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 35, inclusive, of this chapter.

Sec. 2. *As used in sections 2 to 35, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, have the meanings ascribed to them in those sections.*

Sec. 3. *“Department” defined. “Department” means the Department of Taxation.*

Sec. 4. *“Division” defined. “Division” means the Division of Public and Behavioral Health of the Department of Health and Human Services.*

Sec. 5. *“Fair Market Value” defined. “Fair Market Value” is the value established by the Department based on the price that a buyer would pay to a seller in an arm’s length transaction for marijuana in the wholesale market.*

Sec. 6. *“Marijuana Establishment” defined. A “Marijuana Establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.*

Sec. 7. *“Marijuana Establishment Agent” defined. A “Marijuana Establishment Agent” means an owner, officer, board member, employee or volunteer of a marijuana establishment, an independent contractor who provides labor relating to the cultivation, processing, or distribution of marijuana or the production of marijuana or marijuana products for a licensed marijuana establishment, or an employee of such an independent contractor.*

Sec. 8. *“Excluded Felony Offense” defined. An “Excluded Felony Offense” has the meaning ascribed to it in NRS 453D.*

Sec. 9. *“Medical Marijuana Establishment Registration Certificate” defined. A “Medical Marijuana Establishment Registration Certificate” has the meaning ascribed to it in NRS 453A.119.*

Sec. 10. *“Marijuana” defined. “Marijuana” has the meaning ascribed to it in NRS 453D.030.*

Sec. 11. *“Medical Marijuana” defined. “Medical Marijuana” means the possession, delivery, production or use of marijuana pursuant to NRS 453A.*

PRODUCTION AND DISTRIBUTION OF MARIJUANA

Temporary licensing of retail marijuana stores, marijuana testing facilities, marijuana product manufacturing facilities, and marijuana cultivation facilities

Sec. 12. Procedures for the issuance and revocation of a temporary license to operate a marijuana establishment.

1. A medical marijuana establishment that has received a medical marijuana establishment registration certificate and is operating and in good standing, as defined in subsections 7 and 8 of this section, under its medical marijuana establishment registration

certificate may apply for a marijuana establishment temporary license no later than May 31, 2017.

2. The application must be submitted by the same entity that holds the medical marijuana establishment certificate and must be submitted on a form prescribed by the Department pursuant to NRS 453D.210 and must include, without limitation:

(a) A one-time, nonrefundable application fee of \$5,000 plus a license fee of:

(1) \$20,000 for a Retail Establishment;

(2) \$30,000 for a Cultivation Facility;

(3) \$10,000 for a Production/Manufacturing Facility; or

(4) \$15,000 for a Testing Facility

(5) \$15,000 for a Marijuana Distributor

(b) That the applicant is applying for a temporary marijuana establishment license;

(c) The type of temporary marijuana establishment license for which the applicant is applying;

(d) The name of the marijuana establishment, as reflected on the registration certificate issued pursuant to NRS 453A and in the articles of incorporation or other documents filed with the Secretary of State;

(e) The physical address where the marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;

(f) The mailing address of the applicant;

(g) The telephone number of the applicant;

(h) The electronic mail address of the applicant;

(i) Authorization for the Department to review the records of the Division necessary

to determine if the applicant is in good standing under its medical marijuana establishment registration certificate;

(j) Attestation that the applicant understands its location must be properly zoned in compliance with NRS 453D.210(5)(a)-(c) and NRS 453D.210(5)(e) prior to receiving a temporary marijuana establishment license;

(k) A signed copy of the Request and Consent to Release Application Form for Temporary Marijuana License;

(l) An attestation that the information provided to the Department to apply for the temporary marijuana establishment license is true and correct according to the information known by the affiant at the time of signing;

(m) The signature of a natural person for the proposed marijuana establishment and the date on which the person signed the application; and

(n) Any other information that the Department may require.

3. The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a temporary marijuana establishment license. A list of the licensed entities will be posted on the Department's website.

4. Upon receipt of the application by the Department, the Department shall approve the issuance of a temporary marijuana establishment license if:

(a) The applicant holds the same or similar license type under NRS 453A for which it is applying or is applying for a marijuana distributor license;

(b) The applicant is operating and in good standing under its medical marijuana establishment registration certificate; and

(c) The applicant is in compliance with NRS 453D.210 (5)(a)-(f). For purposes of determining compliance with 453D(5)(c) and (e), the Department will not issue the license until the Department receives written notice from the locality that the applicant is in compliance with the distance requirements and zoning and land use rules adopted by the locality.

5. If the proposed marijuana establishment will be located at a location different from the medical marijuana establishment, the Department will not issue a temporary marijuana establishment license until the Department completes an inspection of the proposed marijuana establishment. Such an inspection may require more than one visit to the proposed marijuana establishment.

6. If the temporary marijuana establishment license application is not approved, the license fee will be refunded to the applicant.

7. As used in this section, a medical marijuana establishment is in “good standing” if it is in compliance with NRS 453A and NAC 453A, including but not limited to the following:

(a) For all medical marijuana establishments:

(1) All licenses, certificates and fees are current and paid;

(2) No registration certificate suspension within 6 months of the effective date of the marijuana establishment temporary license for enforcement violations including but not limited to provisions NRS 453A.352, NRS 453A.362, NAC 453A.406, NAC 453A.414, NAC 453A.658, NAC 453A.668, and NAC 453A.672;

(3) The applicant is not delinquent in the payment of any tax administered by the Department or is not in default on a payment required pursuant to a written agreement with the Department, or is not otherwise liable to the Department for the payment of money;

(4) No citations for illegal activity or criminal conduct; and

(5) Plans of correction are in progress or are complete and on time as defined in NRS 453A.330.

(b) If a medical marijuana establishment registration certificate is provisional it is not in good standing pursuant to this section.

8. As used in this section, a medical marijuana establishment is “operating” if it filed a return and paid the tax imposed by NRS 372A.290 prior to or on May 31, 2017.

9. Any application or license fee paid for a temporary marijuana establishment license can be applied toward the fees required for a permanent license.

10. After the application period provided in subsection 1, the Department may accept additional applications for not more than a total of 5 business days. These regulations will apply to any subsequent application period determined by the Department except that the requirement to be operating as provided in subsection 8 will not apply to any subsequent application period.

Sec. 13. Temporary marijuana license except marijuana distributor: Grounds for denial, suspension or revocation.

1. The Department will deny an application for a temporary marijuana establishment license if:

(a) The applicant is not in compliance with NRS 453A, NAC 453A, NRS 453D or this chapter;

(b) The applicant is not in good standing as required by Section 12 of this chapter;

(c) The applicant is not in compliance with NRS 453D zoning requirements; and

(d) The applicant has not paid fees required by NRS 453D.

(e) The marijuana establishment has failed to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.

2. The Department will revoke or suspend a temporary marijuana establishment license if:

(a) The marijuana establishment dispenses, delivers or otherwise transfers marijuana to a person under 21 years of age;

(b) The marijuana establishment acquires usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;

(c) An owner, officer or board member of the marijuana establishment has been convicted of an excluded felony offense;

(d) The Department receives formal notice from the applicable local government that the marijuana establishment has had its authorization to operate terminated;

(e) Any license issued pursuant to NRS 453A is suspended or revoked; or

(f) The marijuana establishment failed to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.

Temporary licensing of marijuana distributors

Sec. 14. Applications to operate marijuana establishment – marijuana distributors:

Required provisions.

1. The Department will accept distributor applications from applicants meeting the following criteria:

(a) Persons holding a liquor wholesaler dealer license pursuant to NRS 369;

(1) Person has the meaning ascribed to it in NRS 0.039.

(2) The person holding the wholesaler liquor dealer license must be the person applying for the marijuana distributor license.

(b) Medical marijuana establishments that hold a registration certificate pursuant to NRS 453A.322(5) and are operating and in good standing as provided in Section 12 of this chapter; or

(c) Applicants who are currently in the business of transporting medical marijuana and whose employees hold valid agent cards pursuant to NRS 453A.332

(1) For the applicant and each person who is proposed to be an owner, officer or board member of the entity that is currently in the business of transporting medical marijuana, each must comply with the provisions set forth in NRS 453A.322 and NRS 453.332 regarding fingerprinting and background checks.

2. After the application deadline set forth in Section 15 the Department may determine pursuant to NRS 453D.210(3) that an insufficient number of distributor licenses would result from limiting licenses to persons holding a wholesale dealer license pursuant to chapter 369 of NRS. The determination will be based upon the liquor wholesale dealer applicants' responses to the following considerations:

(a) Whether the applicant has begun the process to secure local zoning and/or special use permits necessary to operate a marijuana establishment;

(b) Whether the applicant owns the building where it will operate its marijuana establishment, and if not, if it has received written permission from the property owner to operate the proposed marijuana establishment;

(c) Whether the applicant has consulted with a contractor about making physical security modifications to the building where it proposes to operate the marijuana establishment to comply with NRS 453D.300, and if so, whether those modifications would be complete by July 1, 2017, or whether the building which the applicant proposes to use complies with the security requirements for marijuana establishments;

(d) Whether the applicant acknowledges that there is a conflict between state and federal law regarding marijuana sales and that being a licensed marijuana establishment may jeopardize the applicant's status as a federally licensed liquor wholesaler and whether the applicant is prepared to enter the marijuana market despite the potential federal licensing issues;

(e) Explain whether the applicant currently serves a variety of geographic markets as a liquor wholesaler or explain how the applicant is prepared to serve different geographic markets in the state.;

(f) Explain what experience the applicant has in serving a variety of retailers as a liquor wholesaler;

(g) Other information included in the application described in Section 15; and

(h) Other information the applicant believes shows that it is prepared to serve the marijuana establishment market on July 1, 2017.

Sec. 15. Temporary marijuana establishment license for marijuana distributor. Procedures for the issuance of a temporary marijuana distributor license for an applicant who does not hold a medical marijuana registration certificate.

1. An application submitted for a temporary marijuana distributor license from an applicant who does not have a medical marijuana establishment registration certificate must

be submitted on or before May 31, 2017 on a form prescribed by the Department pursuant to NRS 453D.210 and must include:

(a) A one-time, nonrefundable application fee of \$5,000; plus a \$15,000 license fee; and

(b) The name of the proposed marijuana distributor, as reflected in the articles of incorporation or other documents filed with the Secretary of State;

(c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability company, association or cooperative, joint venture or any other business organization;

(d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business, and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;

(e) The physical address where the proposed marijuana distributor will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;

(f) The mailing address of the applicant;

(g) The telephone number of the applicant;

(h) The electronic mail address of the applicant;

(i) An attestation that the information provided to the Department to apply for the temporary marijuana distributor license is true and correct according to the information known by the affiant at the time of signing;

(j) The signature of a natural person for the proposed marijuana distributor and the date on which the person signed the application;

(k) Documentation from a financial institution in this State, or any other state or the District of Columbia, which demonstrates:

(1) That the applicant has liquid assets that demonstrate the applicant is in a financial condition to operate as a distributor. The funds should be unencumbered and able to be converted within 30 days after a request to liquidate such assets; and

(2) The source of those liquid assets.

(l) A description of the proposed organizational structure of the proposed marijuana distributor, including, without limitation:

(1) An organizational chart showing all owners, officers and board members of the proposed marijuana distributor; and

(2) A list of all owners, officers and board members of the proposed marijuana distributor that contains the following information for each person:

(a) The title of the person;

(b) A short description of the role the person will serve in for the organization and his or her responsibilities;

(c) Whether the person has served or is currently serving as an owner, officer or board member of a medical marijuana establishment;

(d) Whether the person has served as an owner, officer or board member for a medical marijuana establishment that has had its medical marijuana establishment registration certificate revoked or suspended;

(e) Whether the person has previously had a medical marijuana establishment agent registration card revoked;

(f) Whether the person is a law enforcement officer;

- (g) Whether the person is currently an employee or contractor of the Department;*
- (h) Whether the person has an ownership or financial investment interest in a medical marijuana establishment;*
- (i) A signed copy of the Request and Consent to Release Application Form for Temporary Marijuana Distributor License;*
- (j) A complete set of fingerprints and written permission of the owner, officer or board member authorizing either the Department or the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;*
- (1) If required, authorization for the Department to obtain account information from the Division regarding fingerprints and background checks.*
- (k) A signed copy of the Child Support Verification Form; and*
- (l) The completed Driver Verification Form*
- (m) For each owner, officer and board member of the proposed marijuana distributor:*
- (1) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of an excluded felony offense,*
- (2) An attestation signed and dated by the owner, officer or board member that he or she has not served as an owner, officer, or board member for a medical marijuana establishment that has had its registration certificate suspended or revoked;*
- (3) That the information provided to support the application for a temporary marijuana distributor license is true and correct;*

(4) A narrative description, not to exceed 750 words, demonstrating:

(a) Any previous experience at operating other businesses or nonprofit organizations; and

(b) Qualifications that are directly and demonstrably related to the operation of a marijuana establishment.

(5) A resume.

(n) A financial plan which includes, without limitation:

(1) Financial statements showing the resources of the applicant;

(2) If the applicant is relying on money from an owner, officer or board member, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Department awards a distributor license to the applicant and the applicant obtains the necessary approvals from local governments to operate; and

(3) Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.

(o) Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana distributor on a daily basis, which must include, without limitation:

(1) A detailed budget for the proposed marijuana distributor, including pre-opening, construction and first year operating expenses;

(2) An operations manual that demonstrates compliance with NRS 453D and this chapter;

(3) An education plan which must include, without limitation, providing educational materials to the staff of the proposed marijuana distributor; and

(4) An indication from the proposed marijuana distributor that it is aware that it must comply with all local government enacted zoning restrictions and be in compliance with NRS 453D.210 prior to issuance of a temporary marijuana distributor license.

(p) Any other information the Department may require.

(1) The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a temporary marijuana establishment license. A list of the licensed entities will be posted on the Department's website.

(2) The Department will not issue a temporary marijuana distributor license until the Department completes an inspection of the proposed marijuana distributor. Such an inspection may require more than one visit to the proposed marijuana distributor.

Sec. 16. Temporary distributor license: Suspension for operational deficiencies; plan of correction.

1. If the Department determines that there are any deficiencies in the operation of a marijuana distributor or in the provision of services by a marijuana distributor, the Department may suspend its temporary marijuana distributor license and request a written plan of correction from the marijuana distributor.

2. A marijuana distributor whose marijuana distributor license has been suspended pursuant to subsection 1 of this section shall develop a plan of correction for each deficiency and submit the plan to the Department for approval within 10 business days after receipt of the statement of deficiencies. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected.

3. If the plan submitted pursuant to subsection 2 of this section is not acceptable to the Department, the Department may direct the marijuana distributor to resubmit a plan of correction or the Department may develop a directed plan of correction with which the marijuana distributor must comply.

Sec. 17. Temporary distributor license: Grounds for denial, suspension or revocation of a temporary license to operate as a marijuana distributor to an applicant who does not hold a medical marijuana registration certificate.

1. The Department will deny an application for a temporary marijuana distributor license if:

(a) The applicant for the temporary marijuana distributor license is not in compliance with any provision of this chapter or NRS 453D; or

(b) An owner, officer or board member of the applicant for the temporary marijuana distributor license:

(1) Is an employee or contractor of the Department;

(2) Has an ownership or financial investment interest in an independent testing facility and also is an owner, officer or board member of a marijuana distributor; or

(3) Provides false or misleading information to the Department.

2. The Department will revoke a temporary marijuana distributor license if:

(a) The marijuana distributor engages in any of the following:

(1) Dispensing, delivering or otherwise transferring marijuana to a person under 21 years of age;

(2) Acquiring usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;

(b) An owner, officer or board member of the marijuana distributor has been convicted of an excluded felony offense; or

(c) The Department receives formal notice from the applicable local government that the marijuana distributor has had its authorization to operate terminated.

3. The Department may revoke or suspend any temporary marijuana distributor license issued or may deny any application under the provisions of this chapter and NRS 453D upon any of the following grounds:

(a) Violation by the marijuana distributor of any of the provisions of this chapter or NRS 453D;

(b) The failure or refusal of a marijuana distributor to comply with any of the provisions of this chapter or NRS 453D;

(c) The failure or refusal of a marijuana distributor to carry out the policies and procedures or comply with the statements provided to the Department in the application of the marijuana distributor;

(d) Operating as a marijuana distributor without a temporary marijuana distributor license;

(e) The failure or refusal to return an adequate plan of correction to the Department within 10 business days after receipt of a statement of deficiencies pursuant to Section 16 of this chapter;

(f) The failure or refusal to correct any deficiency specified by the Department within the period specified in a plan of correction developed pursuant to Section 16 of this chapter; or

(g) The failure or refusal to cooperate fully with an investigation or inspection by the Department;

4. If the Department revokes a temporary marijuana distributor license, the Department must provide notice to the marijuana distributor that includes, without limitation, the specific reasons for the revocation.

5. Before revoking a marijuana distributor license as a result of the actions of an owner, officer or board member of the marijuana distributor pursuant to paragraph (b) of subsection 1 or paragraph (b) of subsection 2 of this section, the Department may provide the marijuana distributor with an opportunity to correct the situation.

Sec. 18. Temporary licensing of a marijuana distributor with a medical marijuana registration certificate.

1. An application submitted for a temporary marijuana distributor license from an applicant that has a medical marijuana establishment registration certificate must be submitted on a form prescribed by the Department pursuant to NRS 453D.210 and must:

(a) Include a one-time, nonrefundable application fee of \$5,000 plus a \$15,000 license fee;

(b) Comply with all provisions of Section 12 of this chapter; and

(c) The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a temporary marijuana establishment license. A list of the licensed entities will be posted on the

Department's website.

Sec. 19. Agents of temporary licensed marijuana distributors required to register with the Department; requirements for registration; establishment required to notify Department if agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor.

1. Except as otherwise provided in this section, a person shall not volunteer or work at, contract to provide labor as, or be employed by a licensed marijuana distributor unless the person is registered with the Department pursuant to this section.

2. A licensed marijuana distributor that wishes to retain as a volunteer or employ a marijuana distributor agent shall submit to the Department an application on a form prescribed by the Department. The application must be accompanied by:

(a) The name, address and date of birth of the prospective marijuana distributor agent;

(b) A statement signed by the prospective marijuana distributor agent pledging not to dispense or otherwise divert marijuana to any person who is not authorized to possess marijuana in accordance with the provisions of this chapter;

(c) A statement signed by the prospective marijuana distributor agent asserting that he or she has not previously had a medical marijuana establishment agent registration card revoked;

(d) A complete set of the fingerprints and written permission of the prospective marijuana distributor agent authorizing either the Department or the Division to forward the

fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(1) If required, authorization for the Department to obtain account information from the Division regarding fingerprints and background checks.

(e) The application fee, as allowed by law; and

(f) Such other information as the Department may require.

3. A marijuana distributor shall notify the Department within 10 days after a marijuana distributor agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor agent to the marijuana distributor.

4. A person shall not serve as a marijuana distributor agent if he or she:

(a) Has been convicted of an excluded felony offense; or

(b) Is less than 21 years of age.

5. Either the Department or the Division shall submit the fingerprints of an applicant for registration as a marijuana distributor agent to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the criminal history of the applicant.

6. If an applicant for registration as a marijuana distributor agent satisfies the requirements of this section and is not disqualified from serving as such an agent pursuant to this section or any other applicable law, the Department shall issue to the person and, for an independent contractor, to each person identified in the independent contractor's application for registration as an employee who will provide labor as a marijuana distributor agent, a marijuana distributor agent card. If the Department does not act upon an application for a

marijuana distributor agent card within 30 days after the date on which the application is received, the application shall be deemed conditionally approved until such time as the Department acts upon the application.

Sec. 20. Marijuana distributor duties and responsibilities.

1. A licensed marijuana distributor may transport marijuana and marijuana products between a marijuana establishment and:

(a) Another marijuana establishment;

(b) Between the buildings of the marijuana establishment.

2. A marijuana establishment may only transport marijuana and marijuana products to a retail marijuana store if they hold a marijuana distributor license.

3. A marijuana distributor may not purchase or sell marijuana or marijuana products unless they hold another license that allows for the purchase or sale of marijuana and marijuana products.

4. Before transporting marijuana or marijuana products pursuant to subsection 1 of this chapter, a licensed marijuana distributor must:

(a) Complete a trip plan that includes, without limitation:

(1) The name of the marijuana establishment agent in charge of the transportation;

(2) The date and start time of the trip;

(3) A description, including the amount, of the marijuana or marijuana products being transported along with the unique identification code for the product; and

(4) The anticipated route of transportation including the business names and phone numbers along with the license number of the shipping and receiving licensee.

(b) Provide a copy of the trip plan completed pursuant to paragraph (a) of this section to the marijuana establishment for which he or she is providing the transportation.

(c) Record the trip plan in the inventory control tracking system approved by the Department if such a system is available.

5. During the transportation of marijuana or marijuana products pursuant to subsection 1 of this section, the licensed distributor agent must:

(a) Carry a copy of the trip plan completed pursuant to paragraph (a) of subsection 2 of this section with him or her for the duration of the trip;

(b) Have his or her marijuana distributor agent card in his or her immediate possession;

(c) Use a vehicle without any identification relating to marijuana and which is equipped with a secure lockbox or locking cargo area which must be used for the sanitary and secure transportation of marijuana or marijuana products;

(d) Have a means of communicating with the marijuana establishment for which he or she is providing the transportation; and

(e) Ensure that all marijuana or marijuana products are not visible.

(1) After transporting marijuana or marijuana products pursuant to subsection 1 of this section, a distributor agent must enter the end time of the trip and any changes to the trip plan that was completed pursuant to paragraph (a) of subsection 2 of this section.

6. Each distributor agent transporting marijuana or marijuana products pursuant to subsection 1 of this section, must:

(a) Report any vehicle accident that occurs during the transportation to a person designated by the marijuana distributor to receive such reports within 2 hours after the accident occurs;

(b) Report any loss or theft of marijuana or marijuana products that occurs during the transportation to a person designated by the marijuana distributor to receive such reports immediately after the marijuana distributor agent becomes aware of the loss or theft. A marijuana distributor that receives a report of loss or theft pursuant to this paragraph must immediately report the loss or theft to the appropriate law enforcement agency and to the Department as required by Section 23 of this chapter; and

(c) Report any unauthorized stop that lasts longer than 2 hours to the Department.

7. A marijuana distributor shall:

(a) Maintain the documents required in paragraph (a) of subsection 2 and subsections 4 (a) and (b) of this section; and

(b) Provide a copy of the documents required in paragraph (a) of subsection 2 and subsections 4 (a) and (b) of this section to the Department for review upon request.

8. Each marijuana distributor shall maintain a log of all reports received pursuant to subsection 2 and subsection 4 (a) and (b) of this section.

9. Unless extenuating circumstances exist, a marijuana distributor may not store marijuana or marijuana products overnight for any reason and must make direct delivery. If extenuating circumstances exist, the marijuana distributor must notify the Department of the extenuating circumstances as soon as possible.

Sec. 21. Transportation of marijuana and marijuana products by a marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility

and retail store.

1. A licensed marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility, or retail marijuana store may transport marijuana and marijuana products without a marijuana distributor license as follows:

(a) A marijuana cultivation facility and a marijuana product manufacturing facility may transport marijuana and marijuana products to or from marijuana testing facility, a marijuana cultivation facility or a marijuana product manufacturing facility.

(b) A marijuana testing facility may transport marijuana and marijuana products to or from a testing facility for testing.

(c) A retail marijuana store may transport marijuana and marijuana products to or from a marijuana testing facility.

Sec. 22. Transportation of marijuana and marijuana products prohibited.

1. A marijuana establishment is prohibited from transporting marijuana and marijuana products to or from a retail marijuana store unless the establishment has a marijuana distributor license. This provision does not apply to:

(a) A medical marijuana establishment only transporting marijuana or marijuana product for sale to medical patients;

(b) A marijuana testing facility transporting samples for testing;

(c) A retail marijuana store transporting marijuana to or from a marijuana testing facility; or

(d) A retail marijuana store delivering not more than 10 ounces of marijuana or marijuana product to a consumer. Except that a retail marijuana store is prohibited from

delivering marijuana or marijuana product to a consumer at any location that has been issued a gaming license as defined in NRS 463.015.

(1) When transporting marijuana or marijuana products to a consumer pursuant to subsection 1 of this section, a retail marijuana store agent must:

(a) Before transportation, confirm verbally with the consumer by telephone that the consumer is 21 years of age or older and ordered the marijuana or marijuana products and verify the identity of the consumer;

(b) Enter the details of the confirmation obtained pursuant to paragraph (a) of this section in a log which must be available for inspection by the appropriate law enforcement agency and by the Department; and

(c) Review the government-issued identification to determine the consumer's age when the items are delivered and only leave the items with the consumer whose age and identity was confirmed.

(d) Comply with the requirements in Section 20, subsections 2 through 6 of this chapter.

2. Violation of this provision may result in denial, suspension, or revocation pursuant to Section 13 of this chapter.

Sec. 23. Reporting of loss or theft of marijuana and marijuana product; maintenance of documentation.

1. A marijuana distributor shall:

(a) Document and report any loss or theft of marijuana and marijuana product from the marijuana distributor to the appropriate law enforcement agency and to the Department; and

(b) Maintain copies of any documentation required pursuant Section 20 of this chapter for at least 5 years after the date on the documentation and provide copies of the documentation to the Department for review upon request.

Sec. 24. License Expiration and renewal

1. A marijuana establishment license issued pursuant to this chapter is valid for 90 days after January 1, 2018.

Sec. 25. Applicability of NRS 453A and NAC 453A to the regulations adopted pursuant to this chapter.

1. Relevant provisions in NRS 453A and related regulations adopted pursuant to NAC 453A are applicable herein, including but not limited to:

(a) Requirements for the security of marijuana establishments;

(b) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;

(c) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;

(d) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;

(e) Requirements for record keeping by marijuana establishments;

(f) Reasonable restrictions on signage, marketing, display, and advertising;

(g) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location; and

(h) Procedures and requirements for agent registration cards except those applying as agents of temporary licensed marijuana distributors pursuant to Section 19 of this chapter.

Sec. 26. Civil penalties.

1. The Department may:

(a) Impose a civil penalty of up to \$35,000 on any person who:

(1) Operates a marijuana establishment without a license

(b) Impose a civil penalty of up to \$10,000 on any person who:

(1) Omits, neglects or refuses to:

(a) Comply with any duty imposed up on him or her pursuant to the provisions of this chapter and NRS 453D;

(b) Do or cause to be done any of the things required pursuant to those provisions; or

(c) Does anything prohibited by the provisions of this chapter and NRS 453D

2. In determining the amount of any civil penalty assessed under this Chapter, the Department shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this Chapter and Chapter 453A, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

MARIJUANA TAX

Reporting and Transmittal of Marijuana Taxes

Sec. 27. Applicability of NRS 360.

1. The provisions of NRS 360 relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the excise and sales tax on marijuana.

Sec. 28. Sales and Use Tax Returns Required. Payment of tax; monthly return.

1. Marijuana sold pursuant to NRS 453D is subject to sales tax when it is sold at a retail store. Returns and payments must be submitted as provided in NRS 372.354 through NRS 372.395.

Sec. 29. Excise Tax Returns Required. Payment of tax: monthly return.

1. An excise tax must be collected by the State on the wholesale sales of marijuana at a rate of 15 percent of the fair market value at wholesale of the marijuana.

2. Each marijuana cultivator shall, on or before the last day of the month immediately following each month for which the marijuana is sold, file with the Department a return on a form prescribed by the Department and remit to the Department any tax due for the month covered by the return. A return must be filed whether or not a sale or purchase has occurred.

3. The marijuana cultivation facility shall pay the excise tax to the Department upon the first sale of marijuana to a marijuana retail store, a marijuana product manufacturing facility, or another marijuana cultivation facility.

(a) If a marijuana cultivation facility sells to another marijuana cultivation facility and pays the wholesale excise tax to the Department on the wholesale sale as required by NRS 453D.500, the wholesale excise tax will not be due on any subsequent sales of that product.

(b) A marijuana cultivation facility must keep all supporting documentation for verification that the excise tax was paid on the first sale of the product.

4. Calculation and Payment of Tax.

(a) Calculation of Fair Market Value at Wholesale.

(1) The Department will calculate the Fair Market Value at Wholesale using reported sales or transfer of each category.

(2) Detailed transaction reports shall be submitted by each marijuana cultivation facility to the Department by October 31, 2017. The reports shall be submitted on a form provided by the Department and must include transactions from April 2017 through September 2017.

(3) The Department will determine the best methodology to arrive at the Fair Market Value at Wholesale. The Department may, from time to time, change its method of calculating the Fair Market Value at Wholesale if, in the judgment of the Department, such change is necessary to arrive at the most accurate Fair Market Value at Wholesale given the market conditions.

(b) The tax shall be calculated based on the category of the Marijuana Product (i.e., Bud, Small/Popcorn Bud, Trim, Immature Plant, Wet Whole Plant, or Seeds) being sold.

(1) To set the initial Fair Market Value at Wholesale, the Department will use data collected from current medical marijuana cultivators as well as other data available related to the Fair Market Value at Wholesale

(2) The excise tax for Bud is computed on the total weight of all Bud that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall not be treated as the sale of Bud.

(3) The excise tax for Trim is calculated on the total weight of all Trim that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall be treated as the sale of Trim.

(4) The excise tax for Immature Plants is calculated on the total number of Immature Plants being sold.

(5) The excise tax for Wet Whole Plants is calculated on the total weight of the entire Marijuana Wet Whole Plant. The weight of the entire plant is subject to tax because the Fair Market Value at Wholesale for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing (i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis.

(a) The Marijuana Wet Whole Plant must be weighed within 2 hours of the batch being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of the batch being harvested or is subjected to further processing before being weighed, the excise tax on such plant cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates.

(b) The Marijuana Cultivation Facility must maintain records of the time each batch was harvested and weighed and the weight of each plant. The records must be in writing and created contemporaneously with the harvesting and weighing.

(6) The excise tax for seeds is calculated on the total number of seeds being sold

5. Both the marijuana cultivation facility and the first purchaser shall maintain documentation of the payment of the excise tax. Such evidence may be the purchase invoice, so long as the invoice shows the name and license number of the marijuana cultivation facility, name and license number of first purchaser, the category of product being sold, the date of sale , and the weight of the product being sold.

Sec. 30. Designation of medical marijuana inventory and retail marijuana inventory.

1. Under the current tax provisions in NRS 453D, marijuana sold by a marijuana cultivation facility is subject to a 15% wholesale tax on the fair market value of the transaction. The tax is the responsibility of the cultivator.

2. Under the current tax provisions in NRS 372A, marijuana sold by medical marijuana establishments is subject to a 2% tax at cultivation, a 2% tax at production and 2% tax at the dispensary.

3. Inventory sold by medical marijuana establishments and inventory sold by marijuana establishments must be designated and separated based on the different taxation requirements.

4. Unless legislation is enacted and effective by July 1, 2017, to apply the tax treatment of marijuana sold by marijuana establishments to marijuana sold by medical marijuana establishments, each medical marijuana establishment, except Independent Testing Laboratories must, no later than June 16, 2017, designate a portion of its medical marijuana

inventory as inventory that may be sold as retail marijuana as provided in NRS 453D. The designation must be submitted to the Department and must contain the following:

(a) A list of all inventory within the medical marijuana establishments tracking control system by inventory and tracking control number;

(b) A list of all inventory that the medical marijuana establishment is designating as retail marijuana by inventory and tracking control number; and

(c) A list of all inventory that the marijuana establishment is designating as medical marijuana by inventory and tracking control number.

5. Once inventory is designated as retail marijuana it cannot be sold as medical marijuana. Once inventory is designated as medical marijuana it cannot be sold as retail marijuana.

Sec. 31. Tax treatment of designated inventory.

1. Once inventory is designated as retail marijuana inventory it must be taxed as provided in NRS 453D.500 and any other applicable provisions regarding the taxation of marijuana sold pursuant to NRS 453D or this chapter.

2. Once inventory is designated as medical marijuana inventory it must be taxed as provided in NRS 372A.900 and any other applicable provisions regarding the taxation of marijuana sold pursuant to NRS 453A or NAC 453A.

Sec. 32. Designation of inventory and tax treatment in the event of legislative change.

1. If legislation is enacted and effective by July 1, 2017 to apply the tax treatment of marijuana sold by marijuana establishments as provided by NRS 453D.500 to marijuana sold by medical marijuana establishments, then Sections 30 and 31 of this Chapter are not

applicable. If legislation changes the tax rate of medical marijuana to 15% of the wholesale price, that change becomes effective to all marijuana sold by the cultivator after the legislation's effective date.

Sec. 33. Maintenance and availability of records of taxpayer.

1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of NRS 453D.500.

(b) Preserve those records for 4 years or until any litigation or prosecution pursuant to NRS 453D.500, inclusive, is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

Sec. 34. Examination of records by Department.

1. To verify the accuracy of any return filed by a taxpayer or, if no return is filed, to determine the amount required to be paid, the Department, or any person authorized in writing by the Department, may examine the books, papers and records of any person who may be liable for the excise tax on marijuana.

Sec. 35. Miscellaneous tax provisions

1. The provisions of NRS 372A.300 through NRS 372A.380 shall be deemed to apply the administration of the tax under NRS 453D.

EXHIBIT E

EXHIBIT E



BRIAN SANDOVAL
Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
DEONNE E. CONTINE
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION

Web Site: <http://tax.nv.gov>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

RENO OFFICE
4800 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-8989
Fax: (775) 686-1303

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

**Statement pursuant to NRS 233B.0613(1) to implement regulations pursuant to
The Regulation and Taxation of Marijuana Act under NRS 453D**

Voters approved the Regulation and Taxation of Marijuana Act at the 2016 General Election. The Act is codified in Chapter 453D and provides that the Department of Taxation ("Department") shall adopt all regulations necessary or convenient to carry out the provisions of NRS Chapter 453D. Temporary regulation Legislative Counsel Bureau ("LCB") File No. T002-17 was adopted on May 8, 2017 (the "temporary regulation"). Pursuant to NRS 233B.063, the temporary regulation will expire on November 1, 2017.

Marijuana establishments became licensed under the temporary regulation to sell adult-use marijuana starting July 1, 2017. The temporary regulation also provides operating requirements including provisions pertaining to licensing, security, inventory control, packaging, labeling, testing, transportation, taxes, fees, and penalties. Additionally, it addresses the prevention of the sale or diversion of marijuana or marijuana products to the black market or to persons under 21 years of age.

The Department drafted a permanent regulation and conducted public workshops from July 24 through July 27, 2017 on the proposed permanent regulation. The draft language was submitted to LCB on September 6, 2017 and was assigned LCB File No. R092-17. The Department has not yet received the approved text of LCB File No. R092-17 from LCB. Pursuant to NRS 233B.064, the Department cannot adopt LCB File No. R092-17 until it has received from LCB the approved or revised text of the regulation in the form to be adopted. The Department must also provide 30 days' notice of the public hearing before the Nevada Tax Commission to adopt the permanent regulation once it receives the approved text of the permanent regulation from LCB.

This emergency regulation is necessary to provide continued operating, regulatory and enforcement requirements for licensed marijuana establishments as well as licensing procedures to those seeking to apply for marijuana establishment licenses while the permanent regulation is pending. This regulation will ensure that the adult-use market continues to be tightly regulated under a strictly controlled regulatory system.

Dated this 26th day of October, 2017:

Deonne E. Contine

Deonne E. Contine, Executive Director
Nevada Department of Taxation

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Statement prepared pursuant to NRS 233B.0613(1)
October 26, 2017
Page 2

I hereby endorse this Statement prepared by the Executive Director of the Department of Taxation pursuant to NRS 233B.0613(1).

Dated this 26th day of October, 2017:



Brian Sandoval, Governor
State of Nevada

EMERGENCY REGULATION OF THE

NEVADA TAX COMMISSION

October __, 2017

Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

Filing of an Emergency Administrative Regulation

AUTHORITY: NRS 453D.200 authorizes the Department to adopt all regulations necessary or convenient to carry out the provisions of NRS Chapter 453D.

Section 1. Chapter 453D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 31, inclusive, of this Chapter.

Sec. 2. *As used in sections 2 to 31, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, have the meanings ascribed to them in those sections.*

Sec. 3. *"Department" defined. "Department" means the Department of Taxation.*

Sec. 4. *"Fair Market Value" defined. "Fair Market Value" is the value established by the Department based on the price that a buyer would pay to a seller in an arm's length transaction for marijuana in the wholesale market.*

Sec. 5. *"Marijuana Establishment" defined. A "Marijuana Establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.*

Sec. 6. *"Marijuana Establishment Agent" defined. A "Marijuana Establishment Agent" means an owner, officer, board member, employee or volunteer of a marijuana establishment, an independent contractor who provides labor relating to the cultivation, processing, or*

distribution of marijuana or the production of marijuana or marijuana products for a licensed marijuana establishment, or an employee of such an independent contractor.

Sec. 7. *“Excluded Felony Offense” defined. An “Excluded Felony Offense” has the meaning ascribed to it in NRS 453D.*

Sec. 8. *“Medical Marijuana Establishment Registration Certificate” defined. A “Medical Marijuana Establishment Registration Certificate” has the meaning ascribed to it in NRS 453A.119.*

Sec. 9. *“Marijuana” defined. “Marijuana” has the meaning ascribed to it in NRS 453D.030.*

Sec. 10. *“Medical Marijuana” defined. “Medical Marijuana” means the possession, delivery, production or use of marijuana pursuant to NRS 453A.*

PRODUCTION AND DISTRIBUTION OF MARIJUANA

Licensing of retail marijuana stores, marijuana testing facilities, marijuana product manufacturing facilities, and marijuana cultivation facilities

Sec. 11. **Procedures for the issuance and revocation of a license to operate a marijuana establishment.**

- 1. A medical marijuana establishment that has received a medical marijuana establishment registration certificate and is in good standing, as defined in subsection 7 of this section, under its medical marijuana establishment registration certificate may apply for a marijuana establishment license during any period of not more than 5 days that the Department issues a request for applications.*

2. The application must be submitted by the same entity that holds the medical marijuana establishment certificate and must be submitted on a form prescribed by the Department pursuant to NRS 453D.210 and must include, without limitation:

(a) A one-time, nonrefundable application fee of \$5,000 plus a license fee of:

- (1) \$20,000 for a Retail Establishment;**
- (2) \$30,000 for a Cultivation Facility;**
- (3) \$10,000 for a Production/Manufacturing Facility; or**
- (4) \$15,000 for a Testing Facility**

(b) That the applicant is applying for a marijuana establishment license;

(c) The type of marijuana establishment license for which the applicant is applying;

(d) The name of the marijuana establishment, as reflected on the registration certificate issued pursuant to NRS 453A and in the articles of incorporation or other documents filed with the Secretary of State;

(e) The physical address where the marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;

(f) The mailing address of the applicant;

(g) The telephone number of the applicant;

(h) The electronic mail address of the applicant;

(i) Attestation that the applicant understands they must be properly zoned in compliance with NRS 453D.210(5)(a)-(c) and NRS 453D.210(5)(e) prior to receiving a marijuana establishment license;

- (j) A signed copy of the Request and Consent to Release Application Form for Marijuana License;*
 - (k) An attestation that the information provided to the Department to apply for the marijuana establishment license is true and correct according to the information known by the affiant at the time of signing;*
 - (l) The signature of a natural person for the proposed marijuana establishment and the date on which the person signed the application; and*
 - (m) Any other information that the Department may require.*
- 3. The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a marijuana establishment license. A list of the licensed entities will be posted on the Department's website.**
- 4. Upon receipt of the application by the Department, the Department shall approve the issuance of a marijuana establishment license if:**
- (a) The applicant holds the same or similar license type under NRS 453A for which it is applying;*
 - (b) The applicant is in good standing under its medical marijuana establishment registration certificate; and*
 - (c) The applicant is in compliance with NRS 453D.210 (5)(a)-(f). For purposes of determining compliance with 453D(5)(c) and (e), the Department will issue the license if the locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana*

establishment will be in violation of zoning or land use rules adopted by the locality.

5. If the proposed marijuana establishment will be located at a location different from the medical marijuana establishment, the Department will not issue a marijuana establishment license until the Department completes an inspection of the proposed marijuana establishment. Such an inspection may require more than one visit to the proposed marijuana establishment.

6. If the marijuana establishment license is not approved, the license fee will be refunded to the applicant.

7. As used in this section, a medical marijuana establishment is in "good standing" if it is in compliance with NRS 453A and NAC 453A, including but not limited to the following:

(a) For all medical marijuana establishments:

(1) All licenses, certificates and fees are current and paid;

(2) No registration certificate suspension within 6 months of the effective date of the marijuana establishment license for enforcement violations including but not limited to provisions NRS 453A.352, NRS 453A.362, NAC 453A.406, NAC 453A.414, NAC 453A.658, NAC 453A.668, and NAC 453A.672;

(3) The applicant is not delinquent in the payment of any tax administered by the Department or is not in default on a payment required pursuant to a written agreement with the Department; or is not otherwise liable to the Department for the payment of money;

(4) No citations for illegal activity or criminal conduct; and

(5) Plans of correction are in progress or are complete and on time as defined in NRS 453A.330.

(b) If a medical marijuana establishment registration certificate is provisional it is not in good standing pursuant to this section.

Sec. 12. Marijuana establishment licenses except marijuana distributor: Grounds for denial, suspension or revocation.

1. The Department will deny an application for a marijuana establishment license if:

(a) The applicant is not in compliance with NRS 453A, NAC 453A, NRS 453D or this Chapter;

(b) The applicant is not in good standing as required by Section 11 of this Chapter;

(c) The applicant is not in compliance with NRS 453D zoning requirements;

(d) The applicant has not paid fees required by NRS 453D; or

(e) The marijuana establishment has failed to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.

2. The Department will revoke or suspend a marijuana establishment license if:

(a) The marijuana establishment dispenses, delivers or otherwise transfers marijuana to a person under 21 years of age;

(b) The marijuana establishment acquires usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;

- (c) An owner, officer or board member of the marijuana establishment has been convicted of an excluded felony offense;*
- (d) The Department receives formal notice from the applicable local government that the marijuana establishment has had its authorization to operate terminated;*
- (e) Any license issued pursuant to NRS 453A is suspended or revoked; or*
- (f) The marijuana establishment failed to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.*

Licensing of marijuana distributors

Sec. 13. Applications to operate marijuana establishment – marijuana distributors:

Required provisions.

1. The Department will accept distributor applications from persons holding a liquor wholesaler dealer license pursuant to NRS 369.

(a) Person has the meaning ascribed to it in NRS 0.039.

(1) The person holding the wholesaler liquor dealer license must be the person applying for the marijuana distributor license.

(2) The applicant and each person who is proposed to be an owner, officer or board member of the entity must comply with the provisions set forth in NRS 453A.322 and NRS 453A.332 regarding fingerprinting and background checks.

Sec. 14. Marijuana establishment license for marijuana distributor. Procedures for the issuance of a marijuana distributor license.

1. An application submitted for a marijuana distributor license from an applicant must be on a form prescribed by the Department pursuant to NRS 453D.210 and must include:

- (a) A one-time, nonrefundable application fee of \$5,000; plus a \$15,000 license fee;***
- (b) The name of the proposed marijuana distributor, as reflected in the articles of incorporation or other documents filed with the Secretary of State;***
- (c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability company, association or cooperative, joint venture or any other business organization;***
- (d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business, and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;***
- (e) The physical address where the proposed marijuana distributor will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;***
- (f) The mailing address of the applicant;***
- (g) The telephone number of the applicant;***
- (h) The electronic mail address of the applicant;***
- (i) An attestation that the information provided to the Department to apply for the marijuana distributor license is true and correct according to the information known by the affiant at the time of signing;***
- (j) The signature of a natural person for the proposed marijuana distributor and the date on which the person signed the application;***

(k) Documentation from a financial institution in this State, or any other state or the District of Columbia, which demonstrates:

(1) That the applicant has liquid assets that demonstrate the applicant is in a financial condition to operate as a distributor. The funds should be unencumbered and able to be converted within 30 days after a request to liquidate such assets; and

(2) The source of those liquid assets.

(l) A description of the proposed organizational structure of the proposed marijuana distributor, including, without limitation:

(1) An organizational chart showing all owners, officers and board members of the proposed marijuana distributor; and

(2) A list of all owners, officers and board members of the proposed marijuana distributor that contains the following information for each person:

a. The title of the person;

b. A short description of the role the person will serve in for the organization and his or her responsibilities;

c. Whether the person has served or is currently serving as an owner, officer or board member of a medical marijuana establishment;

d. Whether the person has served as an owner, officer or board member for a medical marijuana establishment that has had its

medical marijuana establishment registration certificate revoked or suspended;

e. Whether the person has previously had a medical marijuana establishment agent registration card revoked;

f. Whether the person is a law enforcement officer;

g. Whether the person is currently an employee or contractor of the Department;

h. Whether the person has an ownership or financial investment interest in a medical marijuana establishment;

i. A signed copy of the Request and Consent to Release Application Form for Marijuana Distributor License;

j. A complete set of fingerprints and written permission of the owner, officer or board member authorizing the Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

k. A signed copy of the Child Support Verification Form; and

l. The completed Driver Verification Form

m. For each owner, officer and board member of the proposed marijuana distributor:

1. An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of an excluded felony offense,

- 2. An attestation signed and dated by the owner, officer or board member that he or she has not served as an owner, officer, or board member for a medical marijuana establishment that has had its registration certificate suspended or revoked;*
- 3. That the information provided to support the application for a marijuana distributor license is true and correct;*
- 4. A narrative description, not to exceed 750 words, demonstrating:*
 - a. Any previous experience at operating other businesses or nonprofit organizations; and*
 - b. Qualifications that are directly and demonstrably related to the operation of a marijuana establishment.*
- 5. A resume.*
- n. A financial plan which includes, without limitation:*
 - 1. Financial statements showing the resources of the applicant;*
 - 2. If the applicant is relying on money from an owner, officer or board member, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Department awards a distributor license to the applicant and the applicant obtains the necessary approvals from local governments to operate; and*
 - 3. Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.*

o. Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana distributor on a daily basis, which must include, without limitation:

- 1. A detailed budget for the proposed marijuana distributor, including preopening, construction and first year operating expenses;***
- 2. An operations manual that demonstrates compliance with NRS 453D and this chapter;***
- 3. An education plan which must include, without limitation, providing educational materials to the staff of the proposed marijuana distributor; and***
- 4. An indication from the proposed marijuana distributor that it is aware that it must comply with all local government enacted zoning restrictions and be in compliance with NRS 453D.210 prior to issuance of a marijuana distributor license.***

p. Any other information the Department may require.

- 1. The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a marijuana establishment license. A list of the licensed entities will be posted on the Department's website.***

2. *The Department will not issue a marijuana distributor license until the Department completes an inspection of the proposed marijuana distributor. Such an inspection may require more than one visit to the proposed marijuana distributor.*

Sec. 15. Distributor license: Suspension for operational deficiencies; plan of correction.

1. *If the Department determines that there are any deficiencies in the operation of a marijuana distributor or in the provision of services by a marijuana distributor, the Department may suspend its marijuana distributor license and request a written plan of correction from the marijuana distributor.*
2. *A marijuana distributor whose marijuana distributor license has been suspended pursuant to subsection 1 of this section shall develop a plan of correction for each deficiency and submit the plan to the Department for approval within 10 business days after receipt of the statement of deficiencies. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected.*
3. *If the plan submitted pursuant to subsection 2 of this section is not acceptable to the Department, the Department may direct the marijuana distributor to resubmit a plan of correction or the Department may develop a directed plan of correction with which the marijuana distributor must comply.*

Sec. 16. Distributor license: Grounds for denial, suspension or revocation of a license to operate as a marijuana distributor.

1. *The Department will deny an application for a marijuana distributor license if:*

- (a) The applicant for the marijuana distributor license is not in compliance with any provision of this chapter or NRS 453D; or*
 - (b) An owner, officer or board member of the applicant for the marijuana distributor license:*
 - (1) Is an employee or contractor of the Department;*
 - (2) Has an ownership or financial investment interest in an independent testing facility and also is an owner, officer or board member of a marijuana distributor; or*
 - (3) Provides false or misleading information to the Department.*
- 2. The Department will revoke a marijuana distributor license if:**
- (a) The marijuana distributor engages in any of the following:*
 - (1) Dispensing, delivering or otherwise transferring marijuana to a person under 21 years of age;*
 - (2) Acquiring usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;*
 - (b) An owner, officer or board member of the marijuana distributor has been convicted of an excluded felony offense; or*
 - (c) The Department receives formal notice from the applicable local government that the marijuana distributor has had its authorization to operate terminated.*
- 3. The Department may revoke or suspend any marijuana distributor license issued or may deny any application under the provisions of this Chapter and NRS 453D upon any of the following grounds:**

- (a) Violation by the marijuana distributor of any of the provisions of this Chapter or NRS 453D;*
 - (b) The failure or refusal of a marijuana distributor to comply with any of the provisions of this Chapter or NRS 453D;*
 - (c) The failure or refusal of a marijuana distributor to carry out the policies and procedures or comply with the statements provided to the Department in the application of the marijuana distributor;*
 - (d) Operating as a marijuana distributor without a marijuana distributor license;*
 - (e) The failure or refusal to return an adequate plan of correction to the Department within 10 business days after receipt of a statement of deficiencies pursuant to Section 15 of this Chapter;*
 - (f) The failure or refusal to correct any deficiency specified by the Department within the period specified in a plan of correction developed pursuant to Section 15 of this Chapter; or*
 - (g) The failure or refusal to cooperate fully with an investigation or inspection by the Department.*
- 4. If the Department revokes a marijuana distributor license, the Department must provide notice to the marijuana distributor that includes, without limitation, the specific reasons for the revocation.*
- 5. Before revoking a marijuana distributor license as a result of the actions of an owner, officer or board member of the marijuana distributor pursuant to paragraph (b) of subsection 1 of this section, the Department may provide the marijuana distributor with an opportunity to correct the situation.*

Sec. 17. Agents of licensed marijuana distributors required to register with the Department; requirements for registration; establishment required to notify Department if agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor.

1. Except as otherwise provided in this section, a person shall not volunteer or work at, contract to provide labor as, or be employed by a licensed marijuana distributor unless the person is registered with the Department pursuant to this section.

2. A licensed marijuana distributor that wishes to retain as a volunteer, employ, or contract with for labor a marijuana distributor agent shall submit or have the prospective agent submit to the Department an application on a form prescribed by the Department. The application must be accompanied by:

(a) The name, address and date of birth of the prospective marijuana distributor agent;

(b) A statement signed by the prospective marijuana distributor agent pledging not to dispense or otherwise divert marijuana to any person who is not authorized to possess marijuana in accordance with the provisions of this Chapter;

(c) A statement signed by the prospective marijuana distributor agent asserting that he or she has not previously had a medical marijuana establishment agent registration card revoked;

(d) A complete set of the fingerprints and written permission of the prospective marijuana distributor agent authorizing the Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(e) The application fee, as allowed by law; and

- (f) Such other information as the Department may require.*
- 3. A marijuana distributor shall notify the Department within 10 days after a marijuana distributor agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor agent to the marijuana distributor.*
- 4. A person shall not serve as a marijuana distributor agent if he or she:*
- (a) Has been convicted of an excluded felony offense; or*
 - (b) Is less than 21 years of age.*
- 5. The Department shall submit the fingerprints of an applicant for registration as a marijuana distributor agent to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the criminal history of the applicant.*
- 6. If an applicant for registration as a marijuana distributor agent satisfies the requirements of this section and is not disqualified from serving as such an agent pursuant to this section or any other applicable law, the Department shall issue to the person and, for an independent contractor, to each person identified in the independent contractor's application for registration as an employee who will provide labor as a marijuana distributor agent, a marijuana distributor agent card. If the Department does not act upon an application for a marijuana distributor agent card within 30 days after the date on which the application is received, the application shall be deemed conditionally approved until such time as the Department acts upon the application.*

Sec. 18 Marijuana distributor duties and responsibilities.

- 1. A licensed marijuana distributor may transport marijuana and marijuana products*

between a marijuana establishment and:

(a) Another marijuana establishment;

(b) Between the buildings of the marijuana establishment.

- 2. A marijuana establishment that holds more than one type of establishment license may only transport marijuana and marijuana products to a retail marijuana store if they hold a marijuana distributor license.*
- 3. A marijuana distributor may not purchase or sell marijuana or marijuana products unless they hold another license that allows for the purchase or sale of marijuana and marijuana products.*
- 4. Before transporting marijuana or marijuana products pursuant to subsection 1 of this Chapter, a licensed marijuana distributor must:*
 - (a) Complete a trip plan that includes, without limitation:*
 - (1) The name of the marijuana establishment agent in charge of the transportation;*
 - (2) The date and start time of the trip;*
 - (3) A description, including the amount, of the marijuana or marijuana products being transported along with the unique identification code for the product; and*
 - (4) The anticipated route of transportation including the business names and phone numbers along with the license numbers of the shipping and receiving licensees.*

(b) Provide a copy of the trip plan completed pursuant to paragraph (a) of this section to the marijuana establishment for which he or she is providing the transportation.

(c) Record the trip plan in the inventory control tracking system approved by the Department if such a system is available.

5. During the transportation of marijuana or marijuana products pursuant to subsection 1 of this section, the licensed distributor agent must:

(a) Carry a copy of the trip plan completed pursuant to paragraph (a) of subsection 4 of this section with him or her for the duration of the trip;

(b) Have his or her marijuana distributor agent card in his or her immediate possession;

(c) Use a vehicle without any identification relating to marijuana and which is equipped with a secure lockbox or locking cargo area which must be used for the sanitary and secure transportation of marijuana or marijuana products;

(d) Have a means of communicating with the marijuana establishment for which he or she is providing the transportation; and

(e) Ensure that all marijuana or marijuana products are not visible.

(1) After transporting marijuana or marijuana products pursuant to subsection 1 of this section, a distributor agent must enter the end time of the trip and any changes to the trip plan that was completed pursuant to paragraph (a) of subsection 4 of this section.

6. Each distributor agent transporting marijuana or marijuana products pursuant to subsection 1 of this section must:

- (a) Report any vehicle accident that occurs during the transportation to a person designated by the marijuana distributor to receive such reports within 2 hours after the accident occurs;**
- (b) Report any loss or theft of marijuana or marijuana products that occurs during the transportation to a person designated by the marijuana distributor to receive such reports immediately after the marijuana distributor agent becomes aware of the loss or theft. A marijuana distributor that receives a report of loss or theft pursuant to this paragraph must immediately report the loss or theft to the appropriate law enforcement agency and to the Department as required by Section 21 of this Chapter; and**
- (c) Report any unauthorized stop that lasts longer than 2 hours to the Department.**

7. A marijuana distributor shall:

- (a) Maintain the documents required in paragraph (a) of subsection 4 and subsections 6 (a) and (b) of this section; and**
- (b) Provide a copy of the documents required in paragraph (a) of subsection 4 and subsections 6 (a) and (b) of this section to the Department for review upon request.**

8. Each marijuana distributor shall maintain a log of all reports received pursuant to subsection 4 and subsection 6 (a) and (b) of this section.

9. Unless extenuating circumstances exist, a marijuana distributor may not store marijuana or marijuana products overnight for any reason and must make direct

delivery. If extenuating circumstances exist, the marijuana distributor must notify the Department of the extenuating circumstances as soon as possible.

Sec. 19. Transportation of marijuana and marijuana products by a marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility and retail store.

1. *A licensed marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility, or retail marijuana store may transport marijuana and marijuana products without a marijuana distributor license as follows:*

(a) A marijuana cultivation facility and a marijuana product manufacturing facility may transport marijuana and marijuana products to or from marijuana testing facility, a marijuana cultivation facility or a marijuana product manufacturing facility.

(b) A marijuana testing facility may transport marijuana and marijuana products to or from a testing facility for testing.

(c) A retail marijuana store may transport marijuana and marijuana products to or from a marijuana testing facility.

Sec. 20. Transportation of marijuana and marijuana products prohibited

1. *A marijuana establishment is prohibited from transporting marijuana and marijuana products to a retail marijuana store unless the establishment has a marijuana distributor license. This provision does not apply to:*

- (a) A medical marijuana establishment only transporting marijuana or marijuana product for sale to medical patients;*
- (b) A marijuana testing facility transporting samples for lab testing;*
- (c) An independent contractor of a medical marijuana establishment transporting only medical marijuana; or*
- (d) A retail marijuana store delivering not more than 10 ounces of marijuana or marijuana product to a consumer. Except that a retail marijuana store is prohibited from delivering marijuana or marijuana product to a consumer at any location that has been issued a gaming license as defined in NRS 463.015.*

(1) When transporting marijuana or marijuana products to a consumer a marijuana distributor agent must:

- a. Before transportation, confirm verbally with the consumer by telephone that the consumer is 21 years of age or older and ordered the marijuana or marijuana products and verify the identity of the consumer;*
- b. Enter the details of the confirmation obtained pursuant to paragraph (a) of this section in a log which must be available for inspection by the appropriate law enforcement agency and by the Department; and*
- c. Review and document the government-issued identification to determine the consumer's age and secure a signature from the consumer when the items are delivered and may only leave the items with the consumer.*

d. Comply with the requirements in Section 18, subsections 2 through 9 of this Chapter.

2. Violation of this provision may result in denial, suspension, or revocation pursuant to Section 12 of this Chapter.

Sec. 21. Reporting of loss or theft of marijuana and marijuana product; maintenance of documentation.

1. A marijuana distributor shall:

(a) Document and report any loss or theft of marijuana and marijuana product from the marijuana distributor to the appropriate law enforcement agency and to the Department; and

(b) Maintain copies of any documentation required pursuant Section 18 of this Chapter for at least 5 years after the date on the documentation and provide copies of the documentation to the Department for review upon request.

Sec. 22. License Expiration and renewal

1. A marijuana establishment license issued pursuant to this Chapter will expire one year after the date of issue.

Sec. 23. Applicability of NRS 453A and NAC 453A to the regulations adopted pursuant to this Chapter.

1. Relevant provisions in NRS 453A and related regulations adopted pursuant to NAC 453A are applicable herein, including but not limited to:

(a) Requirements for the security of marijuana establishments;

(b) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;

- (c) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;*
- (d) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;*
- (e) Requirements for record keeping by marijuana establishments;*
- (f) Reasonable restrictions on signage, marketing, display, and advertising;*
- (g) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location; and*
- (h) Procedures and requirements for agent registration cards except those applying as agents of licensed marijuana distributors pursuant to Section 17 of this Chapter.*

Sec. 24. Civil penalties.

1. The Department may:

- (a) Impose a civil penalty of up to \$35,000 on any person who:*
 - (1) Operates a marijuana establishment without a license*
- (b) Impose a civil penalty of up to \$10,000 on any person who:*
 - (1) Omits, neglects or refuses to:*
 - a. Comply with any duty imposed up on him or her pursuant to the provisions of this Chapter and NRS 453D; or*

b. Do or cause to be done any of the things required pursuant to those provisions.

(2) Does anything prohibited by the provisions of this Chapter and NRS 453D.

- 2. In determining the amount of any civil penalty assessed under this Chapter, the Department shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this Chapter and Chapter 453A, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.*

Sec 25. Disposition of unauthorized marijuana or marijuana products and related materials.

- 1. The provisions of this section shall apply in addition to any civil penalties.*
- 2. The Department may specify that some or all of the person's or licensee's marijuana or marijuana product is not cultivated, sold, produced, tested or otherwise manufactured in accordance with state law and is deemed illegal marijuana.*
- 3. The Department may summarily seize or quarantine any such marijuana and marijuana products that it determines is illegal marijuana.*
- 4. The Department shall not be required to cultivate or otherwise care for any illegal marijuana or marijuana product quarantined or seized. The Department shall not be authorized to sell illegal marijuana or marijuana product.*
- 5. The Department may direct the destruction of any such marijuana and marijuana products that it determines is illegal marijuana. The authorized destruction may*

include the incidental destruction of any containers, equipment, supplies, and other property associated with the marijuana or marijuana product.

- 6. *If the Department orders destruction authorized by subsection 6 of this section, a person or licensee shall have fifteen days within which to request a hearing with a hearing officer for improper seizure.***

(a) *The hearing officer shall promptly rule upon the request and determine whether the person or licensee has a substantial likelihood of success on appeal so as to warrant delay of the destruction authorized by subsection 6 of this section or whether other circumstances, including but not limited to the need for preservation of evidence, warrant delay of such destruction.*

(b) *If destruction is so delayed by the hearing officer, the hearing officer shall issue an order setting forth terms and conditions pursuant to which the person or licensee may maintain the marijuana and marijuana product pending review and prohibiting the person or licensee from using or distributing the retail marijuana or retail marijuana product pending the review.*

(c) *The Department shall not carry out the destruction authorized by subsection 5 of this section until fifteen days have passed without the filing of a request for hearing or until the hearing officer has issued an order denying the delay of destruction.*

- 7. *If law enforcement begins a criminal investigation of a retail marijuana establishment and notifies the Department of such investigation, the Department shall not destroy***

any marijuana or marijuana products from the retail marijuana establishment until the destruction is approved by law enforcement.

MARIJUANA TAX

Reporting and Transmittal of Marijuana Taxes

Sec. 26. Applicability of NRS 360.

- 1. The provisions of NRS 360 relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the excise and sales tax on marijuana.*

Sec. 27. Sales and Use Tax Returns Required. Payment of tax; monthly return.

- 1. Marijuana sold pursuant to NRS 453D is subject to sales tax when it is sold at a retail store. Returns and payments must be submitted as provided in NRS 372.354 through NRS 372.395.*

Sec. 28. Excise Tax Returns Required. Payment of tax; monthly return.

- 1. An excise tax must be collected by the State on the wholesale sales of marijuana at a rate of 15 percent of the Fair Market Value at Wholesale of the marijuana.*
- 2. An excise tax must be collected by the State on marijuana or marijuana products by a retail marijuana store at the rate of 10 percent of the sales price of the marijuana or marijuana products pursuant to Senate Bill 487 (2017). The excise tax does not apply to non-marijuana products sold by the retail marijuana store. This tax is the obligation of the retail marijuana store and is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.*

3. Each marijuana cultivator and retail marijuana store shall, on or before the last day of the month immediately following each month for which the marijuana is sold, file with the Department a return on a form prescribed by the Department and remit to the Department any tax due for the month covered by the return. A return must be filed whether or not a sale or purchase has occurred.

4. The marijuana cultivation facility shall pay the excise tax to the Department upon the first sale of marijuana to a marijuana retail store, a marijuana product manufacturing facility, or another marijuana cultivation facility.

(a) If a marijuana cultivation facility sells to another marijuana cultivation facility and pays the wholesale excise tax to the Department on the sale as required by NRS 453D.500, the wholesale excise tax will not be due on any subsequent sales of that product.

5. A marijuana cultivation facility and a retail marijuana store must keep all supporting documentation for verification that the excise tax was paid on the first sale of the product.

6. Calculation and Payment of Tax.

(a) Calculation of Fair Market Value at Wholesale.

(1) The Department will calculate the Fair Market Value at Wholesale using reported sales of each category. The Department will determine the best methodology to arrive at the Fair Market Value at Wholesale. The Department may, from time to time, change its method of calculating the Fair Market Value at Wholesale if, in the judgment of

the Department, such change is necessary to arrive at the most accurate Fair Market Value at Wholesale given the market conditions.

(b) The tax shall be calculated based on the category of the Marijuana Product (i.e., Bud, Small/Popcorn Bud, Trim, Immature Plant, Wet Whole Plant, or Seeds) being sold.

(1) To set the initial Fair Market Value at Wholesale, the Department will use data collected from current medical marijuana cultivators as well as other data available related to the Fair Market Value at Wholesale

(2) The excise tax for Bud is computed on the total weight of all Bud that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall not be treated as the sale of Bud.

(3) The excise tax for Trim is calculated on the total weight of all Trim that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall be treated as the sale of Trim.

(4) The excise tax for Immature Plants is calculated on the total number of Immature Plants being sold.

(5) The excise tax for Wet Whole Plants is calculated on the total weight of the entire Marijuana Wet Whole Plant. The weight of the entire plant is subject to tax because the Fair Market Value at Wholesale for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing

(i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis.

(a) The Marijuana Wet Whole Plant must be weighed within 2 hours of the batch being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of the batch being harvested or is subjected to further processing before being weighed, the excise tax on such plant cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates.

(b) The Marijuana Cultivation Facility must maintain records of the time each plant was harvested and weighed and the weight of each plant. The records must be in writing and created contemporaneously with the harvesting and weighing.

(6) The excise tax for seeds is calculated on the total number of seeds being sold

7. Both the marijuana cultivation facility and the first purchaser shall maintain documentation of the payment of the excise tax. Such evidence may be the purchase invoice, so long as the invoice shows the name and license number of the marijuana

cultivation facility, name and license number of first purchaser, the category of product being sold, the date of sale, and the weight of the product being sold.

Sec. 29. Maintenance and availability of records of taxpayer.

1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of NRS 453D.500.

(b) Preserve those records for 4 years or until any litigation or prosecution pursuant to NRS 453D.500, inclusive, is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

Sec. 30. Examination of records by Department.

1. To verify the accuracy of any return filed by a taxpayer or, if no return is filed, to determine the amount required to be paid, the Department, or any person authorized in writing by the Department, may examine the books, papers and records of any person who may be liable for the excise or sales tax on marijuana.

Sec. 31. Miscellaneous tax provisions

1. The provisions of NRS 372A.300 through NRS 372A.380 shall be deemed to apply the administration of the tax under NRS 453D.

EXHIBIT F

EXHIBIT F

MINUTES OF THE JUNE 20, 2018
MEETING OF THE
INTERIM FINANCE COMMITTEE
Carson City, Nevada

Chair Joyce Woodhouse called a regular meeting of the Interim Finance Committee (IFC) to order at 9:39 a.m. on June 20, 2018, in Room 4100 of the Nevada Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer Office Building, 555 East Washington Avenue, Las Vegas, Nevada.

COMMITTEE MEMBERS PRESENT:

Senator Joyce Woodhouse, Chair
Assemblywoman Maggie Carlton, Vice Chair
Senator Kelvin Atkinson for Senator Aaron Ford
Senator Moises Denis
Senator Heidi Gansert
Senator Pete Goicoechea
Senator Ben Kieckhefer
Senator David Parks
Assemblyman Nelson Araujo
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblywoman Olivia Diaz
Assemblyman Chris Edwards
Assemblyman Jason Frierson
Assemblyman John Hambrick
Assemblyman James Oscarson
Assemblywoman Ellen Spiegel
Assemblyman Michael Sprinkle
Assemblywoman Heidi Swank
Assemblywoman Robin Titus

COMMITTEE MEMBERS EXCUSED:

Senator Aaron Ford
Assemblywoman Jill Tolles

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Rick Combs, Director, Legislative Counsel Bureau
Mark Krmpotic, Fiscal Analyst, Senate
Cindy Jones, Fiscal Analyst, Assembly
Alex Haartz, Principal Deputy Fiscal Analyst
Sarah Coffman, Principal Deputy Fiscal Analyst
Brenda Erdoes, Legislative Counsel
Eileen O'Grady, Chief Deputy Legislative Counsel
Cheryl Harvey, Fiscal Analysis Division Secretary
Carla Ulrych, Fiscal Analysis Division Secretary

EXHIBITS:

Exhibit A: Meeting Packet – Volume I

Exhibit B: Meeting Packet – Volume II

Exhibit C: Meeting Packet – Volume III

Exhibit D: Meeting Packet – Volume IV

Exhibit E: Public Testimony – American Federation of State, County and Municipal Employees (AFSCME)

Exhibit F: Public Testimony – Katherine Ryder, A Team Nevada

Exhibit G: Economic Forum Report to the Interim Finance Committee – June 2018

A. ROLL CALL.

Rick Combs, Director, Legislative Counsel Bureau and Secretary, Interim Finance Committee, called the roll; all members were present except Senator Ford and Assemblywoman Tolles who were excused.

B. PUBLIC COMMENT.

Amanda Lampe, resident and mother of a three-year-old boy with autism, said her son was receiving services from the Autism Treatment Assistance Program (ATAP) through the Department of Health and Human Services (DHHS), Aging and Disability Services Division (ADSD). Her son was being treated by a Board Certified Behavior Analyst (BCBA) employed by Sage Health Services, but that BCBA was no longer employed by the organization. Her son's new BCBA was located in Las Vegas, which made it difficult, because her son did not meet with the provider in person. Her son was currently on a waiting list for a BCBA with another organization. Ms. Lampe expressed concern that her son was not receiving the assistance he needed while waiting for a new BCBA. She appealed for any assistance the Committee could provide for people with autism.

Brian Patchett, Chief Executive Officer, Easter Seals Nevada, and chairman, Commission on Services for Persons with Disabilities, expressed his appreciation for Ms. Lampe's testimony; he agreed that the state was facing a crisis due to the shortage of autism services.

Mr. Patchett explained that Easter Seals was in support of the proposed 5 percent rate increase by the ADSD. He noted that studies indicated the rates should be increased to an amount closer to 30 percent.

Mr. Patchett explained that Easter Seals cared for people in the community with significant intellectual, developmental and behavioral disabilities. He explained it was difficult to maintain staff and provide the proper care if caregivers were not sufficiently compensated. The rate increase would allow Easter Seals to increase wages and provide clients with access to insurance and a wider range of providers.

Lisa Foster, representative, State of Nevada Association of Providers (SNAP), said SNAP was a consortium of organizations dedicated to individuals with intellectual disabilities.

She said SNAP had been working with providers of the Supported Living Arrangements (SLA) and Jobs and Day Training (JDT) programs. She said she supported Agenda Item 5a(2), which pertained to the 5 percent rate increase for services. Ms. Foster said individuals on the front line of those organizations provided a wide range of services for adults with cognitive disabilities, from residential services and transportation, to employment-related training.

Ms. Foster explained that because there was a lack of funding, agencies struggled to remain in business. She said many agencies had difficulty filling entry-level positions. She added that agencies competed with fast food companies for employees. A recent survey of SLA and JDT providers indicated that employee turnover rates were 80 percent, and many providers had 100 percent staff turnover. Employee turnover expenses included items like advertising, candidate testing and intensive new hire screenings to meet Medicaid and state requirements. Most employees had more than one job, and some employees worked for multiple providers.

Carter Bundy, representative, American Federation of State, County and Municipal Employees (AFSCME), said he supported the Department of Corrections (NDOC) request for \$3.2 million. He said AFSCME represented staff at correctional facilities where inadequate staffing levels had created significant life-and-death situations. He recalled a recent incident where an inmate was stabbed to death and a correctional officer narrowly avoid being attacked.

Mr. Bundy said AFSCME hoped NDOC would avoid requests for one-time funding in the future by presenting an adequate request for funding to the 2019 Legislature. Although AFSCME did not think the source of funds in the department's request was appropriate, the funds were critical to ensure the safety of correctional officers and inmates.

Mr. Bundy said AFSCME met with NDOC to discuss the benefits of 12-hour shifts. He said NDOC staff was in full support of implementing 12-hour shifts, because it would increase staff retention and provide an extra tool for recruiting officers.

Tracy Brown-May, Director of Advocacy, Board and Government Relations, Opportunity Village, stated that Opportunity Village was thrilled to support ADSD's proposed 5 percent rate increase for the JDT program. She also agreed and supported Mr. Patchett's testimony as well as the testimony provided by Ms. Foster. Ms. Brown-May introduced Katherine Ryder and Janine Klein.

Katherine Ryder, Treasurer, A Team Nevada, and guardian/caretaker of her 47-year-old sister, said she became the caretaker for her sister, Janine Klein, in 2008. She said Janine was developmentally and intellectually delayed from birth and had a cognitive level of a three to four year old. Ms. Ryder said she and Janine had been involved with Opportunity Village for about 26 years. Additionally, they were both charter members of A Team Nevada. She was providing her family's story to stress the positive impact the proposed rate increase would have on caregivers, services and clients.

Ms. Ryder explained that A Team Nevada endured staff changes every other month due to the low wages provided to caregivers. The staff turnover caused a delay in her sister's care, because new staff had to be hired and trained and then the new staff member had to accommodate the client's schedule. She said Janine's unique way of communicating created an additional training process for new staff, which added to the frustration. She said Janine had difficulty coping with the changes. Ms. Ryder said by the time a new caregiver was trained and assigned, the caregiver was already looking for a new job with higher wages.

Ms. Ryder said she and her sister were both supportive and grateful for the proposed rate increase, but wished it was a higher amount.

Sheri Van Horsen, representative, AFSCME, said she represented correctional officers, support staff and members of the mental health and medical staff within the correctional facilities. She said she agreed with Mr. Bundy that 12-hour shifts would be a beneficial change to the schedules of correctional officers. She said the majority of correctional officers that Ms. Van Horsen represented supported the addition of 12-hour shifts.

Ms. Van Horsen said she supported the NDOC's request for additional funding. She said staffing levels were low, which left correctional officers concerned that tensions could intensify and put them in a dangerous situation. She echoed Mr. Bundy's comment that the funding should be included in the NDOC budget request.

Ms. Van Horsen noted that correctional facilities experienced a decrease in the number of correctional officers, because staff transitioned to other sectors. She said AFSCME would like the corrections system to be a career choice for job candidates.

Dave Doyle, chair and president of the Nevada chapter of the Family Focused Treatment Association (FFTA), said his organization was the only national nonprofit agency that advocated for children in specialized foster care (SFC), commonly referred to as "therapeutic foster care."

Mr. Doyle said children in SFC were the most vulnerable children in Clark County. His organization worked with severely emotionally-disturbed children who may have lived in 10 to 30 homes before being placed in SFC for stability. He said he had been a SFC parent for 15 years, and five of those children currently resided in his home.

Mr. Doyle said there was a looming crisis for children in SFC. He explained that SFC was funded through room and board tax and Medicaid state dollars. He said in April of 2017, children in SFC were promised by the Division of Health Care Financing and Policy (DHCFP) and the Division of Child and Family Services (DCFS) that a sustainable model called the State Plan Amendment (SPA) would be implemented prior to any funding cuts for basic skills training. The SPA would extrapolate the billable components of an evidence-based model to continue providing resources for children.

Mr. Doyle reported that in June 2018, FFTA was informed that the SPA was on hold, and the organization may have to close its doors in July. He noted that FFTA represented every therapeutic foster care agency in Nevada, which included 350 Clark County Department of Family Services foster children and 100 juvenile justice children, 70 of whom were juvenile sex offenders.

Mr. Doyle explained that FFTA had been operating under a federal mandate through the Family First Preservation Services Act, which intended to eliminate congregate care facilities, such as Child Haven. If the proposed cuts were made without a sustainable model in place, hundreds of children would be placed at Child Haven or a detention center.

Mr. Doyle asked the IFC to intervene to keep Medicaid and DCFS on track in the pursuit of the SPA before implementing the proposed changes.

Cody Hufford, licensed special education teacher and Registered Behavior Technician (RBT), said he was studying for certification as a Board Certified Behavior Analyst (BCBA). Mr. Hufford said he had been working with children and adults with autism in school and community settings for ten years. He witnessed firsthand the difference that sufficient availability of services and access to adequately trained staff could make in the lives of families. He also witnessed the challenges faced by families who did not have access to immediate and quality Applied Behavior Analysis services for their children.

Mr. Hufford said families were often forced to wait for services for a variety of reasons, including securing funding to pay for the help they needed. Extended wait times for services meant families lost valuable time that could have been spent working on important skills, and the opportunity to train parents to implement proven strategies. He said additional funding could be used to expand ATAP, which would potentially provide services to more families and reduce wait times.

Mr. Hufford said families and providers also had difficulty finding RBTs to work directly with children and their families. There were about 700 RBTs in the state and approximately 8,500 students in Nevada with Individual Education Programs (IEP) eligible for autism services. Developing and funding a system for recruiting, training and retaining RBTs would allow families increased access to an RBT, and give them the opportunity to select which RBT they wanted to work with.

Mr. Hufford said adequate funding to expand services to families, and to recruit, train and retain RBTs was essential. There was no logical reason not to expand funding and use any resources available to address those issues. He said ABA services could help children in the community acquire important skills that could lead them to fuller and more independent lives, which would also mean a smaller long-term investment by taxpayers due to the potential for fewer services being needed later in life. More importantly, access to adequate services and well-trained, certified professionals could ultimately lead to a better life for the families.

Dr. Marc Tedoff, PhD, said he was a BCBA as well as the owner of the Applied Behavior Analysis Institute (ABAI) in Las Vegas. He said ABAI provided services to 65 families, and most of those cases were funded by Medicaid or ATAP. Recent budgetary changes in ATAP threatened the delivery of Medicaid-funded services to children with autism. He said ATAP was a third-party biller for children whose services were funded by Medicaid. He explained that small providers were unable to successfully bill Medicaid directly due to the inefficiency with which claims were processed. ATAP was no longer going to function in this role, but Medicaid had not established a streamlined function for processing claims. Dr. Tedoff noted that state law required employers to pay employees every 15 business days. He said small providers such as ABAI would not have the capital to continue operating without efficient cash flow.

Dr. Tedoff said Families for Effective Autism Treatment (FEAT) reported there were 8,500 children in Nevada with an IEP for autism, but there were only 704 RBTs in the state to serve them. Services of an RBT were required to successfully bill a funding agency. Historically, ATAP supported the development of an RBT workforce by allowing RBT trainees to work while earning credentials. He said ATAP even subsidized the cost of the required 40-hour course, which cost \$100 on average.

Dr. Tedoff said without ATAP's role in covering the cost of certifications for RBTs, there would be even fewer RBTs available to serve clients. He said it would be very difficult to convince somebody to invest \$100, take a 40-hour class, pass an onsite competency assessment, and sit for a national exam, before they could be credentialed with an insurance company and work for a low wage due to the Medicaid reimbursement rate of \$31.30 per hour. His agency experienced a decrease in the number of RBTs it employed due to low wages. Many RBTs left ABAI to work for other companies that served children funded by private insurance, which paid much more.

Dr. Tedoff said treatment for children with autism was threatened by a precarious cash flow, the elimination of a mechanism to develop an RBT workforce for the state, and non-competitive reimbursement rates. He suggested one solution would be to adequately fund ATAP to better support the agencies and RBTs.

Vicki Van Beveren said she would like to address a discrepancy in pay between Nevada Highway Patrol (NHP) officers and officers employed by other local law enforcement entities. She recalled a news article in May 2017 about a rally by state workers who argued that their wages were 30 percent below what they would have been had it not been for cuts made during the Great Recession (Whaley, Sean. "Nevada State Workers Push for Better Pay," Las Vegas Review-Journal, May 5, 2017, accessed July 31, 2018, <https://www.reviewjournal.com/news/2017-legislature/nevada-state-workers-push-for-better-pay/>). She said the article indicated some state workers qualified for public assistance and low wages created issues with retention. She noted Senate Majority Leader Aaron Ford was quoted in the article acknowledging the loss of pay by state employees.

Ms. Van Beveren said a family member had been an NHP officer for over ten years; seven of those years there were no pay increases, because wages for state employees had been frozen. She believed that created a 30 to 40 percent discrepancy in pay between the NHP officer base pay and the pay of other entities' law enforcement officers. She said her relative's base pay as an NHP officer was \$55,000. She researched the website *Transparent Nevada* where she found that the base pay for officers at the Clark County School District was \$72,000. She said NHP positions were more demanding and dangerous than school district positions. She said NHP officers saw things that nobody should have to see. In addition, she said NHP officers contributed to their own retirement benefits, whereas other agencies fully paid their employees' retirement funds.

Ms. Van Beveren was also concerned that NHP was unable to fill vacancies that resulted when officers left NHP for other agencies that offered a higher base salary. She said in the past year, 20 NHP officers transferred to the Las Vegas Metropolitan Police Department, North Las Vegas Police Department or Clark County School District. The state was investing hundreds of thousands of dollars to train new officers who then moved on to higher paying positions with other agencies. She said the highways were not as safe as they could be, because experienced officers were going to other agencies. Ms. Van Beveren said officers that remained with NHP were asked to train new hires without receiving additional pay. She said the state balanced the budget on the backs of state employees, because year after year they were asked to take furloughs and budget cuts.

Ms. Van Beveren said NHP officers should receive an increase higher than 5 percent to close the wage gap. She suggested that the increase come from the State Highway Fund. Ms. Van Beveren said she would appreciate the Committee's consideration of this gap in wages between NHP officers and officers employed by other agencies.

**C. WORK PROGRAM REVISIONS IN ACCORDANCE WITH NRS 353.220(5)(a).
INFORMATIONAL ONLY – APPROVED BY THE GOVERNOR BECAUSE OF AN
EMERGENCY AS DEFINED IN NRS 353.263 OR FOR THE PROTECTION OF
LIFE OR PROPERTY.**

The Committee expressed interest in hearing testimony on the following items: Agenda Items C-1, Department of Health and Human Services (DHHS), Director's Office, and C-2, Department of Public Safety (DPS), Division of Investigations.

- 1. Department of Health and Human Services - Director's Office - Grants Management Unit - FY 2018** Transfer of \$81,980 from Tobacco Wellness Grants category to SafeVoice Program category to support the Department of Public Safety Division of Investigations SafeVoice (Safe-to-Tell) anonymous tip line program.
RELATES TO AGENDA ITEM C.2. Work Program #C43342

Agenda Items C-1, C-2, E-51 and E-135 were discussed together. Refer to testimony and motion for approval under Agenda Item E-135.

2. **Department of Public Safety - Investigations Division - FY 2018** - Addition of \$81,980 in Funds for a Healthy Nevada - Tobacco settlement funds through a transfer from the Department of Health and Human Services to fund the addition of four contract staff positions to support expanded operational capacity of the SafeVoice (Safe-to-Tell) Program. **RELATES TO AGENDA ITEM C.1. Work Program #C43327**

Agenda Items C-1, C-2, E-51 and E-135 were discussed together. Refer to testimony and motion for approval under Agenda Item E-135.

D. WORK PROGRAM REVISIONS IN ACCORDANCE WITH NRS 353.220(5)(b) – INFORMATIONAL ONLY – REQUIRED EXPEDITIOUS ACTION WITHIN 15 DAYS.

Agenda Item D included work programs submitted under the expeditious action item provision in NRS 353.220(5)(b). The Committee expressed interest in hearing testimony on Agenda Items D-2 through D-4, Nevada Department of Corrections (NDOC).

1. **Department of Business and Industry - Nevada Transportation Authority - FY 2018** - Addition of \$28,439 in Noticing Fees revenue to fund increased public notice costs. Requires Interim Finance approval since the cumulative amount added to the Noticing and Refunds category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42894**

There was no discussion on this item.

2. **Department of Corrections - Prison Medical Care - FY 2018** - Addition of \$2,622,782 in the Transfer from Prison Store to fund paid inmate medical claims as defined in NRS 209.221 and NRS 209.246. Requires Interim Finance approval since the amount added to the Inmate Drivens category exceeds \$75,000. **RELATES TO ITEMS D. 3 and 4. Work Program #C42722**

Agenda Items D-2 through D-4 were discussed jointly. Refer to testimony under Agenda Item D-4.

3. **Department of Corrections - Offenders' Store Fund - FY 2018** - Transfer of \$2,622,782 from the Retained Earnings category to the Transfer to Inmate Welfare category to fund paid inmate medical claims as defined in NRS 209.221 and NRS 209.246. Requires Interim Finance approval since the amount added to the Transfer to Inmate Welfare category exceeds \$75,000. **RELATES TO ITEMS D. 2 and 4. Work Program #C42763**

Agenda Items D-2 through D-4 were discussed jointly. Refer to testimony under Agenda Item D-4.

4. **Department of Corrections - Inmate Welfare Account - FY 2018** - Addition of \$2,622,782 in Transfer from Offenders Store to fund paid inmate medical claims as defined in NRS 209.221 and NRS 209.246. Requires Interim Finance approval since the amount added to the Transfer to Medical Co-Pays category exceeds \$75,000. **RELATES TO ITEMS D. 2 and 3. Work Program #C42754**

Agenda Items D-2 through D-4 were discussed jointly.

James Dzurenda, Director, Nevada Department of Corrections (NDOC), introduced Scott Ewart, Administrative Services Officer, NDOC; John Borrowman, Deputy Director, NDOC; and Robin Hager, Medical Administrator, NDOC.

John Borrowman, Deputy Director, NDOC, thanked the Committee, LCB staff and the Governor's Finance Office for assistance in finding a solution to the shortfall in the Prison Medical Inmate Driven's category. He said many operational adjustments were implemented due to the projected shortfall for FY 2018. During the April 11, 2018, IFC meeting, the Committee had concerns about using the Prisoners' Personal Property Fund to correct the shortfall; therefore, NDOC worked with LCB Fiscal Division staff and LCB legal counsel to find a lawful and workable solution to address the financial matter. He said funds would be transferred from the Offenders' Store Fund to the Inmate Welfare category, and then to the Prison Medical Inmate Driven's category to provide additional funding for outside medical expenditures. Mr. Borrowman said the work programs were submitted as expeditious items and had already passed the 15-day time period.

Assemblywoman Carlton remarked that medical costs would only continue to increase. She noted that the number of inmate surgeries had increased by 722, or 543 percent. She said it was important for the Committee to understand the reason for such a substantial increase as well as the ongoing issue pertaining to outside medical costs. She expressed concern about the ongoing issue of inmates being refused treatment by hospitals and doctors.

Assemblywoman Carlton asked the status of the Utilization Review Coordinator position. She said the Committee wanted a better understanding of the department's utilization. The Committee also wanted to know about the department's pharmacy utilization and whether NDOC had a Pharmacy Benefits Manager (PBM).

Assemblywoman Carlton said she still had concerns about how the medical shortfall was being managed. If an inmate did not have funds to pay for medical costs, she hoped it would not impact them after parole, ultimately causing them to return to prison, because they could not afford their medical costs.

Mr. Borrowman said, with regard to the department's policy concerning medical costs for inmates, NDOC worked closely with LCB legal staff to find a lawful and viable solution. He said inmates with sufficient income and resources were

responsible for paying a portion of their medical expenses; however, the majority of inmates did not have sufficient resources or income to cover their medical costs. Mr. Borrowman said NDOC would still receive funds from the Inmate Welfare Fund, but the debt for medical care would not be posted against inmates who lacked the means to pay for their own medical care. He said medical debt would not follow the inmate if it was determined that the inmate did not have the resources at the time the charge was posted.

Robin Hager, Medical Administrator, NDOC, said surgeries included all types of procedures, both minor and major. The increase in surgeries included procedures performed inside and outside of the prison system. She said increased medical care among inmates was similar to the growing need for medical care nationwide. Ms. Hager said the department's medical costs increased as medical inflation increased. She said she would provide the Committee with specific details regarding the various types of surgeries that were required by inmates, as well as which procedures were managed internally and externally. She noted that medical care within the institutions was limited to basic health concerns. More complex issues, such as magnetic resonance imaging (MRI) and cancer treatment, required outside medical care.

Ms. Hager said, with regard to pharmacy, the department's PBM was the Minnesota Multistate Contracting Alliance for Pharmacy, which provided services to every state in the nation. Although the department's pharmacy costs were good, she requested a comparison of NDOC pharmacy rates and Public Employees' Benefit Program (PEBP) pharmacy rates. Ms. Hager noted that the department regularly sought efficiencies to save money. She said the department used the 340B Program through Renown Hospital, especially for HIV and Hepatitis C medications, because the savings exceeded 50 percent. Ms. Hager said NDOC would be issuing a request for proposal (RFP) for preferred provider network and third-party administrator (TPA) services. She said pharmacy may also be included in the RFP, especially if the department could link in with PEBP and Medicaid. She said the three agencies were working together to identify a statewide benefit.

Ms. Hager said providers refusing to treat inmates was a nationwide issue. She said providers' contracts were with the network, not NDOC; therefore, the department did not have a say if a provider refused to treat inmates. She said some providers were not comfortable serving the inmate population, and others preferred to treat inmates after hours and via an alternate entrance to ensure that inmates were not seen by patients. Ms. Hager said in-house clinics at the institutions were a good solution. She said the department hosted in-house clinics as often as possible at Northern Nevada Correctional Center (NNCC) and High Desert State Prison (HDSP). Physicians treated as many inmates as possible during the in-house clinics, which allowed inmates to receive medical care while reducing the cost of transportation and security. Ms. Hager noted that a dermatologist recently agreed to provide a clinic at NNCC, which would afford a savings for the department. She said in-house clinics were good business and beneficial for everyone.

Ms. Hager said in-house clinic doctors treated as many conditions as possible, and a referral for outside care was written for any conditions they could not treat. The referrals were reviewed by the Utilization Review Panel (URP), which was a panel comprised of four doctors. The URP met weekly basis to review consults. Ms. Hager said each week there were typically about 40 new consults; 15 to 30 deferred consults, which were referrals from a prior meeting that required additional information; 0 to 5 dental consults, typically for oral surgery; and approximately 80 approved consults for inmates with a pending transfer from one institution to another. She explained that approved consults were referrals to an in-house clinic, which required transferring an inmate to the institution where the clinic was scheduled.

Ms. Hager said the doctors on the URP reviewed the medical records of inmates and determined if the issue could continue to be treated internally, or if the matter required outside medical care. She said all four doctors had to be in agreement before NDOC could assign an authorization code and make an appointment for the inmate. Ms. Hager said having an in-house URP saved the department money.

Assemblyman Sprinkle recalled that the department indicated the increasing age of the NDOC inmate population was driving the amount of medical liability. He asked if the department had determined which inmates over a specific age were incarcerated for violent and non-violent offenses. He also asked if there was the potential for early release for some of those inmates so NDOC would no longer be responsible for the cost of their medical care.

Mr. Dzurenda replied that the most recent census indicated that the department's elderly inmate population had decreased compared to two years ago. He thought the inmate population was becoming sicker overall. He said he was unsure if prior illegal drug use was causing inmates to deteriorate faster or something else, but the department continued to experience increased medical care costs.

Mr. Dzurenda said NDOC considered three inmates for potential early release due to significant health issues; however, those inmates did not meet the qualifications, because they were incarcerated for violent crimes and determined to be a public safety risk. He said one inmate was hospitalized due to severe brain damage and another was on life support. He noted that the third inmate had spinal damage from a police chase and died while in NDOC custody.

Assemblyman Sprinkle said there were advancements in technology related to telemedicine services. He asked if NDOC was building an infrastructure for telemedicine within the institutions. Assemblyman Sprinkle thought telemedicine would increase accessibility to medical care for inmates as well as all Nevadans, which offered potential cost savings.

Mr. Dzurenda replied that NDOC received confirmation from Enterprise Information Technology Services (EITS) on June 19, 2018, that the department's microwave services would be temporarily increased to improve access to broadband coverage. He said NDOC institutions in the rural areas would have access to broadband by June 22, 2018; however, it was a short-term solution. As a long-term solution, the department was working on a contract with local networks to expand the department's broadband coverage by installing fiber optics in the local areas. Mr. Dzurenda anticipated installation would be complete by the end of August 2018. Additionally, the department was scheduled to meet with the vice president of Renown Hospital to discuss the expansion of telemedicine to the rural institutions, which included HDSP, Lovelock Correctional Center, Ely State Prison and Southern Desert Correctional Center. He said Renown Hospital had a grant that would allow the facility to order telemedicine carts for the department; therefore, NDOC would meet with hospital staff to discuss the order now that it was confirmed that broadband would be available for the rural institutions. Mr. Dzurenda said the next step would be expanding telemedicine to the conservation camps throughout the state. He thought all 18 facilities would have broadband coverage by the end of 2018, which would also increase broadband coverage for the surrounding communities, not just the prison system. Mr. Dzurenda said the department would provide the Committee with an update when the project was close to being finalized. Assemblyman Sprinkle thought that was exciting news.

Assemblyman Sprinkle noted that NDOC was only auditing 10 percent of its medical claims. He asked why such a small number of claims were being audited when medical costs had been an issue since at least 2013. He said cost reductions could be realized for some of the medical claims by utilizing preferred provider organization (PPO) programs; however, the PPO discount had not been applied to more than \$1.9 million in claims. He thought auditing a greater percentage of claims may explain what was driving the department's medical costs.

Ms. Hager said inmates generated between 60,000 and 80,000 medical claims per year, which was a significant workflow. She said provider claims were sent directly to the TPA for adjudication. The TPA watched for claims that were covered by Medicaid, because the department was not responsible for medical costs if an inmate became eligible for Medicaid while in the hospital. Additionally, the TPA watched for workers' compensation claims, because NDOC was also not responsible for those medical costs. Overall, the TPA watched for anything unusual and compared each claim to the weekly authorization list provided by NDOC.

Ms. Hager said after the TPA review, claims were sent to NDOC. She said she did not have an adequate number of staff to review 60,000 to 80,000 claims per year; therefore, approximately 10 percent of the claims were audited. The department performed an audit by exception to look for items that appeared unusual. For example, if a claim for an eye exam was more than the standard \$45, further review was required. Additionally, if the department was charged \$85,000 instead of the standard \$30,000 for a care flight out of Elko, an inquiry needed to be made about

the cost to determine whether the provider was new or not under contract. Ms. Hager said NDOC had the ability to review the explanation of benefits (EOB) in the TPA system. The EOB provided details on the services that were billed and the cost charged by the provider for those services. If necessary, the department could also contact the provider for further explanation. Ms. Hager said after her staff finished performing a second-level review of the claims, the NDOC accounting department performed the third and final review to double check for items such as workers' compensation claims, and then the claim was paid. She said an auditor recently asked how the department ensured it was billed for the appropriate service, and she replied that regular checks and balances helped to avoid those types of billing errors. Ms. Hager said funding was not available for an outside auditor.

Assemblyman Sprinkle asked if the department was confident that the \$1.9 million in claims that had not received a PPO discount had been thoroughly reviewed and the charges were determined to be legitimate.

Ms. Hager said she requested a report from the TPA on June 19, 2018, comparing in-network and out-of-network costs. As of May 31, 2018, the department incurred out-of-network medical expenses totaling \$1.5 million and in-network medical expenses totaling \$9.6 million. She stated that 50 percent of the out-of-network costs were for air transportation and ambulances, which were historically out-of-network services nationwide. She said during a critical situation there was not enough time to seek an in-network provider for air transportation or an ambulance. Ms. Hager said there were other instances when an in-network provider was not an option. For example, a current inmate had a rare form of bone cancer and the only doctor in Nevada that could treat it was out-of-network.

Assemblywoman Benitez-Thompson asked the department to explain the reimbursement process as indicated in Administrative Regulation (AR) 245.

Mr. Borrowman replied that AR 245 defined which inmates were exempt from medical care costs based on income and resources. Specifically, insufficient income was a measure of income set forth annually by the Department of Health and Human Services, defined as income that is at or below 138 percent of the federal poverty level for the Medicaid, childless, adult population. He said income was defined by a Medicaid eligibility standard that was consistent with the community. Insufficient resources were those defined as assets, both real and personal, which an individual owns and can apply, either directly or by sale, to meet the basic needs of food, clothing, shelter and medical costs. Insufficient resources for inmate medical charges was \$2,000, which followed the resource limits for home-based waivers and institutional groups included in the Division of Welfare and Supportive Services *Medical Assistance Manual*. Again, the resources were based on Medicaid eligibility.

Assemblywoman Benitez-Thompson said it appeared that 20 to 40 percent of the inmate population would be charged a percentage of their medical costs. She asked if the department used a sliding scale, or if the formula was published in AR 245.

Mr. Borrowman replied that the number of inmates with sufficient income and resources to participate in their medical costs was very limited. Approximately 112 current inmates, less than 10 percent of the inmate population, met those qualifications, and only 2 to 4 inmates had outside medical services provided to them for which they would be charged. He noted that one of the inmates had already been released and would not be billed retroactively. Mr. Borrowman said the current projected shortfall for NDOC was approximately 20 to 40 percent. The 2 to 4 inmates mentioned previously would be required to pay between 20 and 40 percent of the outside expenditures that were incurred for their medical care. He said the highest charge was about \$300, but most charges were under \$100. Mr. Borrowman reiterated that the total impact of charges to inmates with sufficient funds was a very limited number and so far, with very limited expenditures. He said it was possible that a more expensive medical issue could occur, but currently there were no high-level charges for any inmate.

Assemblywoman Spiegel asked if the TPA utilized billing review software, and if so, what percentage of billing errors were discovered on the front end. Ms. Hager said she was unsure what software the TPA used or the percentage of billing errors; however, she would provide that information to the Committee.

In answer to a question from Assemblywoman Spiegel, Ms. Hager replied that workers' compensation claims were filed when an inmate incurred a work-related injury during incarceration. For example, an inmate may sustain an injury while performing forestry duties or working at the prison ranch.

Assemblywoman Spiegel asked if NDOC pursued subrogation opportunities. Mr. Borrowman replied that the department had a safety and security audit team that investigated all incidents within the prison system. He said the safety and security audit team investigated incidents such as fires, vehicle accidents and work-related injuries. The investigation process included analyzing the site of the incident, events that occurred, risks, procedures and outcome. The team also identified whether funds could be recovered. For example, delivery trucks had been known to damage NDOC fences and buildings. When such an incident occurred, the department tried to recover funds for damages for which the vendor was liable. Mr. Borrowman noted that Alexander Archie, Compliance Investigator, NDOC, was typically responsible for investigations. He said Mr. Archie held many certifications for various agency-level abilities necessary to perform investigations.

There was no further discussion on these items.

- 5. Department of Health and Human Services - Health Care Financing and Policy - Intergovernmental Transfer Program - FY 2018** - Addition of \$2,119,975 in School District Reimbursements funds and deletion of \$274,078 in Receipts County Inpatient Upper Payment Limit funds to cover projected program expenditures. Requires Interim Finance approval since the amount added to the Transfer to Medicaid category exceeds \$75,000. **RELATES TO ITEM D. 6. Work Program #C43251**

There was no discussion on this item.

E. APPROVAL OF GIFTS, GRANTS, WORK PROGRAM REVISIONS AND POSITION CHANGES IN ACCORDANCE WITH CHAPTER 353 OF NRS.

The Committee expressed interest in hearing testimony on the following items: Agenda Items E-14, Department of Administration, Enterprise Information Technology Services (EITS); E-17, Department of Administration, Nevada State Library, Archives and Public Records; E-23 through E-26, Department of Taxation; E-51, Department of Health and Human Services (DHHS), Director's Office; E-68, DHHS, Division of Public and Behavioral Health (DPBH); E-80, DHHS, DPBH; E-127, Department of Motor Vehicles (DMV); E-129, DMV; E-134, Department of Public Safety (DPS), Division of Investigations; E-135, DPS, Division of Investigations; E-153, Nevada Department of Transportation (NDOT); E-161, Silver State Health Insurance Exchange (SSHIX); E-162, SSHIX; and E-164, Office of the Secretary of State.

Agenda Item E-11, Department of Administration, EITS, was withdrawn.

The following items involved the allocation of block grant funds, which required a public hearing: Agenda Items E-91, DHHS, Division of Welfare and Supportive Services (DWSS), and E-98, DHHS, Division of Child and Family Services (DCFS).

Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division, LCB, stated that Agenda Items E-113, NDOC, and E-120, NDOC, required a revision by the agency.

Assemblywoman Swank requested further testimony on Agenda Items E-145 and E-146, Department of Conservation and Natural Resources (DCNR), Division of Environmental Protection.

Assemblywoman Titus requested further testimony on Agenda Item E-149, Department of Wildlife.

Assemblyman Edwards requested further testimony on Agenda Items E-131, DPS, Nevada Highway Patrol (NHP); E-136, DPS, Division of Emergency Management; and E-139, DPS, Division of Traffic Safety.

Assemblywoman Benitez-Thompson requested further testimony on Agenda Items E-44 through E-48; Governor's Office of Economic Development.

SENATOR PARKS MOVED TO APPROVE THE REMAINING WORK PROGRAM REVISIONS AND POSITION RECLASSIFICATIONS.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

1. **Office of the Governor - State Energy Office - Office of Energy - FY 2019** - Deletion of \$100,629 in Transfer from the Renewable Energy Fund to eliminate one full-time equivalent position due to a reduction in position specific workload and the position being vacant for more than a year. Requires Interim Finance approval since the amount deleted from the Personnel Services category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 2. Work Program #C43321**

Refer to motion for approval under Agenda Item E.

2. **Office of the Governor - State Energy Office - Renewable Energy Account - FY 2019** - Transfer of \$100,629 from the Transfer to Office of Energy category to the Reserve category due to a reduction in required administrative funds as a result of one position elimination. Requires Interim Finance approval since the amount transferred from the Transfer to Office of Energy category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 1. Work Program #C43322**

Refer to motion for approval under Agenda Item E.

3. **Office of the Governor - Office of Science, Innovation and Technology – FY 2018** - Deletion of \$907,900 in General Fund appropriations to continue funding for planning broadband development and improvements for schools and libraries. Requires Interim Finance approval pursuant to Section 35 of Assembly Bill 518 (2017 Legislative Session). **RELATES TO AGENDA ITEM E.4. Work Program #C43247**

Refer to motion for approval under Agenda Item E.

4. **Office of the Governor - Office of Science, Innovation and Technology - FY 2019** - Addition of \$907,900 in General Fund appropriations to continue funding for planning broadband development and improvements for schools and libraries. Requires Interim Finance approval pursuant to Section 35 of Assembly Bill 518 (2017 Legislative Session). **RELATES TO AGENDA ITEM E. 3. Work Program #C43216**

Refer to motion for approval under Agenda Item E.

5. **Office of the Secretary of State - FY 2018** - Transfer of \$319,112 from the Personnel category to the Credit Card Discount Fees category to cover projected credit card discount fees for the remainder of the fiscal year. Requires Interim Finance approval since the amount transferred to the Credit Card Discount Fees category exceeds \$75,000. **Work Program #C42961**

Refer to motion for approval under Agenda Item E.

6. **Office of the Secretary of State - FY 2019** - Addition of \$4,754,071 in Balance Forward from Previous Year to fund expenses related to the replacement of the existing Electronic Secretary of State software and hardware. Requires Interim Finance approval since the amount added to the technology investment request category exceeds \$75,000. **Work Program #C42998**

Refer to motion for approval under Agenda Item E.

7. **Office of the Secretary of State - Help America Vote Act (HAVA) Election Reform - FY 2019** - Addition of \$4,277,723 in federal Title I Help America Vote Act (HAVA) funds to add two new positions to support the Elections Division, ***provide subgrants to counties for reimbursement of an Intrusion Detection System and netflow monitoring system***, with unallocated funds placed in reserve, and transfer of \$760,000 from the Voting Machine Replacement category to the Reserve for Reversion category. Requires Interim Finance approval since the amount added to the Personnel category exceeds \$75,000. **Work Program #C43486. REVISED 6-7-18.**

Refer to motion for approval under Agenda Item E.

8. **Office of the Treasurer - Higher Education Tuition Administration - FY 2019** - Addition of \$40,780 in Transfer from Treasurer revenue in order to fund FY 2019 costs for service on the Prepaid Tuition database. Requires Interim Finance approval since the amount added to the Information Services category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42839**

Refer to motion for approval under Agenda Item E.

9. **Office of the Treasurer - Unclaimed Property - FY 2018** - Addition of \$135,058 in Transfer reimbursements for verification of unclaimed property and securities custodial fees. Requires Interim Finance approval since the amount added to the Audit Services category exceeds \$75,000. **Work Program #C42984**

Refer to motion for approval under Agenda Item E.

10. **Department of Administration - Deferred Compensation Committee - FY 2018** - Transfer of \$950 from the Personnel category to the Operating category to fund a temporary employee for the balance of the fiscal year. Requires Interim Finance approval since the amount added to the Operating category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42803**

Refer to motion for approval under Agenda Item E.

11. **Department of Administration - Enterprise Information Technology Services - Agency IT Services - FY 2019** - Transfer of \$85,824 from the Reserves category to the Operating category and \$74,611 from the Reserves category to the Information Services category to fund the office colocation initiative. Requires Interim Finance approval since the amount transferred to the Operating category exceeds \$75,000. **Work Program #C43311**

This item was withdrawn.

12. **Department of Administration - Enterprise Information Technology Services - Computer Facility - FY 2018** - Transfer of \$560,953 from the Reserves category to the Information Services category to fund a projected shortfall for the remainder of the fiscal year due to a need for additional Microsoft Client Access Licenses and higher than anticipated virtual server and print management costs in server support renewal, virtual server and print management costs. Requires Interim Finance approval since the amount transferred to the Information Services category exceeds \$75,000. **Work Program #C42799**

Refer to motion for approval under Agenda Item E.

13. **Department of Administration - Enterprise Information Technology Services - Computer Facility - FY 2018** - Transfer of \$32,709 from the Reserves category to the Utilities category to fund a projected shortfall for the remainder of the fiscal year in utility costs. Requires Interim Finance approval since the amount transferred to the Utilities category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43096**

Refer to motion for approval under Agenda Item E.

14. **Department of Administration - Enterprise Information Technology Services - Network Transport Services - FY 2019** - Addition of \$1,734,952 in User Charges to fund construction for the remainder of the microwave project. Requires Interim Finance approval since the amount added to the Digital Microwave category exceeds \$75,000. **Work Program #C43326**

Agenda Items E-14 and E-153 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-153.

15. **Department of Administration - Enterprise Information Technology Services - Security - FY 2018** - Transfer of \$220,000 from the Reserves category to the Information Services category and \$100,000 from the Personnel Services category to the Information Services category to fund security architecture for the cloud computing environment. Requires Interim Finance approval since the amount transferred to the Information Services category exceeds \$75,000. **Work Program #C42992**

Refer to motion for approval under Agenda Item E.

16. **Department of Administration - Nevada State Library, Archives and Public Records - State Library - FY 2018** - Transfer of \$2,000 from the Bookmobile Services category to the Statewide Databases category to fund the Emerging Technology Early Adopter Program which helps librarians develop basic skills and knowledge to create virtual reality programs. Requires Interim Finance approval since the cumulative amount transferred to the Statewide Databases category exceeds \$75,000. **Work Program #C43284**

Refer to motion for approval under Agenda Item E.

17. **Department of Administration - Nevada State Library, Archives and Public Records - State Library - FY 2019** - Addition of \$1,726 in U.S. Institute of Museum and Library Services grant funds and transfer of \$243,749 from the Library Development Title I category to the Personnel Services category to fund two new positions to provide continuing education support for library development and two new positions converted from existing temporary staff to provide customer assistance. Requires Interim Finance approval since the amount added to the Personnel Services category exceeds \$75,000. **Work Program #C43023**

Patrick Cates, Director, Department of Administration, introduced Jeff Kintop, Division Administrator, Nevada State Library, Archives and Public Records (NSLA), and Jennifer Cartwright, Administrator, Administrative Services Division, Department of Administration.

Mr. Cates said the purpose of the work program was for approval to accept a grant from the U.S. Institute of Museum and Library Services (IMLS) to create two new positions to provide continuing education support for library development. Additionally, two positions would be converted from existing temporary staff to provide customer assistance.

Assemblywoman Swank noted the positions were grant funded. She asked why the department was requesting permanent positions, and how the positions would be funded beyond FY 2019.

Jeff Kintop, Division Administrator, NSLA, Department of Administration, explained that the grant funding for the positions was received every year from the federal

government. The grant was distributed to all of the states, and the amount was based on population. He said the amount of the grant would not decrease unless the federal government failed to pass a budget. He noted that the department was currently paying for existing positions from the same grant. For example, the assistants and technicians for the Talking Books program were funded by the IMLS grant.

In response to a question from Assemblywoman Swank, Mr. Kintop said the positions would continue to be funded by the federal government in the future.

Senator Denis asked if the positions were currently funded as temporary positions, and whether there would be any savings to the state by making the positions permanent. Mr. Kintop replied that the positions had been in place for about ten years under the Manpower temporary employment contract. He said the positions were entirely federally funded, so no state funds were involved.

SENATOR DENIS MOVED TO APPROVE AGENDA ITEM E-17.

ASSEMBLYWOMAN SWANK SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Araujo and Assemblyman Frierson were not present for the vote.)

- 18. Department of Administration - Purchasing - FY 2018** - Transfer \$439,807 from the Reserve category to the Information Services category in order to pay scheduled invoices for the state's e-Procurement system development. Requires Interim Finance approval since the amount added to the Information Services category exceeds \$75,000. **Work Program #C43003**

Refer to motion for approval under Agenda Item E.

- 19. Department of Administration - Purchasing - FY 2019** - Transfer of \$688,000 from the Reserve category to the Information Services category in order to pay scheduled invoices for the state's e-Procurement system development. Requires Interim Finance approval since the amount transferred to the Information Services category exceeds \$75,000. **Work Program #C43016**

Refer to motion for approval under Agenda Item E.

- 20. Department of Administration - Purchasing - FY 2019** - Transfer \$91,557 from the Reserve category to the Information Services category in order to fund the development of an online contract certification course for state contract managers. Requires Interim Finance approval since the amount transferred to the Information Services category exceeds \$75,000. **Work Program #C43004**

Refer to motion for approval under Agenda Item E.

21. **Department of Administration - Purchasing - FY 2019** - Transfer of \$45,798 from the Reserve category to the Operating category to fund upgrades to the Las Vegas Purchasing warehouse. Requires Interim Finance approval since the cumulative amount transferred to the Operating category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43020**

Refer to motion for approval under Agenda Item E.

22. **Department of Administration - State Public Works - Buildings and Grounds - FY 2018** - Transfer of \$279,797 from the Reserve category to the Maintenance of Buildings and Grounds category to fund emergency maintenance and janitorial services for the Grant Sawyer building and extended janitorial services for the office building and the Belrose, Decatur and Henderson Department of Motor Vehicles buildings. Requires Interim Finance approval since the amount transferred to the Maintenance of Buildings and Grounds category exceeds \$75,000. **Work Program #C43149**

Refer to motion for approval under Agenda Item E.

23. **Department of Taxation - Marijuana Regulation and Control Account – FY 2019** - Transfer of \$210,000 from the Reserve category to the Building Security category to provide contracted armed security at the offices in Reno, Henderson and Carson City. Requires Interim Finance approval since the amount added to the Building Security category exceeds \$75,000. **Work Program #C42893**

Agenda Items E-23 through E-26 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-26.

24. **Department of Taxation - Marijuana Regulation and Control Account – FY 2019** - Transfer of \$597,649 from the Dispensaries and Establishments category to the Personnel Services category, transfer of \$789 from the Dispensaries and Establishment category to the Operating category, and transfer of \$2,722 from the Dispensaries and Establishments category to the Information Services category in order to continue funding for eight state positions approved by the Interim Finance Committee for FY 2018 for the Marijuana Program. Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds \$75,000. **Work Program #C43062**

Agenda Items E-23 through E-26 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-26.

25. **Department of Taxation - Marijuana Regulation and Control Account – FY 2019** - Transfer of \$208,000 from the Reserve category to the Operating category, transfer of \$224,100 from the Reserve category to the Dispensaries and Establishments category, and transfer of \$433,096 from the Reserve to the

Information Services category in order to fund contract staff for marijuana establishment application reviews, equipment replacement, public service announcements, contracted regulation review, and a new case management system for the Marijuana Program. Requires Interim Finance approval since the amount added to the Operating category exceeds \$75,000. **Work Program #C43237**

Agenda Items E-23 through E-26 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-26.

- 26. Department of Taxation - Marijuana Regulation and Control Account - FY 2019 -** Transfer of \$402,360 from the Reserve category to the Personnel Services category, transfer of \$23,890 from the Reserve category to the Operating category, transfer of \$35,920 from the Reserve category to the Equipment category and transfer of \$27,028 from the Reserve category to the Information Services category in order to fund eight new state positions for the Marijuana Program. Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds \$75,000. **Work Program #C43239**

Agenda Items E-23 through E-26 were discussed jointly.

Bill Anderson, Executive Director, Department of Taxation, introduced Steve Gilbert, Health Program Manager, Department of Taxation; Melanie Young, Administrative Services Officer, Department of Taxation; and Jorge Pupo, Deputy Director, Marijuana Enforcement Division, Department of Taxation.

Mr. Anderson said the department wanted the marijuana industry in Nevada to be well regulated, responsible, restricted, and respected inside and outside of the state. He described those as the department's "four R" approach to the regulation of the sale of marijuana in Nevada.

Mr. Anderson reported that one year into the legalization of adult-use marijuana in Nevada, about 116 cultivator licenses had been issued. There were currently about 80 producers and 61 dispensaries. For medical marijuana, those numbers were more than double. Together, there were about 554 marijuana licensees in Nevada. For comparison, the Gaming Control Board had about 450 non-restricted gaming licenses in place as of the end of FY 2017.

Mr. Anderson said the best way to measure the growth of Nevada's marijuana industry in its infancy was to perform an analysis of tax collections, which revealed stronger growth than anticipated. He said complete information was available through the first three quarters of FY 2018. During that time, almost \$49 million was collected from the two main taxes: the 15 percent wholesale excise tax and the 10 percent retail excise tax. Revenue was originally anticipated to be just above \$50 million for the entire fiscal year, meaning collections during the first three

quarters of the fiscal year represented 97 percent of what was originally projected for the entire year.

Mr. Anderson said the rapid growth during the industry's infancy had led to the four work program requests. He said the activity had strained the resources of the department, and the department was taking proactive steps to meet those challenges. He noted that the marijuana industry was almost solely a cash industry. As a result, the safety and security of employees and the public have been discussed with the Department of Public Safety and the State Public Works Division. He reported that a non-IFC work program was submitted to fund security guards during FY 2018. Work Program #C42893 proposed to use \$210,000 to extend the presence of security for the department into FY 2019.

Mr. Anderson said when the department absorbed the marijuana program from the Division of Public and Behavioral Health (DPBH), 12 contracted positions were transferred with the budget. At the December 2017 IFC meeting, approval was given to convert those positions into 8 regular state positions. Work Program #C43062 requested to extend the funding into FY 2019 at a cost of about \$600,000 from the Contractual Services category.

Mr. Anderson said the department was trying to accomplish several things through Work Program #C43237. The department was requesting \$108,000 to continue working with QuantumMark, the vendor responsible for developing the permanent adult-use regulations that were approved by the Legislative Commission in February 2018. He said the department would like the vendor to align the medical marijuana regulations with the adult-use regulations.

Mr. Anderson noted \$100,000 was requested for public service announcements (PSA). He said the number one mission of the Marijuana Enforcement Division was to protect the health and safety of Nevadans. The PSAs would be geared toward pregnant women about the dangers of using marijuana products during pregnancy.

Mr. Anderson said \$224,000 was requested to fund temporary staff. The department was currently reviewing applications for existing medical marijuana license holders that had not yet applied for an identical license on the adult-use side. He said existing staff could handle that activity. However, later in the summer of 2018 there would be a licensing period in which any medical marijuana license holder could apply for any adult-use type license. For example, a cultivator could apply for a dispensary license. In terms of volume, the workload would be quite sizable. He estimated that 150 to 170 license applications might be received during that period. The department was requesting authority to hire 15 temporary staff to include support staff, accountants and human resource staff.

Mr. Anderson said \$13,000 was requested for equipment to print agent cards. He explained that the existing printers were failing and needed to be replaced. Funding was also being requested for a new videoconferencing system. He said the

videoconferencing system the department received from DPBH was incompatible with the department's system. Department staff in Northern Nevada had a difficult time communicating with staff in Southern Nevada. He said auditors and inspectors needed to interface with each other, but that had proven to be very difficult. The cost associated with the new videoconferencing system was about \$34,000.

Mr. Anderson said the Marijuana Enforcement Division had been maintaining its records on spreadsheets. The department would like to acquire a case management system to more efficiently manage the interactions between the department and the license holders. The cost associated with that request was about \$386,000. He explained that the funding would come from reserves.

Mr. Anderson said in light of the rapid growth of the industry, the department was asking for authority to hire eight individuals, including an Administrative Services Officer 2; a Management Analyst 1 to help with fiscal issues; five Administrative Assistant 2 positions to help process agent cards, change of ownership forms, advertising and packaging; and a Health Program Manager to assist the Deputy Director in overseeing day-to-day operations (Work Program #C43239). The department was requesting \$490,000 to cover the new positions.

Mr. Anderson said he compared the department's staffing ratio to other states. He learned that Washington, Oregon and Colorado were most like Nevada in terms of their marijuana programs. He noted Nevada had 12 employees per million population; Washington had about 11 employees per million; Oregon had about 17 employees per million; and Colorado had about 19 employees per million. Based on that comparison, he believed the department's request was reasonable.

Assemblyman Sprinkle said in January 2017, the IFC allocated over \$800,000 in Contingency Account funds to develop the initial regulations for recreational marijuana. At no time during that meeting was it brought to the attention of the Committee that the department would need to hire outside contractors, such as QuantumMark, to develop the regulations. Assemblyman Sprinkle said the department was requesting mid-level and upper-level positions that should be able to perform those tasks.

Mr. Anderson said QuantumMark worked with the department to develop the permanent regulations for adult-use/recreational marijuana. The department had a contract with QuantumMark, which developed an extensive set of knowledge about Nevada's marijuana market during that process. He noted that the permanent regulations were approved by the Legislative Commission at its February 2018 meeting. He said the department thought the most efficient way to ensure that medical marijuana regulations were consistent with the adult-use regulations was to use QuantumMark's services, which cost about \$108,000.

Assemblyman Sprinkle suggested that department staff had developed an expertise of the topic during the process of developing the regulations for adult-use marijuana with the contractor.

Jorge Pupo, Deputy Director, Marijuana Enforcement Division, Department of Taxation, recalled that the initial \$108,000 Contingency Account request was for funding to get the program started. He said three positions were requested at that time. The QuantumMark contract to coordinate the regulations was roughly \$100,000. He said QuantumMark had experience developing regulations for the initial medical marijuana program in 2014.

Mr. Pupo said the Administrative Assistant 2 positions would work on the backlog of agent cards and change of ownership forms. He explained that division staff participated in developing the regulations, but QuantumMark did most of the work. He added that division staff was stretched thin, and staff from other divisions were working overtime to assist the Marijuana Enforcement Division.

Mr. Pupo said there was a problem with NAC 453A not being consistent with NAC 453D, which was adopted in February 2018. He said it was difficult to enforce two different sets of regulations. He noted that QuantumMark had the foundation to help coordinate hearings and public workshops.

Assemblyman Sprinkle said he appreciated that perspective; however, he thought division staff had gained enough experience in the past two years to avoid the need for an outside contractor. He recalled that during the 2013 Legislative Session, an appropriation was made for a Chief Deputy specifically designated to manage regulations.

Assemblyman Hambrick noted there was a request for funding for a PSA directed at pregnant women. He asked about the effect of marijuana use on the fetus during pregnancy and while nursing.

Steve Gilbert, Health Program Manager, Department of Taxation, said the Marijuana Enforcement Division partnered with DPBH and the Department of Public Safety on topics such as driving while intoxicated. The department relied on the studies of those other agencies, and communicated those messages.

Senator Denis noted the department was using spreadsheets to track licensee data and seeking funding for a case management system. He asked how the estimate of \$386,000 was determined and whether a technology investment notification (TIN) had been submitted to EITS.

Melanie Young, Administrative Services Officer, Department of Taxation, said the department reached out to various vendors in the industry to request quotes for a case management system. The dollar amount in the work program was based on a quote received from one of those vendors. Ms. Young said the division would submit

a TIN to EITS and work with the Purchasing Division to prepare a request for proposal.

In response to a question from Senator Denis, Ms. Young said the off-the-shelf program being requested was specifically designed for the cannabis industry. The department's IT staff developed the TIN, which would be submitted to EITS upon approval of the work program.

Senator Kieckhefer asked if the department had an estimate of the additional expense being incurred by using a bifurcated method to separate the medical and recreational marijuana systems. He noted the two systems had different tax structures, and different cards were issued for each system. He was curious as to whether maintaining two systems was still necessary.

Mr. Anderson said the department handled the vast majority of the regulatory responsibility over the marijuana industry in Nevada, both medical and adult-use. The DPBH was responsible for issuing medical marijuana cards. The department and DPBH collaborated with regard to the public health aspect of the program.

In response to a question from Senator Kieckhefer, Mr. Gilbert explained that the department was responsible for issuing agent cards for all owners, officers and board members, as well as employees and contractors of all the establishments licensed in the state. He said there were approximately 10,200 registered agents that were allowed to work in any one of the marijuana establishments in the state. He explained that there was a requirement under NAC 453A and 453D for the department to issue cards for each type of worker, for each establishment. For example, an employee who worked in an establishment that sold both medical and recreational marijuana must have both types of cards.

Assemblyman Oscarson asked when the Marijuana Enforcement Division would become self-supporting. Mr. Anderson clarified that the law was written in such a way that the department's operation with respect to the Marijuana Enforcement Division was fully funded by the 15 percent wholesale tax levied on cultivators. The statute required the department to provide \$5 million per year to counties and other jurisdictions to assist them with marijuana enforcement activities. The statute also required the department to pay for operating expenses for the Marijuana Enforcement Division with revenue from the 15 percent wholesale tax. At the end of the fiscal year, the remaining revenue was transferred to the Distributive School Account (DSA). Mr. Anderson said the Marijuana Enforcement Division was not funded by General Funds; rather, it was completely funded by marijuana taxes and licensing fees.

Assemblyman Oscarson asked if the money being requested had already been collected as revenue. Mr. Anderson confirmed that was correct.

Assemblywoman Carlton said the Committee understood the division needed personnel, and the Committee wanted the division to be the “gold standard” for marijuana enforcement. However, she said it should be clear that whatever revenue the division did not use would go to the DSA.

Senator Gansert noted the scope of the contract for QuantumMark was to align the regulations for medical and recreational marijuana. She asked if that scope should be changed from aligning the regulations, to streamlining and consolidating the regulations. Regarding the PSAs, she noted that the division was going to purchase 33 advertising slots for \$3,000 each. She asked if the division had pursued federal matching grants that could be used to leverage that messaging. She noted there may be private nonprofit organizations that would be interested in getting those types of messages across as well.

Assemblyman Sprinkle said the request was sensible. He agreed that Nevada’s marijuana program could be an ideal for other states. In fact, there was talk about the good work happening in Nevada at a conference in Colorado that he attended recently. He agreed that additional security and support staff would make the program even better. However, he believed the division’s internal staff should be able to finalize the regulations for medical marijuana.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE AGENDA ITEMS E-23, E-24, E-25 AND E-26, WITH THE EXCEPTION OF THE REQUEST FOR \$108,000 TO HIRE AN OUTSIDE CONTRACTOR TO PERFORM A REVIEW OF REGULATIONS.

SENATOR PARKS SECONDED THE MOTION.

Senator Gansert wanted assurance that the department was using the EITS TIN process to determine whether the scope was appropriate, and that the contract would be awarded through the RFP process.

Assemblyman Edwards asked if the reserve funding to be used for the requests was from marijuana tax revenue, as opposed to General Fund reserve. He noted that revenue collections were about 30 percent above projections.

Mr. Anderson reiterated that there were no General Fund monies associated with the marijuana program. The vast majority of marijuana revenue came from the 15 percent wholesale tax, and a smaller amount of revenue was collected from license and application fees.

THE MOTION PASSED UNANIMOUSLY.

- 27. Department of Taxation - Marijuana Regulation and Control Account – FY 2018** - Addition of \$92,765 in Excise Tax Medical, \$3,000,000 in Excise Tax Wholesale, \$1,200,000 in Establishment Application Fees, \$77,499 in

Establishment License Fees, \$4,850 in Agent Card Registration fees, \$475 in Administration Fees Returned Checks, \$85,500 in Time and Effort Assessments, \$125,250 in Civil Penalties, and deletion of \$5,375 in Treasurers Interest Distribution in order to provide sufficient authority to allow for the transfer of unused marijuana revenue to the Distributive School Account at the close of FY 2018. Requires Interim Finance approval since the amount added to Transfer to DSA category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 28. Work Program #C43260**

Refer to motion for approval under Agenda Item E.

- 28. Department of Education - Distributive School Account - FY 2018** - Addition of \$8,443,443 in Marijuana funds transferred from the Department of Taxation for the operation of school districts and charter schools. Requires Interim Finance approval since the amount added to the Basic Support Aid to Schools category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 27. Work Program #C42689**

Refer to motion for approval under Agenda Item E.

- 29. Department of Education - Distributive School Account - FY 2018** - Transfer of \$299,997 from the Students with Disabilities Exceeding 13 Percent category to the Special Education category to distribute all special education funds in the current fiscal year. Requires Interim Finance approval since the amount transferred to the Special Education category exceeds \$75,000. **Work Program #C43141**

Refer to motion for approval under Agenda Item E.

- 30. Department of Education - Assessments and Accountability - FY 2019** - Transfer of \$92,053 from the State Assessments Contracts category to the S.B. 303, External Audit category to fund the development and implementation of a plan to audit the assessment tools and examinations used to monitor the performance of students and schools in the public education system. Requires Interim Finance approval since the amount transferred to the S.B. 303, External Audit category exceeds \$75,000. **Work Program #C43299**

Refer to motion for approval under Agenda Item E.

- 31. Department of Education - Achievement School District - FY 2019** - Addition of \$196,288 in Charter School Authorizer fees to fund ongoing operations for FY 2019. Requires Interim Finance approval since the amount added to the Indirect Costs category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43288. WITHDRAWN 5-24-18.**

- 32. State Public Charter School Authority - FY 2018** - Addition of \$793,528 in federal Individuals with Disabilities Education Act funds to align state and federal authority to provide funding for Special Education programs. Requires Interim Finance

approval since the amount added to the Special Education category exceeds \$75,000. **Work Program #C43324**

Refer to motion for approval under Agenda Item E.

- 33. State Public Charter School Authority - FY 2018** - Addition of \$181,117 in state English Language Learner Program funds to align authority to continue to support English Language Learner (ELL) programs. Requires Interim Finance approval since the amount added to the State ELL category exceeds \$75,000. **Work Program #C43337**

Refer to motion for approval under Agenda Item E.

- 34. State Public Charter School Authority - FY 2018** - Addition of \$320,886 in federal Title II High Quality Teachers and Principals grant funds to align state and federal authority to continue programs to increase academic achievement by improving teacher and principal quality. Requires Interim Finance approval since the amount added to the Federal Teacher Quality Aid to Schools category exceeds \$75,000. **Work Program #C43347**

Refer to motion for approval under Agenda Item E.

- 35. Department of Agriculture - Registration and Enforcement - FY 2018** - Transfer of \$11,657 from the Reserve category to the Environmental Protection Agency (EPA) Pesticide Enforcement category to provide ongoing pesticide inspections and controls. Requires Interim Finance approval since the cumulative amount transferred to the EPA Pesticide Enforcement category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43170**

Refer to motion for approval under Agenda Item E.

- 36. Department of Agriculture - Pest, Plant Disease, and Noxious Weed Control - FY 2018** - Addition of \$107,894 in federal Food Produce Safety Program grant funds to continue Produce Safety Program activities. Requires Interim Finance approval since the amount added to the Food and Drug Administration Produce Safety category exceeds \$75,000. **Work Program #C42884**

Refer to motion for approval under Agenda Item E.

- 37. Department of Agriculture - Pest, Plant Disease, and Noxious Weed Control - FY 2019** - Addition of \$252,367 in U.S. Department of Agriculture (USDA) Forest Service grant funds to support ongoing sage grouse habitat restoration activities. Requires Interim Finance approval since the amount added to the USDA Forest Service category exceeds \$75,000. **Work Program #C43144**

Refer to motion for approval under Agenda Item E.

38. **Department of Agriculture - Veterinary Medical Services - FY 2018** - Addition of \$5,122 in federal Animal and Plant Health Inspection Services grant funds and transfer of \$4,751 from the Department Cost Allocations category to the Personnel Services category, \$39,091 from the Department Cost Allocations category to the U.S. Department of Agriculture (USDA) Animal Disease Traceability category, and \$141 from the Department Cost Allocations category to the Reserve category to support ongoing animal and plant health inspection service activities. Requires Interim Finance approval since the amount transferred to the USDA Animal Disease Traceability category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42935**

Refer to motion for approval under Agenda Item E.

39. **Department of Agriculture - Livestock Inspection - FY 2018** - Transfer of \$61,614 from the Reserve category to the Personnel Services category to fund a projected shortfall for the remainder of the fiscal year in staff salaries. Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42885**

Refer to motion for approval under Agenda Item E.

40. **Department of Agriculture - Nutrition Education Programs - FY 2018** - Addition of \$99,307 in National School Lunch Program School Equipment grant funds to support equipment purchases for eligible school food authorities. Requires Interim Finance approval since the amount added to the National School Lunch Program School Equipment Grant category exceeds \$75,000. **Work Program #C43085**

Refer to motion for approval under Agenda Item E.

41. **Department of Agriculture - Commodity Foods Distribution Program - FY 2018** - Addition of \$144,403 in federal Commodity Supplemental Food Program grant funds to provide ongoing commodity food subgrants for schools and other eligible entities. Requires Interim Finance approval since the amount added to the Commodity Supplemental Food Program category exceeds \$75,000. **Work Program #C43349**

Refer to motion for approval under Agenda Item E.

42. **Department of Business and Industry - Housing Division - Account for Low-Income Housing - FY 2018** - Transfer of \$735,736 from the Encumbered Reserve category to the Loan Disbursements category to make payments to local entities for the balance of the fiscal year. Requires Interim Finance approval since the amount added to the Loan Disbursements category exceeds \$75,000. **Work Program #C43036**

Refer to motion for approval under Agenda Item E.

- 43. Department of Business and Industry - Housing Division - FY 2018** - Addition of \$1,344,075 in federal Home Grant revenue in order to align revenue to authority and make subgrantee reimbursements. Requires Interim Finance approval since the amount added to the Home Program Administration category exceeds \$75,000. **Work Program #C43133**

Refer to motion for approval under Agenda Item E.

- 44. Governor's Office of Economic Development - Nevada Catalyst Fund – FY 2019** - Transfer of \$822,500 from the Reserve category to the Business Assistance and Development category in order to make scheduled grant payments to companies. Requires Interim Finance approval since the amount added to the Business Assistance and Development category exceeds \$75,000. **Work Program #C43156**

Agenda Items E-44 through E-48 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-48.

- 45. Governor's Office of Economic Development – Nevada State Small Business Credit Initiative (SSBCI) Program - FY 2018** - Deletion of \$2,315,880 in Balance Forward to New Year, deletion of \$1,003,628 in Federal Funds to New Year, addition of \$86,104 in Treasurer's Interest Distribution, addition of \$500,000 in Collateral Repayments, and transfer of \$77,375 from the Reserve category to the Collateral Support Program (CSP) Loans category in order to partially balance forward funds to begin project funding in FY 2019 and align revenue and expenditure authority to expected project activity for the remainder of FY 2018. Requires Interim Finance approval since the amount added to the CSP Loans category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 46. Work Program #C42693**

Agenda Items E-44 through E-48 were discussed jointly. Refer to motion for approval under Agenda Item E-48.

- 46. Governor's Office of Economic Development - Nevada State Small Business Credit Initiative (SSBCI) Program - FY 2019** - Addition of \$2,315,880 in Balance Forward from Previous Year, addition of \$1,003,628 in Federal Funds from Previous Year, transfer of \$334,454 from the Reserve category to the Collateral Support Program Loans category, and transfer of \$194,627 from the Reserve category to the Battle Born Venture Capital Program category. Requires Interim Finance approval since the amount added to the Battle Born Venture Capital Program category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 45. Work Program #C43116**

Agenda Items E-44 through E-48 were discussed jointly. Refer to motion for approval under Agenda Item E-48.

- 47. Governor's Office of Economic Development - Nevada Knowledge Fund - FY 2018** - Addition of \$54,219 in Treasurer's Interest Distribution and transfer of \$1,091,512 from the Reserve category to the Knowledge Fund category in order to

make projected expenditures for the balance of the fiscal year. Requires Interim Finance approval since the amount added to the Knowledge Fund category exceeds \$75,000. **Work Program #C43105**

Agenda Items E-44 through E-48 were discussed jointly. Refer to motion for approval under Agenda Item E-48.

- 48. Governor's Office of Economic Development - Small Business Enterprise Loan - FY 2019** - Addition of \$500,000 in partial balance forward of S.B. 126 appropriations in order to establish this budget account in FY 2019. Requires Interim Finance approval since the amount added to the SBE/WBE/MBE/DBE Loans category exceeds \$75,000. **Work Program #C43147**

Agenda Items E-44 through E-48 were discussed jointly.

Assemblywoman Benitez-Thompson noted that Work Program #C43156, which involved transferrable tax credits, requested \$822,500, but the categorical authority was \$257,000. She asked why the Governor's Office of Economic Development (GOED) Board approved an amount exceeding the authorization.

Matt Moore, Deputy Director, GOED, introduced Bonnie Long, Director of Administration, GOED.

Ms. Long said the Board was not aware of GOED's categorical authority each fiscal year. The Board knew the amount of available cash, and GOED's Manager of Business Development worked with the companies to get the deals in place for the Board to approve. Ms. Long said it was her job to ensure GOED had what it needed based on contracts that were already approved.

Assemblywoman Benitez-Thompson said the transferrable tax credits came out of the General Fund's bottom line. She said the Committee would be receiving a report on revenue projections later in the meeting today indicating revenue collections were increasing. However, the transferrable tax credits would need to be subtracted from those increases. She said the Board should have an understanding of the amount of authorization, and not exceed the amount authorized.

Assemblywoman Benitez-Thompson noted the dates of the Board approval were for multiple years. She noted that when the tax credits were set up by the Legislature, the economy was down. The tax credits were intended to be one-shots to encourage companies to expand and move to the state, which would boost revenue and provide high-paying jobs. The economy had improved since the tax credits were established. She noted companies were getting multi-year grants. She asked whether the companies had multi-year expansions to qualify for those grants.

Ms. Long said the transferrable tax credits program was managed by the Department of Taxation. The Nevada Catalyst Fund was used to train employees

and create new jobs. State General Funds were provided in prior years, and those funds continued to balance forward. Once the funds were gone, the program would be discontinued.

Mr. Moore said each company entered into a contract, which was then approved by the Board. The company's business plan, which was part of the application, included projected job growth, which could span over a period of more than one year.

Assemblywoman Benitez-Thompson noted the work program referenced transferrable tax credits. She said the companies might use that for training, but the actual exchange mechanism was transferrable tax credits.

Assemblywoman Carlton noted that on the schedule of Nevada Catalyst Fund grant payments as of April 2, 2018 (page 345, [Exhibit A](#)), Starbucks would be given \$85,000 in FY 2018, \$82,500 in FY 2019 and \$82,500 in FY 2020.

Mr. Moore said he did not have the details of that deal with him. He noted Starbucks recently expanded its regional distribution center in Douglas County. He offered to provide Assemblywoman Carlton with those details.

Assemblywoman Carlton said the purpose of the Nevada Catalyst Fund was not to include restaurants and businesses that were already established in the state. Rather, the goal was to bring new businesses to Nevada that would diversify the workforce. She was curious why a company such as Starbucks, that had locations everywhere, needed that funding to expand. She asked for a follow up. Mr. Moore said he would get those details to the Committee.

Assemblywoman Benitez-Thompson noted that Work Programs #C42693 and #C43116 were requesting amounts higher than the legislatively approved amounts.

Mr. Moore said the State Small Business Credit Initiative (SSBCI) provided funds from the U.S. Department of Treasury that passed through the state to GOED for the purpose of administering several programs for small business growth and development. GOED was asking for authority to execute that funding. For example, the SSBCI Nevada State Collateral Support Program provided up to 35 percent collateral for growing small businesses with positive cash flow. At the end of that term, GOED received the collateral back, with additional fees and a small interest rate. GOED was requesting authority to redeploy those funds and continue the program based on the returns from first generation investments.

Assemblywoman Benitez-Thompson reiterated that the legislatively approved amount was much smaller than the requested amount. She asked about the Board process, and whether it understood the amount the Legislature had authorized.

Assemblywoman Benitez-Thompson asked for an explanation of Work Program #C43116, which requested to expand the authority.

Mr. Moore reassured Assemblywoman Benitez-Thompson that the program was not spending more money than it had on hand, because he personally oversaw the program. Before a grant was approved, the bottom line was checked so that the program was not over obligating any amount of money. The Board's approval process considered the bottom line, but also considered funds returned to the program that were not included in the forecast. He said 17 loans had been executed with a zero percent default rate on those transactions. The businesses repaid the loans, including the fee and interest. Mr. Moore said the program was unable to accurately estimate when those returns would be received. The program was asking for authority to redeploy that money. The program could restructure a deal based on the cash on hand and the authority on hand. The work programs requested authority to execute the deals with the funds on hand that might not have been forecasted earlier.

Ms. Long said since there was only about \$350,000 in authority. If a deal came early in the year, the program would have to wait until October 2018 to execute, and would miss the opportunity. Approval of the work programs would give the program the opportunity to execute a deal quickly.

Mr. Moore reiterated that the request was for authority to execute funds that were returned from the first generation programs.

Assemblywoman Benitez-Thompson noted that the information in the meeting packet referred to "shortfalls," which she interpreted as the program not having enough money, but she understood from the agency that the term shortfall meant something else in this context (page 351, [Exhibit A](#)).

Assemblywoman Benitez-Thompson said Work Program #C43105 requested to transfer money from reserves into the Knowledge Fund to meet projected needs for prior commitments (page 359, [Exhibit A](#)). She noted quite a number of higher education institutions had not used the funds, and the total paid to date was lower than budgeted. She noted there were reversions of about \$75,000 and remaining grant authority of about \$2.9 million. She asked why additional authority was needed.

Ms. Long said, with the Knowledge Fund, GOED executed new two-year agreements with the universities for FY 2018 and FY 2019. When the current budget was built, it was unknown how much would be needed. The request covered projections based on the quarterly budgets for each of the projects in place.

Regarding the year-to-date actuals for higher education, Ms. Long explained that there was a significant delay in receiving invoices from the universities due to issues with the new system called "Workday." She was now processing most of the higher education invoices for the whole year.

Assemblywoman Benitez-Thompson asked for an updated spreadsheet so the Committee had a document that supported the request for the record, and Mr. Moore said he would provide that to the Committee.

Assemblywoman Benitez-Thompson noted with regard to Work Program #C43177 (withdrawn 5-24-18) that \$175,100 was authorized for the Nevada Main Street Program, but the amount provided to businesses was about \$68,000. That meant about \$100,000 was used for travel, training and conferences. She asked the agency to think about ways to provide more of those grant dollars to the grant recipients, rather than using the funds for administration expenses.

Mr. Moore said GOED was entering its second year of the Nevada Main Street Program. The total appropriation of \$350,000 was split in half between two years. Since his start in February 2018, GOED had been trying to increase interest in program membership. At that time, Gardnerville was the only member of the Nevada Main Street Program. Since then, other communities had either filed or would file letters of intent to join the program. He said there was a lot of recruiting efforts in 2018. GOED entered into a contract with National Main Street for consulting and recruiting to establish the program at the state level.

Mr. Moore said GOED was holding a daylong seminar in Northern Nevada on Nevada Main Street training for new communities, and would also hold another round of training in Southern Nevada. He said the program was gaining momentum; the request was to carry forward funds to maintain that momentum.

Assemblywoman Benitez-Thompson said she understood that the amounts granted would increase in year two, so she should not be too concerned about the year-one expenditures that were heavy on training contracts.

Mr. Moore said that was correct. He added that once the program was able to help communities become eligible for those grants, he expected more grant money to go out as part of the Nevada Main Street Program.

ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO
APPROVE AGENDA ITEMS E-44, E-45, E-46, E-47 AND
E-48.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED. (Assemblywoman Titus opposed
the motion. Assemblyman Edwards was not present for the
vote.)

- 49. Governor's Office of Economic Development - Nevada Main Street Program -
FY 2019 - Addition of \$175,100 in Partial Balance Forward funds to establish this
budget account in FY 2019. Requires Interim Finance approval since the amount**

added to the Nevada Main Street Program category exceeds \$75,000. **Work Program #C43177. WITHDRAWN 5-24-18**

This item was referenced in the discussion of Agenda Items E-44 through E-48.

- 50. Department of Tourism and Cultural Affairs - Nevada Arts Council - FY 2019** - Addition of \$39,500 in federal National Endowment for the Arts grant funds to ensure arts activities are available and accessible for large and small communities in rural and urban localities. Requires Interim Finance approval since the amount added to the Grants Program category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43069**

Refer to motion for approval under Agenda Item E.

- 51. Department of Health and Human Services - Director's Office - Grants Management Unit - FY 2019** - Addition of \$609,346 in tobacco settlement income funds transferred from the Treasurer's Office to support ongoing operations of the Department of Public Safety, Division of Investigations SafeVoice (Safe-to-Tell) Support center Program. Requires Interim Finance approval since the amount added to the SafeVoice Program category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 135. Work Program #C43174**

Agenda Items C-1, C-2, E-51 and E-135 were discussed together. Refer to testimony and motion for approval under Agenda Item E-135.

- 52. Department of Health and Human Services - Aging and Disability Services - Senior RX and Disability RX - FY 2018** - Deletion of \$320,000 in tobacco settlement income transferred from the Treasurer's Office due to membership decreases. Requires Interim Finance approval since the amount deducted from the Senior Prescription Program category exceeds \$75,000. **Work Program #C43390**

Refer to motion for approval under Agenda Item E.

- 53. Department of Health and Human Services - Aging and Disability Services - Federal Programs and Administration - FY 2018** - Transfer of \$75,802 from the Personnel Services category to the Operating category to cover unbudgeted rent space for Information Technology staff and additional National Core Indicator memberships. Requires Interim Finance approval since the amount added to the Operating category exceeds \$75,000. **Work Program #C43250**

Refer to motion for approval under Agenda Item E.

- 54. Department of Health and Human Services - Aging and Disability Services - Federal Programs and Administration - FY 2018** - Addition of \$389,388 in federal Nutrition Services Incentive Program grant funds to continue to provide meals to senior citizens. Requires Interim Finance approval since the amount added to the

Nutrition Services Incentive Program category exceeds \$75,000. **Work Program #C43410**

Refer to motion for approval under Agenda Item E.

55. **Department of Health and Human Services - Aging and Disability Services - Federal Programs and Administration - FY 2018** - Addition of \$66,395 in federal Title VII Ombudsman grant funds to continue to provide advocacy services to seniors. Requires Interim Finance approval since the cumulative amount added to the Title VII Ombudsmen category exceeds \$75,000. **Work Program #C43412**

Refer to motion for approval under Agenda Item E.

56. **Department of Health and Human Services - Aging and Disability Services - Home and Community-Based Services - FY 2018** - Addition of \$320,000 in tobacco settlement funds transferred from the Treasurer's Office to continue to provide services through the Personal Assistance Services program. Requires Interim Finance approval since the amount added to the Personal Assistance category exceeds \$75,000. **Work Program #C43401**

Refer to motion for approval under Agenda Item E.

57. **Department of Health and Human Services - Health Care Financing and Policy - Administration - FY 2018** - Transfer of \$195,182 from the Reserve For Resident Protection category to the Civil Monetary Penalty Payment category to fund three projects within the Division of Public and Behavioral Health for skilled nursing facilities authorized by the Centers for Medicare and Medicaid Services. Requires Interim Finance approval since the amount transferred to the Civil Monetary Penalty Payment category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 65. Work Program #C42932**

Refer to motion for approval under Agenda Item E.

58. **Department of Health and Human Services - Health Care Financing and Policy - Administration - FY 2019** - Transfer of \$257,650 from the Reserve For Resident Protection category to the Civil Monetary Penalty Payment category to fund three projects within the Division of Public and Behavioral Health for skilled nursing facilities authorized by the Centers for Medicare and Medicaid Services. Requires Interim Finance approval since the amount transferred to the Civil Monetary Penalty Payment category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 66. Work Program #C43423**

Refer to motion for approval under Agenda Item E.

59. **Department of Health and Human Services - Health Care Financing and Policy - Administration - FY 2018** - Addition of \$428,867 in federal Title XXI funds,

\$11,369,325 in federal Title XIX funds and \$753,138 in federal Medicaid Survey and Certification Program funds to cover Medicaid reimbursable activities in other divisions within the Department of Health and Human Services. Requires Interim Finance approval since the amount added to the Payments to State Agencies category exceeds \$75,000. **Work Program #C43314**

Refer to motion for approval under Agenda Item E.

- 60. Department of Health and Human Services - Health Care Financing and Policy - Increased Quality of Nursing Care - FY 2018** - Addition of \$2,871,597 in Long Term Care Provider Tax funds and \$47,948 in Treasurer's Interest Distribution funds to allow the receipt of revenues for the non-federal share of nursing facility supplemental payments and administrative costs. Requires Interim Finance approval since the amount added to the Transfer to Medicaid category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 61. Work Program #C42946**

Refer to motion for approval under Agenda Item E.

- 61. Department of Health and Human Services - Health Care Financing and Policy - Nevada Medicaid, Title XIX - FY 2018** - Addition of \$5,483,531 in federal Title XIX grant funds and \$2,890,829 in Long Term Care Provider Tax funds transferred from the Increased Quality of Nursing Care account to support nursing facility supplemental payments. Requires Interim Finance approval since the amount added to the Offline category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 60. Work Program #C42960**

Refer to motion for approval under Agenda Item E.

- 62. Department of Health and Human Services - Public and Behavioral Health - Health Statistics and Planning - FY 2018** - Transfer of \$70,827 from the Reserve category to the Information Services category to provide an upgrade to the Electronic Death Registration System. Requires Interim Finance approval since the cumulative amount transferred to the Information Services category exceeds \$75,000. **Work Program #C42740**

Refer to motion for approval under Agenda Item E.

- 63. Department of Health and Human Services - Public and Behavioral Health - Health - Statistics and Planning - FY 2019** - Transfer of \$135,000 from the Reserves category to the National Center for Health Statistics (NCHS) category to assist in the purchase of an X-ray scanning machine for Washoe County Regional Examiner's Office. Requires Interim Finance approval since the amount transferred to the NCHS Contract category exceeds \$75,000. **Work Program #C42848**

Refer to motion for approval under Agenda Item E.

64. **Department of Health and Human Services - Public and Behavioral Health - Women, Infants, and Children Food Supplement - FY 2019** - Addition of \$379,338 in federal Demonstration Projects to End Childhood Hunger, Healthy Hunger-Free Kids grant funds to continue to work with Supplemental Nutrition Assistance Program staff to reduce food insecurity rates for children birth to five years of age. Requires Interim Finance approval since the added amount Hunger-Free Kids category exceeds \$75,000. **Work Program #C42910**

Refer to motion for approval under Agenda Item E.

65. **Department of Health and Human Services - Public and Behavioral Health - Health Care Facilities Regulation - FY 2018** - Addition of \$195,182 in Civil Monetary Penalty funds transferred from the Division of Health Care Financing and Policy to continue the Comprehensive Resident Safety and Prevention program, the Music and Memory project and the Antimicrobial Resistance Intelligence System for residents in skilled nursing facilities. Requires Interim Finance approval since the amount added to the Civil Monetary Penalty category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 57. Work Program #C42807**

Refer to motion for approval under Agenda Item E.

66. **Department of Health and Human Services - Public and Behavioral Health - Health Care Facilities Regulation - FY 2019** - Addition of \$257,650 in Civil Monetary Penalty funds transferred from the Division of Health Care Financing and Policy to continue the Comprehensive Resident Safety and Prevention program, the Music and Memory project and the Antimicrobial Resistance Intelligence System for residents in skilled nursing facilities. Requires Interim Finance approval since amount added to the Civil Monetary Penalty category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 58. Work Program #C43419**

Refer to motion for approval under Agenda Item E.

67. **Department of Health and Human Services - Public and Behavioral Health - Health Care Facilities Regulation - FY 2018** - Addition of \$942,309 in Licenses and Fees to continue to contract with health care facility inspectors to assist in reducing the backlog of inspections. Requires Interim Finance approval since the amount added to the Federal Inspections Surveys category exceeds \$75,000. **Work Program #C42919**

Refer to motion for approval under Agenda Item E.

68. **Department of Health and Human Services - Public and Behavioral Health - Public Health Preparedness Program - FY 2019** - Addition of \$44,234 in Medicaid Administrative funds transferred from the Division of Health Care Financing and Policy, \$25,305 in Health Facility Licenses/Fees transferred from the Health Care Facility Regulation account, \$173,571 in tobacco settlement funds transferred from the Treasurer's Office, deletion of \$47,975 in Health Care Quality Compliance fees transferred from the Health Care Facility Regulation account, and transfer of

\$47,975 from the Health Care Quality Compliance category to the Primary Care Workforce Development (PCWD) category to continue funding for a PCWD Manager and a Management Analyst position within the PCWD program. Requires Interim Finance approval since the amount added to the Personnel category exceeds \$75,000. **Work Program #C43089**

Julie Kotchevar, Administrator, Division of Public and Behavioral Health (DPBH), said the division was requesting the addition of funding for the Primary Care Workforce Development Program (PCWD). The division performed a cost allocation plan, and time and effort study to properly allocate the positions. The division requested the transfer of Health Care Quality and Compliance fee funding to earn Medicaid administrative dollars as well as funding from the Fund for a Healthy Nevada. She explained that the request was a follow up to the report to the IFC at its April 11, 2018, meeting.

Assemblywoman Carlton said it appeared that the division was looking to fund a little over 71 percent of the positions with tobacco settlement funds. She noted the tobacco settlement funds would not always be available. She asked how the positions would be funded if the tobacco settlement funds were not available in the future.

Ms. Kotchevar explained that with the Medicaid expansion, the division was considering moving programs that were reimbursable. She said that would help the division maximize Medicaid funding by providing some of the match. The PCWD office had been working very hard to expand access to providers, particularly in areas with a shortage of health professionals, so there were enough providers available to Medicaid recipients. She noted that a few years ago there were 2 J1 visa doctors in the entire state, but the state could have up to 30. In 2018, the state had 15 J1 visa doctors. She explained that J1 visa doctors worked in areas with a shortage of health professionals for three years. Most of them were in rural areas, or areas where there was a significant shortage of doctors. She said this was a good use of the tobacco settlement funds, because it would improve access to health care for people who really needed it.

In answer to a question from Assemblywoman Carlton, Ms. Kotchevar explained that the program received approval from Medicaid to include the funding in the cost allocation plan. The division used a national consultant that frequently worked with the Centers for Medicare and Medicaid Services (CMS); therefore, it would be highly unusual for CMS to disagree.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE
AGENDA ITEM E-68.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Frierson
was not present for the vote.)

69. **Department of Health and Human Services - Public and Behavioral Health - Public Health Preparedness Program - FY 2018** - Addition of \$68,823 in federal Health and Health Care Preparedness grant funds and transfer of \$150,000 from the Personnel Services category to the Hospital and Health Care Preparedness Grant category to enhance public health, hospital and emergency response system capacities. Requires Interim Finance approval since the amount transferred to the Hospital and Health Care Preparedness Grant category exceeds \$75,000. **Work Program #C43266**

Refer to motion for approval under Agenda Item E.

70. **Department of Health and Human Services - Public and Behavioral Health - Public Health Preparedness Program - FY 2018** - Addition of \$826,136 in federal Public Health Emergency Preparedness grant funds to continue preparation and management of the response to public health emergencies caused by naturally-occurring disasters or terrorism. Requires Interim Finance approval since amount added to the Public Health Emergency Preparedness category exceeds \$75,000. **Work Program #C43229**

Refer to motion for approval under Agenda Item E.

71. **Department of Health and Human Services - Public and Behavioral Health - Biostatistics and Epidemiology - FY 2018** - Addition of \$736,998 in federal Epidemiology and Laboratory Capacity (ELC) grant funds to continue building and strengthening epidemiology, laboratory and health information systems capacity in state and local health departments. Requires Interim Finance approval since the amount added to the ELC category exceeds \$75,000. **Work Program #C42209**

Refer to motion for approval under Agenda Item E.

72. **Department of Health and Human Services - Public and Behavioral Health - Biostatistics and Epidemiology - FY 2018** - Addition of \$43,236 in federal Women, Infant and Children (WIC) grant funds transferred from the WIC Food Supplement account to continue data and reporting services for the WIC program and realign revenue for personnel costs. Requires Interim Finance approval since the amount added to the State System Development Initiative category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42591**

Refer to motion for approval under Agenda Item E.

73. **Department of Health and Human Services - Public and Behavioral Health - Biostatistics and Epidemiology - FY 2018** - Addition of \$62,163 in federal Viral Hepatitis and Improving Hepatitis B and C Cascades grant funds to continue to provide adult viral hepatitis prevention and control. Requires Interim Finance approval since the cumulative amount added to the Adult Viral Hepatitis Prevention and Control category exceeds \$75,000. **Work Program #C43270**

Refer to motion for approval under Agenda Item E.

74. **Department of Health and Human Services - Public and Behavioral Health - Biostatistics and Epidemiology - FY 2018** - Addition of \$111,674 in federal HIV/AIDS Surveillance grant funds to continue data collection and surveillance efforts. Requires Interim Finance approval since the amount added to the HIV/AIDS Surveillance category exceeds \$75,000. **Work Program #C42590**

Refer to motion for approval under Agenda Item E.

75. **Department of Health and Human Services - Public and Behavioral Health - Biostatistics and Epidemiology - FY 2018** - Addition of \$94,878 in federal Sexually Transmitted Disease (STD) Prevention and Control grant funds to continue activities related to STD prevention and surveillance. Requires Interim Finance approval since the amount added to the STD Prevention/Control category exceeds \$75,000. **Work Program #C42589**

Refer to motion for approval under Agenda Item E.

76. **Department of Health and Human Services - Public and Behavioral Health - Chronic Disease - FY 2018** - Addition of \$76,540 in Tobacco Control grant funds and transfer of \$7,500 from the Personnel Services category to the Tobacco Control category to promote tobacco control activities. Requires Interim Finance approval since amount added to the Tobacco Control category exceeds \$75,000. **Work Program #C42810**

Refer to motion for approval under Agenda Item E.

77. **Department of Health and Human Services - Public and Behavioral Health - Chronic Disease - FY 2018** - Transfer of \$4,229 from the Personnel Services category to the Tobacco Control and Prevention category to continue tobacco prevention programs. Requires Interim Finance approval since the cumulative amount transferred from the Personnel Services exceeds \$75,000. **Work Program #C42975**

Refer to motion for approval under Agenda Item E.

78. **Department of Health and Human Services - Public and Behavioral Health - Office of Health Administration - FY 2019** - Transfer of \$200,000 from the Reserve category to the Operating category to support the division's efforts toward Public Health Accreditation Board accreditation. Requires Interim Finance approval since the amount transferred to the Operating category exceeds \$75,000. **Work Program #C42858. WITHDRAWN 5-31-18.**

79. **Department of Health and Human Services - Public and Behavioral Health - Community Health Services - FY 2018** - Addition of \$69,820 in federal Title X Family Planning Services grant funds, transfer of \$7,392 from the

Operating category to the Family Planning category and \$249 from the Information Services category to the Family Planning category to continue support for the rural community health clinics. Requires Interim Finance approval since the amount added to Family Planning category exceeds \$75,000. **Work Program #C42972**

Refer to motion for approval under Agenda Item E.

- 80. Department of Health and Human Services - Public and Behavioral Health - Emergency Medical Services - FY 2019** - Addition of \$11,613 in Vital Records fees transferred from the Health Statistics and Planning account, \$104,513 in federal Health Information Technology grant funds transferred from the Division of Health Care Financing and Policy Administration account, \$116,000 in federal Opioid Enhanced Surveillance grant funds transferred from the Biostatistics and Epidemiology account, \$250,000 in federal Highway Safety Improvement Program grant funds transferred from the Department of Public Safety, and \$204,000 in federal Opioid and Strategic Prevention Framework-Partnership For Success grant funds transferred from the Behavioral Health Prevention and Treatment account to implement a new emergency medical services (EMS) data management system. Requires Interim Finance approval since the amount added to the EMS Data System category exceeds \$75,000. **Work Program #C42502**

Julie Kotchevar, Administrator, DPBH, said the division was requesting a transfer of grant funding from the Department of Public Safety, Division of Health Care Financing and Policy and DPBH to fund the purchase of a new emergency medical services data management system. She explained that the division was required by statute to collect certain data related to emergency medical services, so it procured grant funding to purchase the computer system.

Assemblywoman Titus asked what kind of information would be recorded in the new emergency medical services data management system. Ms. Kotchevar replied that the data management system would track many things pertaining to emergency medical services, such as opioid overdoses, state call volume and surveillance data, to provide better emergency planning and capacity building for the community. She added that NRS required that the information be collected.

Assemblywoman Titus asked who would input the data, and who would have access to the system. Ms. Kotchevar explained that the new system would replace the existing system. She said there was already a process through which EMS agencies submitted data to the system.

Assemblyman Sprinkle noted that system maintenance would be built into the next budget request. He asked what would happen if General Funds were not available to maintain the system. Ms. Kotchevar replied that the division was seeking grant funding for maintenance, and the General Fund request was a backup plan. The division felt it needed to submit a budget request to ensure the system was

maintained if grant funding was not available. The division did not want the maintenance expense to be passed on to first responders.

Assemblyman Sprinkle understood there was a mandate to track the data, but no funding was provided for maintenance. He asked if it was possible to defer the purchase until the 2019 Legislative Session to be sure funding was in place.

Ms. Kotchevar explained that almost \$700,000 of the grant funding being used to purchase the system would end in FY 2019. The grant funding would not be available for the system implementation if the purchase was deferred. It was the division's preference to use federal dollars to implement the system, and then continue to seek funding for system maintenance.

Senator Kieckhefer noted the cost of the system was \$700,000. He said \$350,000 per year for maintenance seemed expensive. Ms. Kotchevar replied that the maintenance costs included ongoing licensing and security patching. Senator Kieckhefer asked if the \$350,000 for maintenance would be an ongoing annual expense.

Ms. Kotchevar said the maintenance cost was not atypical. She added that the system was already configured to support EMS, so the division would not incur excessive implementation costs. Part of the reason the cost for the system was low was that the division had been thrifty in purchasing a system that did not have a high implementation cost.

Senator Kieckhefer asked if the division had any current budget authority for the system. Debi Reynolds, Deputy Administrator, DHHS, DPBH, said the EMS program paid approximately \$32,000 for the existing system; however, the vendor indicated that the system would no longer be supported. She said the existing system experienced significant issues with capturing and reporting data.

Assemblywoman Benitez-Thompson said she had expressed concern in a meeting of the Legislative Commission's Subcommittee to Review Regulations about the type of personal information being collected, such as names and social security numbers. She said that information should be unidentified.

Ms. Kotchevar said she would need to research whether the collected data was unidentified or identified. She said all of the vendors agreed to meet certain security standards. The division was a HIPPA agency, which meant it had to meet certain standards in order to be able to collect and store that information.

Assemblywoman Benitez-Thompson said it was important that personal information concerning a suspected overdose that was maintained by the state did not contain personal identifying information. If the state was maintaining that information, the data should be very secure.

Assemblyman Oscarson said he hoped the new system would protect personal information. Ms. Kotchevar noted that aging systems were more vulnerable to breaches or system failures that could lead to a breach. One reason to upgrade the system was to ensure the information was secure.

In response to a question from Assemblyman Oscarson, Ms. Reynolds said she was unsure how old the system was, but in 2010, EMS contracted with Med-Media to provide the existing database.

Assemblyman Oscarson noted seven or eight years was a lifetime for a computer system.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE
AGENDA ITEM E-80.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

81. **Department of Health and Human Services - Public and Behavioral Health - Behavioral Health Prevention and Treatment - FY 2019** - Transfer of \$107,015 from the Cooperative Agreements to Benefit Homeless Individuals (CABHI) Grant category to the Personnel Services category, \$99 from the CABHI Grant category to the Operating category and \$341 from the CABHI Grant category to the Information Services category, to continue to fund a Health Program Manager 1 position to oversee all mental health planning and housing projects for the program. Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds \$75,000. **Work Program #C42793**

Refer to motion for approval under Agenda Item E.

82. **Department of Health and Human Services - Public and Behavioral Health - Behavioral Health Prevention and Treatment - FY 2019** - Addition of \$5,017,561 in federal Opioid Strategic Response grant funds to support the prevention, treatment and recovery activities for opioid use. Requires Interim Finance approval since amount added to the Opioid Strategic Response category exceeds \$75,000. **Work Program #C43430**

Refer to motion for approval under Agenda Item E.

83. **Department of Health and Human Services - Public and Behavioral Health - Northern Nevada Adult Mental Health Services - FY 2018** - Transfer of \$2,000 from the Personnel Services category to the Training category to provide crisis prevention and intervention training for in-patient staff. Requires Interim Finance approval since the cumulative amount transferred from the Personnel Services category exceeds \$75,000. **Work Program #C42974**

Refer to motion for approval under Agenda Item E.

84. **Department of Health and Human Services - Public and Behavioral Health - Northern Nevada Adult Mental Health Services - FY 2018** - Transfer of \$115,000 from the Personnel Services category to the Professional Services category to cover projected contracted services for psychiatric services due to the inability to find and hire state staff. Requires Interim Finance approval since the amount transferred to the Professional Services category exceeds \$75,000. **Work Program #C43027**

Refer to motion for approval under Agenda Item E.

85. **Department of Health and Human Services - Public and Behavioral Health - Northern Nevada Adult Mental Health Services - FY 2018** - Transfer of \$10,000 from the Personnel Services category to the Information Services category to cover higher than anticipated software and computer hardware costs. Requires Interim Finance approval since the cumulative amount transferred from the Personnel Services category exceeds \$75,000. **Work Program #C42918**

Refer to motion for approval under Agenda Item E.

86. **Department of Health and Human Services - Public and Behavioral Health - Northern Nevada Adult Mental Health Services - FY 2018** - Transfer of \$10,000 from the Personnel Services category to the Food Services category to cover projected food services costs for the remainder of the fiscal year. Requires Interim Finance approval since the cumulative amount transferred from the Personnel Services category exceeds \$75,000. **Work Program #C43026**

Refer to motion for approval under Agenda Item E.

87. **Department of Health and Human Services - Public and Behavioral Health - Facility for the Mental Offender - FY 2018** - Transfer of \$83,107 from the Personnel Services category to the Professional Services category to continue to contract with physicians and clinical staff due to the inability to find and hire state staff. Requires Interim Finance approval since the amount transferred the Professional Services category exceeds \$75,000. **Work Program #C43046**

Refer to motion for approval under Agenda Item E.

88. **Department of Health and Human Services - Welfare and Supportive Services - Assistance to Aged and Blind - FY 2018** - Addition of \$75,000 in Budgetary Transfers from the Field Services account to fund a projected shortfall in supplemental payments to low-income, aged and blind individuals and to adult group care facilities receiving Supplemental Security Income to assist recipients with avoiding or delaying institutionalization for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 54 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 89. Work Program #C43188**

Refer to motion for approval under Agenda Item E.

89. **Department of Health and Human Services - Welfare and Supportive Services - Welfare Field Services - FY 2018** - Deletion of \$75,000 in Budgetary Transfers to the Assistance to Aged and Blind account to fund a projected shortfall in supplemental payments to low-income, aged and blind individuals and adult group care facilities receiving Supplemental Security Income to assist recipients for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 54 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 88. Work Program #C43225**

Refer to motion for approval under Agenda Item E.

90. **Department of Health and Human Services - Welfare and Supportive Services - Welfare Field Services - FY 2018** - Addition of \$158,924 in federal Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) funds to provide vocational training to SNAP participants. Requires Interim Finance approval since the amount added to the Federal SNAP E&T Expansion category exceeds \$75,000. **Work Program #C42844**

Refer to motion for approval under Agenda Item E.

91. **Department of Health and Human Services - Welfare and Supportive Services - Energy Assistance Program - FY 2018** - Addition of \$7,057,503 in federal Low Income Home Energy Assistance (LIHEA) grant funds to provide energy assistance benefits for needy households. **Requires Interim Finance approval since the work program involves the allocation of block grant funds and the agency is choosing to use the IFC meeting for the required public hearing and the amount added to the LIHEA Payments category exceeds \$75,000. Work Program #C42827**

Robert Thompson, Deputy Administrator, Division of Welfare and Supportive Services (DWSS), introduced Naomi Lewis, Deputy Administrator, DWSS.

Mr. Thompson said DWSS was requesting authorization to receive funds of approximately \$7.1 million to continue funding the Energy Assistance Program which served needy Nevadans.

Agenda Item E-91 involved the allocation of block grant funds, which required a public hearing. Chair Woodhouse opened the public hearing. There being no requests to testify, Chair Woodhouse closed the public hearing.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE AGENDA
ITEM E-91.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

92. **Department of Health and Human Services - Child and Family Services - Children, Youth and Family Administration - FY 2018** - Deletion of \$103,011 in Budgetary Transfers to the Summit View Youth Center account to fund a projected shortfall in personnel services for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 62 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 100. Work Program #C43157**

Refer to motion for approval under Agenda Item E.

93. **Department of Health and Human Services - Child and Family Services - UNITY/SACWIS - FY 2018** - Deletion of \$100,000 in Budgetary Transfers to the Summit View Youth Center account to fund a projected shortfall in personnel services for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 62 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 100. Work Program #C43158**

Refer to motion for approval under Agenda Item E.

94. **Department of Health and Human Services - Child and Family Services - Children, Youth and Family Administration - FY 2018** - Addition of \$2,272,941 in federal Victims of Crime Assistance (VOCA) grant funds to provide assistance and services to victims. Requires Interim Finance approval since the amount added to the U. S. Crime Victims - VOCA category exceeds \$75,000. **Work Program #C43233**

Refer to motion for approval under Agenda Item E.

95. **Department of Health and Human Services - Child and Family Services - Washoe County Child Welfare - FY 2018** - Addition of \$1,412,904 in federal Title IV-E grant funds to continue support of child welfare services and adoption subsidies for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Child Welfare category exceeds \$75,000. **Work Program #C43100**

Refer to motion for approval under Agenda Item E.

96. **Department of Health and Human Services - Child and Family Services - Clark County Child Welfare - FY 2018** - Addition of \$4,785,758 in federal Title IV-E grant funds to continue support of adoption and foster care activities for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Subsidized Adoptions category exceeds \$75,000. **Work Program #C43117**

Refer to motion for approval under Agenda Item E.

97. **Department of Health and Human Services - Child and Family Services - Rural Child Welfare - FY 2019** - Transfer of \$257,348 from the Personnel Services category to the Temporary Contract Staffing category to cover vacancies for hard-to-fill positions and meet statutory demands. Requires Interim Finance approval since the amount transferred to the Temporary Contract Staffing category exceeds \$75,000. **Work Program #C42718**

Refer to motion for approval under Agenda Item E.

98. **Department of Health and Human Services - Child and Family Services - Rural Child Welfare - FY 2019** - Addition of \$1,840,056 in federal Title XX grant funds transferred from the Director's Office and deletion of \$1,693,756 in federal Title XX grant funds to support child welfare services. **Requires Interim Finance approval since the work program involves the allocation of block grant funds and the agency is choosing to use the IFC meeting for the required public hearing and the amount added to the Title XX category exceeds \$75,000. Work Program #C43269**

Reesha Powell, Deputy Administrator, Division of Child and Family Services (DCFS), said the division was requesting authority to balance forward the remaining Title XX funds from FY 2018 to FY 2019 to continue supporting child welfare activities. The funds would be used for early identification or timely intervention to support families and prevent the consequences of abuse and neglect.

Agenda Item E-98 involved the allocation of block grant funds, which required a public hearing. Chair Woodhouse opened the public hearing. There being no requests to testify, Chair Woodhouse closed the public hearing.

ASSEMBLYWOMAN SPIEGEL MOVED TO APPROVE
AGENDA ITEM E-98.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

99. **Department of Health and Human Services - Child and Family Services - Transition from Foster Care - FY 2018** - Transfer of \$142,751 from the Reserve category to the Transition from Foster Care category to assist persons who turn 18 years of age while in foster care in Nevada to transition from foster care to economic self-sufficiency. Requires Interim Finance approval since the amount transferred to the Transition from Foster Care category exceeds \$75,000. **Work Program #C43093**

Refer to motion for approval under Agenda Item E.

- 100. Department of Health and Human Services - Child and Family Services - Summit View Youth Center - FY 2018** - Addition of \$203,011 in Budgetary Transfers from the Child, Youth and Family Administration account and the UNITY/SACWIS account to fund a projected shortfall in personnel services for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 62 of the 2017 Legislative Session. **RELATES TO AGENDA ITEMS E. 92 and 93. Work Program #C42664**

Refer to motion for approval under Agenda Item E.

- 101. Department of Health and Human Services - Child and Family Services - Caliente Youth Center - FY 2018** - Deletion of \$199,013 in Budgetary Transfers to the Nevada Youth Training Center account to fund a projected shortfall in personnel costs for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 62 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 102. Work Program #C43161**

Refer to motion for approval under Agenda Item E.

- 102. Department of Health and Human Services - Child and Family Services - Nevada Youth Training Center - FY 2018** - Addition of \$199,013 in Budgetary Transfers from the Nevada Caliente Youth Center account to fund a projected shortfall in personnel costs for the remainder of the fiscal year. Requires Interim Finance approval pursuant to Assembly Bill 518, Section 62 of the 2017 Legislative Session. **RELATES TO AGENDA ITEM E. 101. Work Program #C42665**

Refer to motion for approval under Agenda Item E.

- 103. Department of Employment, Training and Rehabilitation - Employment Security - Workforce Development - FY 2018** - Transfer of \$104,500 from the Reserve category to the Operating category to fund projected operating expenditures through the end of the fiscal year. Requires Interim Finance approval since the amount transferred to the Operating category exceeds \$75,000. **Work Program #C43289**

Refer to motion for approval under Agenda Item E.

- 104. Department of Employment, Training and Rehabilitation - Employment Security - Workforce Development - FY 2018** - Addition of \$1,430,000 in federal Workforce Innovation Opportunity Act (WIOA) of 2014 funds to support the Local Workforce Investment Boards through year end. Requires Interim Finance approval since the amount added to the WIOA Program category exceeds \$75,000. **Work Program #C43315**

Refer to motion for approval under Agenda Item E.

- 105. Department of Employment, Training and Rehabilitation - Employment Security - Special Fund - FY 2019** - Transfer of \$94,300 from the Reserve category to the 2017 Senate Bill (S.B.) 137 Unemployment Insurance (UI) Modification category to support the technical modifications for data collection related to veterans pursuant to S.B. 137 of the 2017 Legislative Session. Requires Interim Finance approval since the amount added to the 2017 S.B. 137 UI Modification category exceeds \$75,000. **Work Program #C43119. RELATES TO AGENDA ITEM E. 163.**

Refer to motion for approval under Agenda Item E.

- 106. Department of Corrections - Director's Office - FY 2019** - Addition of \$830,115 in Sexual Assault Kit Initiative funds transferred from the Attorney General to align state authority with the federal Sexual Assault Kit Initiative (SAKI) subgrant award and continue the program implementation. Requires Interim Finance approval since the amount added to the SAKI Grant category exceeds \$75,000. **Work Program #C42822**

Refer to motion for approval under Agenda Item E.

- 107. Department of Corrections - Director's Office - FY 2018** - Addition of \$22,349 in Budgetary Transfers, and transfer of \$27,937 from the Employee Physicals category to the Inmate Transportation category, \$38,567 from the Employee Physicals category to the Personnel Services category, \$20,000 from the Extraordinary Maintenance category to the Personnel Services category, \$20,365 from the Information Services category to the Personnel Services category, \$11,475 from the Uniform Allowance category to the Personnel Services category, \$6,430 from the Inmate Drug Testing category to the Personnel Services category and \$4,480 from the Beds/Mattresses/Footlockers category to Personnel Services category to fund total projected shortfall for the remainder the fiscal year. Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds \$75,000. **Work Program #C43182**

Refer to motion for approval under Agenda Item E.

- 108. Department of Corrections - Prison Medical Care - FY 2018** - Addition of \$800,000 in Offender revenues transferred from the Offenders' Store Fund account to fund qualifying paid inmate medical claims. Requires Interim Finance approval since the amount added to the Inmate Drivens category exceeds \$75,000. **RELATES TO AGENDA ITEMS E. 122 and 125. Work Program #C42566**

Refer to motion for approval under Agenda Item E.

- 109. Department of Corrections - Correctional Programs - FY 2018** - Transfer of \$2,639 from the Youthful Offender Grant category to the Reserve for Reversion category and the transfer of \$200,778 from the Statewide Recidivism Reduction category to the Reserve for Reversion category to repay General Fund appropriation

used for program expenditures paid in FY 2017. Requires Interim Finance approval since the amount transferred from the Statewide Recidivism Reduction category exceeds \$75,000. **Work Program #C41726**

Refer to motion for approval under Agenda Item E.

- 110. Department of Corrections - Ely State Prison - FY 2018** - Addition of \$75,741 in Budgetary Transfers, deletion of \$1,047 in Employee Service revenue, \$2,795 in Reimbursement of Expenses revenue, \$1,174 in Transfer from Prison Store revenue and transfer of \$67,245 from the Uniform Allowance category to the Utilities category to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Utilities category exceeds \$75,000. **Work Program #C43194**

Refer to motion for approval under Agenda Item E.

- 111. Department of Corrections - High Desert State Prison - FY 2018** - Addition of \$115,885 in Budgetary Transfers, addition of \$20,968 in Transfer from Prison Store and transfer of \$40 from the Operating category to the Inmate Drivens category, \$9,961 from the Maintenance Building and Grounds category to the Inmate Drivens category, \$14,365 from the Maintenance Contracts category to the Inmate Drivens category, and \$22,674 from the Uniform Allowance category to the Inmate Drivens category to fund a projected shortfall within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount transferred to the Inmate Drivens category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43223**

Refer to motion for approval under Agenda Item E.

- 112. Department of Corrections - Northern Nevada Correctional Center - FY 2018** - Addition of \$57,738 in Budgetary Transfers, deletion of \$8,000 in Room, Board, Transportation charges, and transfer of \$19,054 from the Operating category to the Personnel Services category, and \$911 from the Operating category to the Maintenance Contracts category to fund projected shortfall for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Personnel Service category exceeds \$75,000. **Work Program #C43189**

Refer to motion for approval under Agenda Item E.

- 113. Department of Corrections - Lovelock Correctional Center - FY 2018** - Addition of \$40,000 in Room, Board, Transportation Charge funds, deletion of \$256,731 in Budgetary Transfers, and transfer of \$55,226 from the Inmate Drivens category to the Utilities category to fund a projected shortfall for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Utilities category exceeds \$75,000. **Work Program #C43012**

Agenda Items E-113 and E-120 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-120.

- 114. Department of Corrections - Southern Desert Correctional Center - FY 2018 -** Deletion of \$54,980 from Budgetary Transfers to fund a projected shortfall within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount deducted from the Uniform Allowance category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43222**

Refer to motion for approval under Agenda Item E.

- 115. Department of Corrections - Warm Springs Correctional Center – FY 2018 -** Deletion of \$7,349 in Budgetary Transfers, and transfer of \$39,918 from the Inmate Drivens category to the Utilities category, \$7,216 from the Uniform Allowance category to the Utilities category, \$3,792 from the Equipment category to the Operating category and \$1,705 from the Equipment category to the Utilities category to fund a projected shortfall within the department for the remainder of the fiscal year. Requires Interim Finance approval since the cumulative amount added to the Utilities category exceeds the \$75,000. **Work Program #C43185**

Refer to motion for approval under Agenda Item E.

- 116. Department of Corrections - Florence McClure Women's Correctional Center - FY 2018 -** Addition of \$415,330 in Budgetary Transfers, and transfer of \$1,313 from the Maintenance Contracts category to the Operating category, \$6,454 from the Uniform Allowance category to the Operating category, and \$17,000 from the Inmate Drivens category to the Operating category to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount added to the Personnel Services category exceeds \$75,000. **Work Program #C43014**

Refer to motion for approval under Agenda Item E.

- 117. Department of Corrections - Casa Grande Transitional Housing - FY 2018 -** Deletion of \$64,328 in Budgetary Transfers to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount deducted from the Inmate Drivens category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43200**

Refer to motion for approval under Agenda Item E.

- 118. Department of Corrections - Pioche Conservation Camp - FY 2018 -** Addition of \$5,258 in Budgetary Transfers and transfer of \$10,516 from the Personnel Services category to the Inmate Drivens category to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the cumulative amount transferred from the Personnel Services category exceeds \$75,000. **Work Program #C43191**

Refer to motion for approval under Agenda Item E.

- 119. Department of Corrections - Three Lakes Valley Conservation Camp – FY 2018** - Deletion of \$43,157 in Budgetary Transfers, and transfer of \$48,704 from the Personnel Services category to the Utilities category, \$201 from the Personnel Services category to the Maintenance Contracts category, and \$780 from the Boot Camp category to the Utility category to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount transferred to the Utilities category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43221**

Refer to motion for approval under Agenda Item E.

- 120. Department of Corrections - Ely Conservation Camp - FY 2018** - Addition of \$9,244 in Room, Board, Transportation charge and the deletion of \$77,761 in Budgetary Transfers to fund a projected shortfall within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount deducted from the Personnel Services category exceeds \$75,000. **Work Program #C43193**

Agenda Items E-113 and E-120 were discussed jointly.

Scott Ewart, Administrative Services Officer, Nevada Department of Corrections, noted the following revisions to Work Program #C43012: a decrease in the amount of \$40,000 to the Room, Board, Transportation Charge funds; an increase in the amount of \$30,000 to the Inmate Drivens category for a revised total deficit of \$161,301; and a decrease of \$19,244 in the Utility category for a revised amount of \$51,092. The revised budgetary transfer amount was a deficit of \$282,437.

Mr. Ewart noted the following revision for Work Program #C43193: deletion of Room, Board, Transportation Charge funds in the amount of \$9,244. The revised budgetary transfer amount was a deficit of \$68,507.

SENATOR DENIS MOVED TO APPROVE AGENDA
ITEMS E-113 AND E-120.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

- 121. Department of Corrections - Carlin Conservation Camp - FY 2018** - Deletion of \$128,034 in Budgetary Transfers to fund projected shortfalls within the department for the remainder of the fiscal year. Requires Interim Finance approval since the amount deducted from the Personnel Services category exceeds \$75,000. **Work Program #C42753**

Refer to motion for approval under Agenda Item E.

- 122. Department of Corrections - Offenders' Store Fund - FY 2018** - Transfer of \$800,000 from the Retained Earnings category to the Transfer to Inmate Welfare Account (IWA) category to fund projected shortfalls in Medical Co-Pays. Requires Interim Finance approval since the amount transferred to the IWA category exceeds \$75,000. **RELATES TO AGENDA ITEMS E. 108 and 125. Work Program #C42748**

Refer to motion for approval under Agenda Item E.

- 123. Department of Corrections - Offenders' Store Fund - FY 2018** - Transfer of \$143,306 from the Retained Earnings category to the Transfer to Inmate Welfare Account (IWA) category to fund medical co-pays and indigent inmate co-pays as legislatively approved for qualifying claims. Requires Interim Finance approval since the amount transferred to the Transfer to IWA category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 124. Work Program #C43409**

Refer to motion for approval under Agenda Item E.

- 124. Department of Corrections - Inmate Welfare Account - FY 2018** - Addition of \$143,306 in funds transferred from Offenders' Store Fund to fund medical co-pays and indigent inmate co-pays as legislatively approved for qualifying claims. Requires Interim Finance approval since the amount added to the Transfer Medical Co-Pays category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 123. Work Program #C42595**

Refer to motion for approval under Agenda Item E.

- 125. Department of Corrections - Inmate Welfare Account - FY 2018** - Addition of \$800,000 in revenue transferred from Offenders' Store Fund account to fund medical co-pays for qualifying paid inmate medical claims. Requires Interim Finance approval since the amount added to Transfer to Medical Co-Pays category exceeds \$75,000. **RELATES TO AGENDA ITEMS E. 108 and 122. Work Program #C42728**

Refer to motion for approval under Agenda Item E.

- 126. Department of Corrections - Inmate Welfare Account - FY 2018** - Transfer of \$30,567 from the Retained Earnings category to the Indigent Inmate Postage category to fund a projected shortfall through fiscal year end. Requires Interim Finance approval since the amount transferred to the Indigent Inmate Postage category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43355**

Refer to motion for approval under Agenda Item E.

- 127. Department of Motor Vehicles - System Modernization - FY 2019** - Transfer of \$307,952 from the Master Service Agreement Programmer Charges category to the Personnel Services category to fund one new Organizational Change Manager position and one new Director, Office of Project Management position to provide effective project management for the department's System Modernization Project, ***and transfer of \$28,048 from the Master Service Agreement Programmer Charges category to the Reserve for Reversion category.*** Requires Interim Finance approval since the amount transferred to the Personnel Services category exceeds \$75,000. **Work Program #C43146. REVISED 6-4-18.**

Terri Albertson, Director, Department of Motor Vehicles (DMV), said the agency was requesting a transfer of funds from the Master Service Agreement Contract category to the Personnel Services category to fund two new state positions for the System Technology Application Redesign (STAR) modernization project. She said the department continued to work with Gartner Consulting to review, revise and update previous business and technical requirements. As identified in the state audit report and Gartner's health assessment, the DMV was restructuring the Office of Project Management (OPM) to provide more effective project management. Similar to the OPM for the Silver State Modernization Approach for Resources and Technology in the 21st Century (SMART 21) program, the DMV was requesting funds to hire a Director of OPM and an Organizational Change Manager. She said the two positions could be funded for less than the cost of one full-time contract manager. Ms. Albertson said the DMV was requesting approval of the Director position now so that leadership would be available to oversee the development and issuance of a request for proposal (RFP). The Organizational Change Manager position was also being requested at the current time to ensure employees and stakeholders were fully informed and aware of impending changes from the beginning. She said the positions were needed to participate in the planning, organization and decision-making related to the STAR project from the onset. In addition, establishing the OPM now would allow the department to come before the 2019 Legislature with a completed RFP process for approval and funding. Ms. Albertson said once the OPM Director position was filled, the department anticipated requesting the Committee's approval of OPM support staff consisting of a Management Analyst and a Project Manager. She said the remaining positions would be onboarded in conjunction with project approval and timelines. Ms. Albertson indicated that DMV staff continued to work on the technology investment notification (TIN) process, which would be ready for approval and submittal to EITS by August 2018. Upon approval, the RFP process would commence.

In answer to a question from Senator Denis, Ms. Albertson replied that the department expended \$28 million toward the system modernization project. At the recommendation of Gartner Consulting, the department's primary focus was to take a pause period and reorganize the project management team. She said the agency's Business Process Analysts were refining the business requirements, which had been reduced from approximately 8,000 to 4,000 items. Ms. Albertson

said the department was also working on business capability models and other items that were consistent with best practices in the industry for project management.

Ms. Albertson stated that the majority of the \$28 million expended toward the system modernization project was used for Oracle hardware and software. She said the DMV was currently in negotiations with another state agency that was interested in purchasing some of the hardware. Additionally, the department was engaged in conversations with a third-party vendor about selling the databases that would not be used in the project going forward. Ms. Albertson said, as a result of discussions with Gartner Consulting, the decision was made to use either a hosted or cloud solution instead of the Oracle equipment. She said the department would still utilize a vast majority of the network and security equipment purchased during the procurement phase. She indicated that the network and security equipment would be of great benefit regardless of the department's future efforts. Ms. Albertson said it was imperative for the department to maintain a robust system to protect the personally identifiable information of Nevadans. She thought the system that was currently in place would ensure the gold standard for protecting that information.

Senator Denis said the networking equipment was not for the system modernization project specifically, and Ms. Albertson said that was correct. She added that a portion of the \$28 million was used to secure the facility on College Parkway in Carson City, which would be retained for the STAR project.

In response to a question from Senator Denis, Ms. Albertson replied that approximately \$16 million was expended for the hardware and licensing of the Oracle equipment. She said the resale cost estimate was pennies on the dollar, which equated to approximately \$285,000. She reiterated that another state agency was interested in purchasing the storage as well as a number of switches; therefore, it was a win-win for the state. Ms. Albertson said the two agencies would have to work out the functionality as far as transferring funds, because the requesting agency was a General Fund agency. She indicated that the requesting agency would probably request an allocation from the IFC Contingency Account to purchase the equipment.

Senator Denis said although it was a financial loss for the DMV, the agency that was acquiring the equipment would save money.

In answer to a question from Senator Denis, Ms. Albertson said the department's intent was to utilize the OPM Director over the next few months to get the STAR project operational and establish the TIN. Subsequently, the DMV would complete the RFP process and present the project for approval by the 2019 Legislature.

Senator Denis asked if the department anticipated a cost savings for hardware if a cloud solution was selected for the STAR project. Ms. Albertson replied that the department was currently leaning toward a hosted rather than a cloud solution, but

the RFP would require the prospective vendor to provide the services as cloud-ready for when the state was in a better position to transition to a cloud solution. She said the cloud solution must be secure due to the sensitive information maintained by the DMV.

Senator Denis asked how the project would be impacted if the two positions were not approved. Ms. Albertson replied that it was unlikely the department would have adequate resources available to complete the RFP and begin the organizational change management activities; therefore, the DMV was hopeful the positions would be approved by the Committee.

Senator Denis said he hoped the DMV would present information to the 2019 Legislature that would allow the state to move forward with the STAR project without expending and losing funds. Ms. Albertson agreed.

Senator Gansert stated that \$28 million was a significant amount of money for a small amount of deliverables. She asked if the agency used the TIN process for the RFP to select the original vendor. She also asked what type of recourse was included in the contract with the previous vendor to recoup some of the funds.

Ms. Albertson replied that the department had finalized its business with the previous vendor, and no additional payments would be made. She said approximately \$35,000 was paid to the previous vendor for work that was completed on a communication plan. All of the remaining funds were associated with the Oracle hardware and software. Of the \$28 million, approximately \$11 million was for resources on the state side, such as the facility, Master Service Agreement contractors, furnishings, equipment and all of the support that went in to the project. Ms. Albertson said the DMV used the previous technology investment request process, which was more extensive than the TIN. She said the department went through the formal procurement process with State Purchasing to select the vendor.

Senator Gansert said the Oracle equipment could no longer be used by the DMV, and only \$285,000 could be recouped from the cost. She said it was a huge loss for the state, and it was important to ensure it did not happen again. She recalled similar circumstances with other agencies, and it was often related to information technology. Senator Gansert thought systematic changes may be necessary to avoid those types of situations in the future.

Ms. Albertson replied that as part of the process, the department requested an internal audit. The findings of that audit indicated that the department needed to improve project management. Subsequently, Gartner Consulting completed a health assessment of the project, which confirmed the audit findings, especially for a job the size and magnitude of the system modernization project. Therefore, the DMV was before the Committee today in an attempt to take the necessary steps to improve project management by asking for the OPM Director and Organizational

Change Manager positions. Both of the positions would have specific knowledge about the department and would be state positions rather than outside contractors.

Assemblywoman Diaz said the state's main priority was to serve Nevadans to the best of its ability. She asked how constituents would benefit from the significant investment in system modernization. Ms. Albertson replied that one of the primary goals of the STAR project was to increase service delivery and self-service capabilities. She said the current system was antiquated and diverse, and there were systems within the department that were not integrated. Although the department could perform its duties, those duties were not being handled in the most efficient manner. Ms. Albertson said it was the goal of the DMV to make services more convenient for customers and reduce the number of visits to a DMV office by becoming more automated.

Assemblywoman Diaz recalled a recent visit to a DMV office. She noted that it was important for DMV staff to remember that some customers visiting a DMV office may not have been there in a while. She explained that during her visit, she checked in at the information desk and then proceeded to the lobby area; however, after waiting 90 minutes, she became concerned. She said she inquired with customers around her who were checking their phones regularly, and they explained that they were watching for status updates in the queue. Assemblywoman Diaz said she returned to the information desk only to learn that she had not been placed in the queue. She proceeded to wait another two hours before being called to a customer service window, only to find out that her business had to be handled via correspondence. She was frustrated about the amount of time that was wasted on a Saturday due to an oversight by DMV staff. Assemblywoman Diaz said it was imperative that DMV personnel ensure that each customer was successfully placed in the queue before leaving the information desk. Additionally, she recommended that staff ask questions to avoid wasting the customer's time. She said her experience at the DMV was probably happening to others, and it should not continue. Assemblywoman Diaz said it was important to provide the best possible service to all Nevadans.

In answer to a question from Senator Denis, Ms. Albertson replied that the system modernization project was funded by the \$1 Technology Fee as well as Highway Funds.

SENATOR DENIS MOVED TO APPROVE AGENDA ITEM E-127.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson was not present for the vote.)

- 128. Department of Motor Vehicles – Motor Vehicle Pollution Control - FY 2018 -** Transfer of \$101,062 from the Reserve category to the City/County Air Quality category to fund an increase in payments to Clark County and Washoe County for

the remainder of FY 2018. Requires Interim Finance approval since the amount transferred to the City/County Air Quality category exceeds \$75,000. **Work Program #C43159**

Refer to motion for approval under Agenda Item E.

- 129. Department of Motor Vehicles - Field Services - FY 2019** - Transfer of ~~\$678,160~~ **\$564,149** from the Personnel Services category to the Operating category to continue funding of a Uniformed Security Guard at the Pahrump Office and additional uniformed security guards at the Carson City, Decatur, Donovan, Flamingo, Henderson, Reno and Sahara field offices. Requires Interim Finance approval since the amount transferred to the Operating category exceeds \$75,000. **Work Program #C43205. REVISED 6-5-18.**

Terri Albertson, Director, DMV, introduced Tonya Laney, Division Administrator, Field Services, DMV.

Assemblywoman Carlton said she understood the importance of security guards, because frustration levels were often elevated at DMV offices; however, she had questions regarding the need for security guards at the Donovan and Carson City DMV offices. She said the Donovan office was primarily dedicated to commercial driver's licenses (CDL). It was a small office with limited clientele; therefore, she asked why it was necessary for the Donovan office to have two security guards. Likewise, the Carson City office was also small, and it was located next to DPS. She asked why it was necessary to have two security guards at that DMV location.

Tonya Laney, Division Administrator, Field Services, DMV, replied that the lobby of the Carson City office was fairly small, but the Carson City office was actually the largest DMV building. The security guards were responsible for patrolling the interior and exterior of the building. She said it took considerable time for the security guards to patrol the building as well as the customer/employee parking areas, which were located in the front and rear of the building, and across the street.

Ms. Laney said the Donovan office had fewer customers, but the clientele was different than the clientele at other locations. She said the Donovan office was located between the railroad tracks and Interstate 215, and customers were primarily CDL holders and truck drivers needing to pay taxes at the Motor Carrier Division. She said the security guards monitored the interior of the building as well as the CDL parking lots to ensure that staff was safe.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE AGENDA
ITEM E-129.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman
Benitez-Thompson was not present for the vote.)

- 130. Department of Public Safety - Nevada Highway Patrol Division - FY 2018** - Transfer of \$7,500 from the Utilities category to the Lab Services category and transfer of \$82,000 from the Communication High Band System category to the Forensic Services Contracts category to fund projected shortfalls within the respective categories. Requires Interim Finance approval since the amount transferred to the Forensic Services Contracts category exceeds \$75,000. **Work Program #C43092**

Refer to motion for approval under Agenda Item E.

- 131. Department of Public Safety - Nevada Highway Patrol Division - FY 2018** - Addition of \$1,349,921 in Contract Services Reimbursement revenue to continue to provide escort services for wide-load customers, and traffic control for construction projects and special events. Requires Interim Finance approval since the amount added to the Operating category exceeds \$75,000. **Work Program #C43178**

Agenda Items E-131, E-136 and E-139 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-139.

- 132. Department of Public Safety - Division of Parole and Probation - FY 2019** - Transfer of \$418,157 from the Personnel Services category to the Offender Tracking Information System (OTIS) Replacement category to support the completion of the OTIS update project. Requires Interim Finance approval since the amount transferred to the OTIS Replacement category exceeds \$75,000. **Work Program #C43052**

Refer to motion for approval under Agenda Item E.

- 133. Department of Public Safety - Investigation Division - FY 2018** - Transfer of \$37,884 from the Uniform category to the Personnel Services category and transfer of \$73,800 from the Uniform category to the Equipment category to fund compensatory time liabilities and purchase narcotic forensic analysis equipment. Requires Interim Finance approval since the cumulative amount transferred to the Equipment category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42928**

Refer to motion for approval under Agenda Item E.

- 134. Department of Public Safety - Investigation Division - FY 2018** - Transfer of \$7,976 from the Uniform category to the Personnel Services category to fund a projected shortfall for the remainder of the fiscal year. Requires Interim Finance approval since the cumulative amount transferred from the Uniform category exceeds \$75,000. **Work Program #C43137. RELATES TO AGENDA ITEM I.**

Agenda Item E-134 and Agenda Item I were discussed together.

Patrick Conmay, Chief, Division of Investigations (NDI), DPS, said the division was requesting an allocation of Highway Funds from the IFC Contingency Account in the

amount of \$8,691 to cover a projected shortfall in the Personnel Services category. He said NDI was comprised of 50 positions, 32 sworn and 18 civilian. Of the 32 sworn positions, 29 were funded with General Fund appropriations and 3 were funded with Highway Fund authorization. All 3 Highway Funded positions were filled during FY 2018. He explained that the total projected shortfall was \$25,279; however, on June 19, 2018, the Board of Examiners approved an allocation from the Highway Fund Salary Adjustment Fund in the amount of \$8,612. Additionally, the division identified budgetary savings in the amount of \$7,976 in other categories, which may be transferred to the Personnel Services category as identified in Work Program #C43137. The remaining balance of \$8,691 in Highway Fund authorization was necessary to cover expenditures related to the 3 Highway Funded positions. Mr. Conmay said the projections included in Work Program #C43422 were still accurate to the best of the agency's knowledge, and no modification was necessary (page 46, [Exhibit D](#)).

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE AGENDA ITEM E-134 AND AGENDA ITEM I.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson was not present for the vote.)

- 135. Department of Public Safety - Investigation Division - FY 2019** - Addition of \$609,346 in Tobacco Settlement Income transferred from the Department of Health and Human Services to support ongoing operations of the SafeVoice (Safe-to-Tell) Support center Program. Requires Interim Finance approval since the amount added to the SafeVoice (Safe-to-Tell) Support center Program category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 51. Work Program #C42850**

Agenda Items C-1, C-2, E-51 and E-135 were discussed together.

Jim Wright, Director, Department of Public Safety (DPS), introduced Patrick Conmay, Chief, NDI, DPS. Mr. Wright said Work Program #C42850 requested the transfer of \$609,346 in tobacco settlement income from DHHS to support ongoing operations of the SafeVoice support center.

Patrick Conmay, Chief, NDI, DPS, said Nevada's SafeVoice Program was the result of legislative action from the 2015 and 2017 Legislative Sessions. The program was established to provide Nevadans with a simple mechanism to anonymously report violent, unlawful or threatening activities on school buses or property, or at activities sponsored by a school. Consistent with Senate Bill 212 (2017) and NRS 388, as well as a grant from the Pacific Institute for Research and Evaluation (PIRE), NDI, in collaboration with the Nevada Department of Education (NDE), established a SafeVoice support center which operated 24 hours a day, 7 days per week, 365 days per year (24/7/365).

Mr. Conmay said support center staff used P3 Campus software to monitor and track incoming tips. It also ensured information was processed appropriately and in a timely manner. He said the SafeVoice support center was initially staffed with four contract personnel funded by the PIRE grant. In addition, NDI assigned a sergeant to oversee and supervise the program. In order to meet the legislative mandate that the support center be available and staffed at all times including holidays and other non-school days, DPS Dispatch was initially used to cover graveyard and weekend hours. Following the April 11, 2018, IFC meeting and a subsequent emergency work program, eight additional staff were added to the SafeVoice support center. He said the additional positions were funded using Fund for a Healthy Nevada tobacco settlement funds. He noted that all positions had been filled and trained. Mr. Conmay said the support center was fully operational and available 24/7/365 as of June 11, 2018, and the additional demands on DPS Dispatch had been removed. He said NDI was requesting continued funding for FY 2019 using tobacco settlement funds to support the four additional contract personnel and associated costs approved at the April 11, 2018, IFC meeting, as well as the four additional contract personnel and associated costs approved through the emergency work program.

Mr. Conmay introduced Nicole Mendoza, SafeVoice Program Supervisor, who had been with the program since its inception.

Nicole Mendoza, SafeVoice Program Supervisor, NDI, DPS, said she was the support center supervisor for the swing shift. Ms. Mendoza and two other staff members received anonymous tips via telephone, web and mobile application from students at public and charter schools throughout Nevada. She noted that most tips were grave in nature.

Ms. Mendoza said when a tip such as a suicide threat was received, SafeVoice staff moved quickly to address the matter. She said it was important for staff to build a rapport with the individual reporting the tip so they would feel comfortable providing critical information such as the name of the student of concern and the address and telephone number of that student. Subsequently, SafeVoice staff notified law enforcement and/or the school district so that a welfare check could be done. Ms. Mendoza said a team of people were involved in each response to simultaneously communicate with the individual reporting the tip as well as the school district superintendent to obtain information on the student's whereabouts after school. She said SafeVoice staff had relationships with law enforcement agencies throughout the state that were responsible for performing welfare checks.

Ms. Mendoza said the SafeVoice Program had 58 success stories to date. By definition, a success story was an instance where a youth was admitted to a hospital or mental health institution before they could take their life. Although she may never know the true impact of the SafeVoice Program, she sensed the program's impact in the 30 to 40 kudos she had received since January 2018. She said tipsters told

her personally that they did not know what they would have done without the SafeVoice Program. Ms. Mendoza recalled an incident where a student called the SafeVoice support center after ingesting pills, because she did not feel that anyone in her life cared about her, and she wanted someone to be there while she was dying. She said the SafeVoice Program was instrumental and needed to be available all times of day. She said it was inconceivable how many lives would have been lost without the program.

Assemblyman Edwards said he was unsure of the correlation between tobacco settlement funds and the SafeVoice Program. He asked how the SafeVoice Program would be funded if tobacco settlement funds were discontinued. Buddy Milazzo, Administrative Services Officer, DHHS Director's Office, said NRS 439.631g stated that tobacco settlement funds could be used for the wellbeing of state residents. He said the Fund for a Healthy Nevada currently funded other crisis lines, such as 2-1-1; therefore, the DHHS Director thought the SafeVoice Program was an appropriate expenditure of tobacco settlement funds. Mr. Milazzo said he did not foresee an end to the tobacco settlement funds. He said the funding had been ongoing for a number of years; however, if the funds were discontinued, the matter would be addressed at that time.

Assemblyman Edwards said one of the problems conveyed by constituents was that it was difficult to track the students involved in the incident being reported, because the process was anonymous. He asked how often that happened, and if the website had been updated to require individuals to provide contact information.

Mr. Conmay replied that statute specifically designated that reporting parties could remain anonymous. As Ms. Mendoza described, SafeVoice staff attempted to extract the necessary information to address emergency situations.

Steve Canavero, Superintendent, Department of Education (NDE), said the balancing act between the conditions of anonymity and apparent emergencies needed to be addressed. He said NDE was working on regulations that should strike the right balance. Additionally, NDE recently drafted a recommendation to find balance and determine a mechanism by which DPS would have access to necessary information to identify and locate a student in an emergency situation. Mr. Canavero said the recommendation would be presented to the Governor's School Safety Taskforce followed by the 2019 Legislature.

Assemblyman Sprinkle asked why the number of tips was declining. He also asked how the SafeVoice Program would be marketed to increase public awareness. Mr. Conmay replied that the declining number of tips that occurred at the end of the 2017-2018 school year was anticipated by DPS. He said the number of tips was expected to increase when the 2018-2019 school year commenced.

Mr. Conmay said the SafeVoice Program was still in the initial phase and had not been rolled out to all the schools. He said the program statistics were from

January 2018 through the end of the traditional 2017-2018 school year for Cohort 1 only. He said the program was still receiving tips from the year-round schools and summer schools. Mr. Conmay said SafeVoice support center staff was responsible for front loading the database with the upcoming Cohort 2 schools, which included public and charter schools as well as some private schools that requested to participate in the program. Each school had a team of personnel dedicated to the SafeVoice Program, and SafeVoice support center staff was entering that information into the support center database. He said all of the information would be in place by the time the 2018-2019 school year commenced.

Mr. Conmay thought NDE had a significant statewide marketing plan to announce that the SafeVoice Program was operational, which would likely cause a surge in reporting.

In answer to a question from Assemblywoman Spiegel, Mr. Conmay said it was his understanding that early numbers for the Nevada SafeVoice Program far exceeded that of the Colorado program in its initial phase. Nevada's numbers were expected to trend even higher, because the SafeVoice Program was a statewide program as opposed to regional, like in Colorado.

Senator Gansert thanked the agency for its efforts with the SafeVoice Program. She said the program was critical for Nevada, and she was pleased it was rolled out quickly. She said she appreciated the testimony from Ms. Mendoza, which conveyed the importance of the program; how it was impacting the lives of Nevada's youth; and how it was helping to save people.

Senator Gansert thought support center staffing could be adjusted as necessary based on fluctuations in tip volume, because the support center was staffed with contract personnel.

Assemblyman Oscarson said he knew firsthand that the SafeVoice Program was effective, because the program saved lives in the community of Pahrump several weeks ago. He said he was grateful for the efforts of the agencies involved and their ongoing support of the SafeVoice Program. He said he was equally appreciative of the SafeVoice support center staff. He thought it must be heartbreaking work, but at the same time, it was satisfying to know the program was making a difference in the lives of Nevadans.

Assemblywoman Carlton noted that Agenda Items C-1 and C-2 had been approved by the Governor under the emergency work program provision. With regard to Agenda Items E-51 and E-135, she said the workload fluctuated for some of the SafeVoice support center shifts. She requested that the agency provide additional workload statistics over the coming months so the Committee would have a better idea of staffing needs before the 2019 Legislative Session. Assemblywoman Carlton said the Committee was supportive of the program, and it should be funded appropriately.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE AGENDA ITEMS E-51 AND E-135 AND REQUIRE THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF INVESTIGATIONS, TO PROVIDE TIP VOLUME STATISTICS TO THE INTERIM FINANCE COMMITTEE FOLLOWING THE COMMENCEMENT OF THE 2018-2019 SCHOOL YEAR.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Senator Atkinson was not present for the vote.)

- 136. Department of Public Safety - Division of Emergency Management - FY 2018 -** Addition of \$270,234 in Federal Emergency Management Agency (FEMA) 4303 Grant funds, deletion of \$34,204 in Emergency Management Preparedness Grant funds and \$34,205 in Department of Homeland Security Grant funds to cover disaster administration/management costs associated with the January 2017 flood events in Northern Nevada. Requires Interim Finance approval since the amount added to the FEMA 4303 Northern Nevada January Disaster category exceeds \$75,000. **Work Program #C42996**

Agenda Items E-131, E-136 and E-139 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-139.

- 137. Department of Public Safety - Division of Emergency Management - FY 2019 -** Addition of \$134,687 in federal State and Local Implementation Grant Program (SLIGP) funds and deletion of \$40,205 in federal Homeland Security Grant Program funds to support the agency's Interoperable Public Safety Broadband Network program. Requires Interim Finance approval since the amount added to the SLIGP category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 138. Work Program #C43075**

Refer to motion for approval under Agenda Item E.

- 138. Department of Public Safety - Emergency Management Assistance Grants - FY 2019 -** Addition of \$150,000 in federal State and Local Implementation Grant funds to support division activities associated with the Nationwide Interoperable Public Safety Broadband Network program. Requires Interim Finance approval since the amount added to the State and Local Implementation Grant Program category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 137. Work Program #C43078**

Refer to motion for approval under Agenda Item E.

- 139. Department of Public Safety - Traffic Safety - FY 2018 -** Transfer of \$1,155,954 from the Nevada Department of Transportation (NDOT) Flex Funds category to the

NDOT Highway Safety Improvement Plan (HSIP) category to make a correction to the category in which the NDOT federal HSIP funding authority was placed. Requires Interim Finance approval since the amount transferred to the NDOT HSIP Funds category exceeds \$75,000. **Work Program #C43140**

Agenda Items E-131, E-136 and E-139 were discussed jointly.

Assemblyman Edwards said his questions regarding Agenda Items E-131 and E-136 were answered by the DPS Director during the break. He said he appreciated that fewer taxpayer dollars would be required as a result of a change in the contracting method with NDOT.

In answer to a question from Assemblyman Edwards, Amy Davey, Administrator, DPS, said the purpose of Work Program #C43140 was to make a correction to the category in which NDOT Federal Highway Safety Improvement Plan funding authority was placed. She said a similar request was approved at the April 11, 2018, IFC meeting; however, the funds were inadvertently transferred to the wrong category due to an error on the part of the agency.

Colonel John O'Rourke, Nevada Highway Patrol (NHP), DPS, noted that Work Program #C43178 required a modification.

Jonny McCuin, Administrative Services Officer, NHP, DPS, said the division required an adjustment to the Operating expenditure account authority by \$72,700, which would increase the amount from \$110,300 to \$183,000, and reduce the reversion to the Highway Fund from \$1,219,621 to \$1,146,921. He said there was no adjustment to the In-State Travel expenditure account.

Mr. McCuin said NDOT referenced 79 percent of the division's fuel bills and Thomas Petroleum referenced 21 percent. He said the fuel bills for April and May 2018 were higher than projected. He explained that projections for June 2018 were determined using the number of gallons of gasoline consumed by NHP in June 2017 multiplied by the average price per gallon of gasoline charged in May 2018. Mr. McCuin said Contract Services reimbursements received to date were significantly higher than budgeted. Contract Services reimbursements were used to fund a portion of the NHP personnel for trooper overtime and in-state travel for wide-load escorts, and operating expenses primarily for gasoline. Due to vacancies experienced by NHP in the current year, the division did not need to augment the Personnel category, thus the large reversion to the Highway Fund at the end of the year.

Assemblywoman Carlton noted that the Committee was typically notified of work program revisions in advance. She asked when the division became aware of the need for a revision. Mr. McCuin replied that the division became aware of the revision approximately one to two weeks prior to the meeting today. He explained

that NHP usually received the NDOT fuel bill on the 8th of each month for the previous month; however, the bill was received a day later.

Chair Woodhouse asked the division to provide the revisions in writing to the Committee.

ASSEMBLYMAN EDWARDS MOVED TO APPROVE AGENDA ITEM E-131 AS REVISED, AND AGENDA ITEMS E-136 AND E-139 AS SUBMITTED.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED. (Assemblyman Araujo, Assemblywoman Benitez-Thompson and Assemblyman Hambrick were not present for the vote.)

- 140. Department of Conservation and Natural Resources - Account for Off-Highway Vehicles (OHV) - FY 2018** - Transfer of \$48,150 from the Trails and Facilities category to the Off-Highway Vehicles Commission Grants category to support grant and program activities. Requires Interim Finance approval since the amount transferred from the Trails and Facilities category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42639**

Refer to motion for approval under Agenda Item E.

- 141. Department of Conservation and Natural Resources - State Parks - FY 2018** - Addition of \$33,031 in federal Recreational Trails grant funds to cover administration costs related to recreation trails projects. Requires Interim Finance approval since the amount added to the State Trails category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C42342**

Refer to motion for approval under Agenda Item E.

- 142. Department of Conservation and Natural Resources - Water Resources - FY 2018** - Addition of \$73,508 in U.S. Department of Energy grant funds transferred from Environmental Protection and transfer of \$30,773 from the In State Travel category to the DOE Grant category and \$55,764 from the Operating category to the DOE Grant category to support basin program activities underlying the Nevada Test Site. Requires Interim Finance approval since the amount added to the DOE Grant category exceeds \$75,000. **Work Program #C43079**

Refer to motion for approval under Agenda Item E.

- 143. Department of Conservation and Natural Resources - Water Resources - FY 2018** - Transfer of \$44,000 from the Operating category to the Court Reporter category to support reimbursable court reporter expenditures. Requires

Interim Finance approval since the cumulative amount transferred from the Operating category exceeds \$75,000. **Work Program #C43080**

Refer to motion for approval under Agenda Item E.

- 144. Department of Conservation and Natural Resources - Nevada Natural Heritage - FY 2018** - Addition of \$40,062 in NatureServe funds transferred from the Department of Conservation and Natural Resources Gift Fund account and \$15,000 in NatureServe Receipts to support data collection activities. Requires Interim Finance approval since the amount added to the NatureServe Projects category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43336**

Refer to motion for approval under Agenda Item E.

- 145. Department of Conservation and Natural Resources - Environmental Protection - Waste Management and Corrective Action - FY 2018** - Addition of \$500,000 in Reclamation fees transferred from the Mining Regulation and Reclamation account to continue with regulatory oversight for characterization and cleanup of large legacy mining sites. Requires Interim Finance approval since the amount added to the Corrective Actions category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 146. Work Program #C42125**

Agenda Items E-145 and E-146 were discussed jointly. Refer to testimony and motion for approval under Agenda Item E-146.

- 146. Department of Conservation and Natural Resources - Environmental Protection - Mining Regulation and Reclamation - FY 2018** - Transfer of \$500,000 from the Reserve category to the Transfers category to support ongoing projects in the Abandoned Mine Lands program. Requires Interim Finance approval since the amount transferred to the Transfers category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 145. Work Program #C42224**

Assemblywoman Swank recalled that the reclamation fees from the Mining Regulation and Reclamation account that were transferred during the 2015-2016 Interim were supposed to be a one-time occurrence. She wanted to be certain that the transfer would not happen a third time without first addressing a problem in the agency's budget. Additionally, the fees were paid by mining companies and intended to be used for mining programs; however, it was her understanding there were not enough funds to cover staff time for services such as extensions and permit amendments. Assemblywoman Swank said she was concerned about transferring funds that were meant to cover services.

Jeff Kinder, Deputy Administrator, Division of Environmental Protection (DEP), Department of Conservation and Natural Resources (DCNR), said the division believed the previous transfer would be a single occurrence based on projections.

He said the funds were transferred and tracked separately, and used for the direct cleanup of two legacy mine sites with significant pollution control concerns; the funds were not used for programs. Mr. Kinder said after a recent reevaluation of the programs, the division saw the opportunity for a second transfer for use at the same two legacy sites. He said the funds would allow continued work at one site and closure of the other.

Mr. Kinder said the transfer of funds would not have an effect on the Bureau of Mining Regulation and Reclamation. He said the program was fully staffed, and personnel was working with the regulated community to process permits in a timely manner. He said the transfer of fees would not have an impact on staffing.

Assemblywoman Swank asked if the mining companies were informed that the funds were being redirected, and if the companies were in agreement. She also asked what feedback the division received from the mining companies. Mr. Kinder replied that the DEP met with the mining companies several times prior to the previous work program. He indicated that the companies supported the first work program that requested the transfer of reclamation fees. Mr. Kinder said the DEP had done presentations for mining companies and kept them up-to-date on the progress of the two sites.

In answer to a question from Assemblywoman Swank, Mr. Kinder replied that he could not speak for the Nevada Mining Association, but the division believed the association was in support of the work being done by the DEP.

ASSEMBLYWOMAN SWANK MOVED TO APPROVED AGENDA
ITEMS E-145 AND E-146.

SENATOR ATKINSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson and Assemblyman Hambrick were not present for the vote.)

- 147. Department of Wildlife - Operations - FY 2018** - Addition of \$49,104 in Application Fees transferred from the Wildlife Fund account to fund a projected shortfall for the remainder of the fiscal year in staff salaries. Requires Interim Finance approval since the cumulative amount added to the Personnel Services category exceeds \$75,000. **Work Program #C43306**

Refer to motion for approval under Agenda Item E.

- 148. Department of Wildlife - Game Management - FY 2018** - Addition of \$81,795 in federal Wildlife Restoration grant funds and \$27,265 in Sportsmen Revenue transferred from the Wildlife Fund account to fund a projected shortfall for the remainder of the fiscal year in staff salaries. Requires Interim Finance approval

since the amount added to the Personnel Services category exceeds \$75,000.
Work Program #C43312

Refer to motion for approval under Agenda Item E.

- 149. Department of Wildlife - Game Management - FY 2019** - Addition of \$2,212,500 in federal Wildlife Restoration grant funds and \$737,500 in Sportsmen Revenue transferred from the Wildlife Fund account to support the replacement of a 1983 Bell helicopter to support the agency mission. Requires Interim Finance approval since the amount added to the Equipment category exceeds \$75,000. **Work Program #C43113**

Assemblywoman Titus thanked the agency for limiting the amount of funds requested for staff salaries in Agenda Items E-147 and E-148. She said she was surprised the agency did not request more funds for salary and overtime due to the implementation of the new licensing system. Assemblywoman Titus said she was able to navigate through the tag application system within the new licensing program with minimal issues. She noted that Department of Wildlife (NDOW) staff responded promptly to her request for assistance.

Assemblywoman Titus said the department was requesting approximately \$2.9 million to purchase a used 2008 Eagle Bell 407HP helicopter. She noted that a Google search revealed that the average cost of a 2008 Eagle Bell 407HP helicopter was \$3.2 million. She said the department's average budgeted cost for air maintenance was about \$468,000 annually. She asked if the new helicopter would impact the agency's air maintenance budget.

Tony Wasley, Director, NDOW, said the agency maintained an air operations unit within the Game Management Division. Traditionally, air operations consisted of two rotary-wing aircraft and a fixed-wing aircraft. He noted that wildlife inventory was a significant part of the agency's mission. The department estimated the total cost to replace a 35-year-old helicopter with an excess of 12,000 hours on the engine was approximately \$2.95 million. He noted that the department replaced an Eagle Bell 206 with an Eagle Bell 407 in FY 2017. He said the air operations unit consisted of two full-time pilots and a mechanic, so there was great value in staying with the same make and model helicopter. For example, a Ford garage was equipped with Ford tools and knowledge; therefore, it made sense to maintain a Bell shop in terms of efficiency and the knowledge set of the mechanic.

Mr. Wasley reiterated that the department's current aircraft was 35 years old and had excessive hours on both the air frame and engine. The air operations unit noticed an increase in maintenance costs and a decrease in reliability, value and efficiency, and ultimately, safety. Mr. Wasley said it was important to note that when the department sold its previous Eagle Bell 206 after 20 years of operations, it sold for more than the purchase price. He said Bell was preparing to release a newer model helicopter that would render the Eagle Bell 206 obsolete. The department

was struggling to locate parts and the cost of those parts was increasing; therefore, there were growing concerns about the safety and efficiency of an aircraft of that age with excessive flight hours. He said NDOW was confident it could replace the aircraft for approximately \$2.95 million.

Mr. Wasley said, with regard to the cost of operations, two years ago NDOW purchased an Eagle Bell 407HP to replace the Eagle Bell 206. Initially there were concerns about fuel consumption rates and other things that may not have been included in the budget; however, the department found that the new aircraft was more efficient, partly due to travel speed. He explained that even though fuel consumption rates were higher, the aircraft arrived at its destination more quickly, thereby burning less fuel per unit time. Mr. Wasley said the department anticipated it would realize some of those same efficiencies, including maintenance costs, with the new helicopter.

Assemblywoman Titus noted that Sportsmen Revenue would be used to purchase the helicopter. She said NDOW had many different types of funds with stipulations concerning usage. She asked if it was permissible to use Sportsmen Revenue for the purchase of a helicopter.

Mr. Wasley replied that Work Program #C43113 requested authority to transfer \$737,500 in Sportsmen Revenue. He explained that the work program was submitted during the process of selling the old helicopter; therefore, the amount of the transfer was estimated for the purpose of the work program. Of the \$737,500, the department generated \$400,000 through the sale of the helicopter, including parts, which reduced the remaining balance to \$373,000. He said \$200,000 was requested through the Wildlife Heritage program, which was administered by the Wildlife Commission. The request was approved by the Wildlife Heritage Committee and would go before the full Wildlife Commission on June 29, 2018. Mr. Wasley said, as with the previous helicopter purchase, NDOW sought partnerships with non-governmental organizations (NGOs). The NGOs, representing nine different partners, had committed approximately \$145,000 toward the purchase of the replacement helicopter. Mr. Wasley said, although the department was requesting authority to transfer \$400,000 in Sportsmen Revenue, approximately \$395,000 was revenue from the sale of the previous helicopter. He stated that 75 percent of the purchase price would be covered by a federal aid grant, and the remaining 25 percent would be covered by state funds. The state dollars would largely be comprised of revenue from the sale of the previous helicopter, Wildlife Heritage account contribution, and NGO partner contributions.

Assemblywoman Titus said the agency indicated that the cost of the helicopter was expected to be less than most alternatives. She said the primary use of the helicopter was to perform surveys of certain wildlife species. She asked how much downtime there was for the helicopter, and if there were other uses for the aircraft, such as seeding and fire suppression. She also asked if a contractor could be used as an alternative to purchasing a helicopter.

Mr. Wasley replied that the current flight schedule was planned for 1,500 hours. He said flying two helicopters with two pilots for approximately 1,500 hours was an aggressive schedule and higher than the industry standard. He noted that weather and other factors sometimes reduced the flight schedule. Mr. Wasley indicated that in FY 2017 the department flew approximately 1,000 hours, which meant there was little downtime. The helicopters were primarily used in fulfilling NDOW's mission of surveying wildlife inventory, which included big game, sage grouse and water fowl. Additionally, the helicopter was used to supplement water supplies in the guzzler system. By carrying multiple buckets under the aircraft, the department could transport water to guzzlers to provide water for wildlife in remote locations. Mr. Wasley said NDOW cooperated with other state agencies as well. For example, during the extreme winter conditions of 2017, NDOW worked with the Division of Water Resources to perform dam inspections in remote locations. He said the department sought additional opportunities to use the helicopters. Mr. Wasley said the department was also interested in talking with NDF about ways to leverage state resources with other partners. He said the department could assemble a comprehensive list for the Committee regarding how the helicopters were utilized by NDOW.

Mr. Wasley said the cost of contract helicopter services was approximately \$2,000 per hour compared to \$800 per hour in-house. If the department could maintain the aircraft for 20 years or more, and sell it for more than the purchase price, the hourly operating costs would be reduced significantly. He said sometimes it was better to provide service internally rather than outsourcing for a lower price, especially when it came to the safety of air operations.

In answer to questions from Assemblywoman Titus, Mr. Wasley replied that the previous helicopter sold for approximately \$400,000. Between the helicopter and parts, there were two lots auctioned off through the state. After fees, the auction generated approximately \$396,000. He said the funds from the sale of the helicopter in FY 2017 were applied to the purchase of a replacement helicopter. In FY 2017, NDOW sold a Cessna 206 and an Eagle Bell 206, which generated \$600,000. The Sportsmen Revenue was used for the 25 percent state match, similar to what the department was proposing in the current work program.

Assemblywoman Titus said she was happy to hear the department was helping with the guzzler programs and other state needs.

ASSEMBLYWOMAN TITUS MOVED TO APPROVE AGENDA
ITEM E-149.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson and Assemblyman Hambrick were not present for the vote.)

- 150. Department of Wildlife - Habitat - FY 2019** - Addition of \$600,000 in Vegetation Management, Habitat Improvement and Restoration Project grant funds to support vegetation, habitat and restoration projects. Requires Interim Finance approval since the amount added to the Nevada Partners for Conservation and Development Program category exceeds \$75,000. **Work Program #C42899**

Refer to motion for approval under Agenda Item E.

- 151. Department of Wildlife - Habitat - FY 2019** - Addition of \$340,860 in federal Wildlife Restoration grant funds and \$257,140 in Trout Stamp fees transferred from the Wildlife Fund account to support the Mason Valley Wildlife Management Area (WMA) water system project. Requires Interim Finance approval since the amount added to the WMA System category exceeds \$75,000. **Work Program #C42927**

Refer to motion for approval under Agenda Item E.

- 152. Department of Wildlife - Habitat - FY 2019** - Addition of \$300,000 in federal Wildlife Restoration grant funds to purchase 13 acres adjacent to the Overton Wildlife Management Area (WMA) for wetland and upland habitat. Requires Interim Finance approval since the amount added to the WMA System category exceeds \$75,000. **Work Program #C43301. WITHDRAWN 5-30-18**

- 153. Department of Transportation - Transportation Administration - FY 2018** - Addition of \$1,400,227 in Highway Fund Authorization to fund a portion of construction costs for the remainder of the microwave system replacement project. Requires Interim Finance approval since the amount added to the Information Services category exceeds \$75,000. **Work Program #C43376**

Agenda Items E-14 and E-153 were discussed jointly.

Patrick Cates, Director, Department of Administration, said Enterprise Information Technology Services (EITS) was requesting permission to increase user charges related to the microwave system replacement project by approximately \$1.7 million due to an unexpected need for additional antennas and other equipment. The reason for the change was due to additional requirements identified during implementation.

Rudy Malfabon, Director, Nevada Department of Transportation (NDOT), stated that NDOT was in agreement with EITS regarding the additional expense for antennas with higher capabilities, which were necessary for public safety throughout the state. He said the total cost included the design and installation of the equipment. Mr. Malfabon said NDOT shared 81 percent of the cost based on the number of

devices and circuits. He said NDOT was requesting approximately \$1.4 million in Highway Funds to fund a portion of the construction costs. He noted that fuel tax revenue was exceeding projections by the Department of Motor Vehicles due to economic improvement. He said unemployment was low and more people were driving their vehicles, which was beneficial for the Highway Fund.

In answer to questions from Senator Denis, Patrick Sheehan, IT Manager, EITS, Department of Administration, replied that additional antennas were necessary because of the frequency coordination process. He said higher quality antennas would help avoid interference with other licensed users. Also, the upgraded antennas and additional hardware facilitated an increase in the bandwidth of the microwave system to approximately double the previous capacity.

Senator Denis asked how the project timeline would be impacted by the change in the project scope. Mr. Sheehan replied that the revised completion date for the project was November 2018. He noted that the project was 70 percent complete as of today.

In answer to a question from Senator Denis, Mr. Sheehan replied that early snowfall could impact the project timeline. He said the majority of the antenna work had been completed, and the crews were currently working on installation and tune up of the new microwave equipment. He said some minor path alignment adjustments would have to be done after the new radios were installed; however, most of the antenna work should be completed before winter. He said the only remaining task would be transitioning customer traffic from the old system to the new.

In answer to a question from Senator Goicoechea, Mr. Sheehan replied that the antennas in Cold Springs, Austin and Eureka would also be on the state microwave system; however, that was a separate project that EITS was working on in conjunction with NDOT. He said Cold Springs, Austin and Eureka were new sites being constructed along Highway 50 fiber and would be connected into the statewide microwave system by the antennas at those locations.

Senator Goicoechea asked which agencies would be impacted by the increased user charges. Jenni Cartwright, Administrator, Department of Administration, replied that multiple state agencies, as well as federal and local entities, utilized the state microwave system. She said the state agencies that utilized the microwave system included the Office of the Governor, EITS, NDOC, NDF, NDOW, NDOT, DPS and Highway Patrol.

Senator Goicoechea said the DPS dispatch center in Elko closed in 2017, because the new microwave system was supposed to provide coverage in the rural areas. He was concerned that the microwave system was still not in place, additional funds were being requested, and coverage in rural Nevada remained spotty. He said new antennas were being installed at existing Bell Telephone sites like Prospect Peak, Rib Hill and Hickison Summit. Mr. Sheehan confirmed that the antennas were being

installed at existing microwave sites and no new construction was involved in that project.

Senator Goicoechea said he was hopeful the coverage would be in place soon, because Highway Patrol troopers from Winnemucca eastward were unhappy about the current situation.

Senator Denis asked if the rural areas would have increased bandwidth due to the upgraded equipment. Mr. Sheehan replied that some bandwidth would be available in the rural areas, but the majority of it would be consumed by NDOT's new radio system due to the required capacity.

Senator Denis asked if any microwave system users would have a problem affording the additional user charges. Ms. Cartwright said she spoke with each state agency that would be impacted by the increased user charges. She said several agencies had already paid their portion of the fees and others were working on submitting payment. Ms. Cartwright said, if the work program was approved, state agencies would have the option to pay the fees in FY 2018 or FY 2019, in large part due to NDOT's willingness to help EITS through this part of the project. She said she had not received any complaints, which she attributed to communication between EITS and the agencies involved, as well as EITS' partnership with NDOT. She was hopeful the agencies would be able to manage the unanticipated charges.

Senator Denis thought some of those agencies may request IFC approval to transfer funds to cover the increased fees. Ms. Cartwright said she could not speak to all of the state agencies involved; however, she thought that NDOC and NDF were able to manage the increased charges, because it was funded through a different category.

Senator Denis asked why the agency proceeded with the unfunded changes before receiving IFC approval. Ms. Cartwright replied that the project was fast paced and necessary for uninterrupted public safety communications. She said there was miscommunication between EITS field staff and Department of Administration fiscal staff. She said EITS had been operating with the understanding that the project was fully funded for the \$10.6 million in the contract and did not realize that full authority was not authorized in the current biennium. Ms. Cartwright said EITS was handling issues as they arose in an effort to keep the project on schedule and maintain radio communication support. After it was determined that EITS and the Department of Administration were operating on different platforms, discussions took place with NDOT, the Governor's Finance Office and LCB Fiscal Division staff. Ms. Cartwright thanked all three entities for helping to find a solution to the problem.

Continuing, Ms. Cartwright said the microwave system replacement was an ongoing project which involved retention and various timing of payments. She said the agency had spending authority for a portion of the work, but 20 percent of the work was postponed until final payment was received. If the project was viewed in its

continuum, it was anticipated that funding would be in place throughout the project; however, if the project was put on hold, the state would be liable for the retention that would be due at the end of the project. Ms. Cartwright apologized for the misunderstanding as well as the oversight on the part of the Department of Administration for not clearly distinguishing between contract authority and approved funding authority.

In answer to a question from Assemblywoman Titus, Mr. Sheehan replied that the microwave upgrade was specifically meant to replace the end-of-life microwave system currently in place. Through the project design changes, the new system would be double the capacity; however, the majority of that capacity would be consumed by the new radio system and the bandwidth it required. The needs of existing customers would still be met, but the project was specifically intended to provide communications for the public safety radio system.

SENATOR DENIS MOVED TO APPROVE AGENDA ITEMS E-14 AND E-153.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED. (Assemblywoman Spiegel was not present for the vote.)

- 154. Public Employees Benefits Program - FY 2018** - Transfer of \$30,622 from the State Employee Insurance Costs category to the Operating category to cover projected expenditures through the end of the fiscal year. Requires Interim Finance approval since the cumulative amount added to the Operating category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43215**

Refer to motion for approval under Agenda Item E.

- 155. Public Employees Benefits Program - Non-State Retiree Rate Mitigation - FY 2018** – Transfer of ~~\$186,886~~ **\$177,482** in General Fund appropriations from FY 2019 in order to make projected subsidy payments for non-state, non-Medicare retirees participating in the Public Employees' Benefits Program. Requires Interim Finance approval pursuant to Section 72 of Assembly Bill 518 of the 2017 Legislature. **RELATES TO AGENDA ITEM E. 156. Work Program #C43243. REVISED 6-7-18.**

Refer to motion for approval under Agenda Item E.

- 156. Public Employees Benefits Program – Non-State Retiree Rate Mitigation – FY 2019** – Transfer of ~~\$186,886~~ **\$177,482** in General Fund appropriations to FY 2018 to make projected subsidy payments for non-state, non-Medicare retirees participating in the Public Employees' Benefits Program. Requires Interim Finance

approval pursuant to Section 72 of Assembly Bill 518 of the 2017 Legislature.
RELATES TO AGENDA ITEM E.155. Work Program #C43235. REVISED 6-7-18.

Refer to motion for approval under Agenda Item E.

- 157. Public Employees Benefits Program - FY 2019** - Addition of \$1,539 in Miscellaneous Insurance Premiums, addition of \$96,554 in Non-State Retiree Premiums, deletion of \$101,440,565 in Premium Income, addition of \$268,059 in Non-State Subsidy revenue, addition of \$665,092 in State Employee Premiums, addition of \$127,053 in State Retiree Premiums, and deletion of \$276,753,124 in State Subsidy revenue to delete existing revenue general ledgers and expenditure categories to enhance tracking and transparency by participant group pursuant to Section 11 of Senate Bill 545 of the 2017 Legislature. Requires Interim Finance approval since the amount decreased from the Self-Insured Medical Costs category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 158. Work Program #C43433**

Refer to motion for approval under Agenda Item E.

- 158. Public Employees Benefits Program - FY 2019** - Addition of \$192,165 in Miscellaneous Insurance Premiums, \$9,876,372 in Non-State Retiree Premiums, \$26,702,782 in Non-State Subsidy revenue, \$53,504,875 in State Employee Premiums, \$14,547,940 in State Retiree Premiums, and \$272,211,258 in State Subsidy revenue to establish restructured revenue general ledgers and expenditure categories to enhance tracking and transparency by participant group pursuant to Section 11 of Senate Bill 545 of the 2017 Legislature. Requires Interim Finance approval since the amount added to the State Employee Insurance Costs category exceeds \$75,000. **RELATES TO AGENDA ITEM E. 157. Work Program #C43432**

Refer to motion for approval under Agenda Item E.

- 159. Office of the Military - Emergency Operations Center - FY 2018** - Transfer of \$31,480 from the Reserve category to the Emergency Management Building category and transfer of \$4,630 from the Reserve category to the Personnel Services category to cover projected shortfall in the respective category for the remainder of the fiscal year. Requires Interim Finance approval since the cumulative amount transferred to the Emergency Management Building category exceeds 10 percent of the legislatively approved amount for that category. **Work Program #C43344**

Refer to motion for approval under Agenda Item E.

- 160. Silver State Health Insurance Exchange - Administration - FY 2018** - Transfer of \$1,034,630 from the Reserve category to the Transfer to Centers for Medicare and Medicaid Services (CMS) category to fund the projected increase in the fee paid to CMS for the use of the federal platform for the remainder of the fiscal year.

Requires Interim Finance approval since the amount transferred to the Transfer to CMS category exceeds \$75,000. **Work Program #C42902**

Refer to motion for approval under Agenda Item E.

161. Silver State Health Insurance Exchange - Administration - FY 2019 - Transfer of ~~\$470,600~~ **\$510,800** from the Reserve category to the Exchange Platform category for the establishment of a Project Management Office to oversee the State-Based Marketplace transition. Requires Interim Finance approval since the amount transferred to the Exchange Platform category exceeds \$75,000. **Work Program #C42913. REVISED 5-31-18**

Heather Korbolic, Executive Director, Silver State Health Insurance Exchange (SSHIX), said Work Program #C42913 requested authority for \$510,800 to fund the establishment of a Project Management Office (PMO) for Nevada's transition to a state-based marketplace.

Ms. Korbolic provided the following timeline for the state's transition to a state-based marketplace:

- December 2017 - SSHIX closed a request for information (RFI) soliciting data about proven and demonstrated marketplace technology and consumer assistance center functions.
- January 2018 - SSHIX made a site visit to the Minnesota state-based exchange. Ms. Korbolic noted that Minnesota issued the most recent request for proposal (RFP) for technology.
- February 2018 - SSHIX made a site visit to Idaho's state-based exchange, a state similar to Nevada in terms of population and budget.
- March 2018 - The Centers for Medicare and Medicaid Services (CMS) provided SSHIX with a comprehensive list of transition milestones.

Ms. Korbolic said throughout the aforementioned time period, SSHIX developed and issued an RFP intended to select a proven technology and support center solution with an anticipated contract start date of August 2018. During the February 8, 2018, IFC meeting, the agency recognized and acknowledged that a complicated project of this size would require engagement from an independent vendor to validate and verify successful deliverables. However, SSHIX was unable to analyze the true volume of work required to successfully manage a project of this scope until after the site visits to Minnesota and Idaho, and receipt of the project milestones from CMS. Ms. Korbolic said although SSHIX was confident in its ability to oversee a successful transition to a state-based marketplace, the agency made the determination to seek formal project management assistance from qualified personnel with direct experience in establishing a state-based marketplace under the Affordable Care Act (ACA). She said conversations and visits with other states, along with the detailed roadmap provided by CMS, convinced the agency that

maximizing success in Nevada's transition would require a level of specialized expertise and experience that existing SSHIX staff could not provide. Ms. Korbolic said if Work Program #C42913 was approved, SSHIX intended to use the PMO to coordinate project management including, but not limited to, verifying compliance with federal security and privacy regulations; independent verification of CMS regulatory milestones; coordination with CMS for data migration; independently assuring quality and functionality of the SSHIX platform and consumer assistance center for functionality; and the development and authoring of the SSHIX standard operating procedures and training materials for stakeholders and staff. The requested PMO positions would not only be instrumental in bridging the experience gap and imparting expertise to staff, but would also provide functions that were far too specialized for existing staff members, including privacy and security compliance. Ms. Korbolic said SSHIX believed that the Division of Labor would allow for administrative staff to remain in control of the project while delegating the weighty and technical aspects to personnel with the appropriate level of knowledge and expertise.

Assemblyman Sprinkle asked why project management services were not requested in conjunction with the agency's request to transition to a private vendor during the February 8, 2018, IFC meeting. Ms. Korbolic replied that at that time SSHIX was unsure of the entire project scope or the expertise that would be required. When SSHIX expressed the need for independent verification and validation, the agency was unsure what that entailed. She said site visits to Idaho and Minnesota, as well as the transition milestones supplied by CMS, provided insight into presenting a more analytical scope of work.

Assemblyman Sprinkle expressed concern that mistakes made during the inception of SSHIX would be repeated. Ms. Korbolic agreed it was critical to avoid repeating past mistakes during the transition.

Assemblyman Sprinkle asked if SSHIX was aware of any other potential costs that may be necessary prior to the 2019 Legislative Session. Ms. Korbolic replied that the agency did not foresee other potential costs.

Russell Cook, Information Systems Manager, SSHIX, said SSHIX identified three specific areas in which the cost associated with the transition were presently unknown; however, the agency had a contingency plan in place for each of those areas. He said the first area with unknown costs related to the required integration between the agency's system and the Division of Welfare and Supportive Services (DWSS) to accommodate shared use of the federal data services hub. He explained that the data services hub was used to verify income, household composition, and citizenship or lawful presence. Shared use of the data services hub had been in place since 2014; however, SSHIX was currently working with members of DWSS IT staff to determine what, if any, security and privacy regulations had been enacted in the interim that would modify the requirements of the integration, as well as what changes had been implemented to the DWSS system in the interim that

may also require modification. Mr. Cook said as a contingency plan, a set number of programmer hours would be included in the vendor contract in the event that the scope of work exceeded DWSS' ability to accommodate the changes.

Mr. Cook said the second area with unknown costs related to the first. He said only one Authority to Connect (ATC) was granted to each state for the data services hub, which was why SSHIX and DWSS had to share the service. He said the ATC would need to be revised and resubmitted to CMS by the SSHIX vendor. Mr. Cook said an independent security assessment, which could not be performed by the state or vendor, would also need to be performed. The agency was unsure of the specific requirements of the independent security assessment over the next year and a half; therefore, SSHIX was unsure whether any of the costs would fall within FY 2019 or FY 2020. He said the agency was working with CMS to finalize the requirements within the next month or two. Mr. Cook said there was a strong potential for shared cost savings for the portion of the assessment that dealt with overlapping functions between SSHIX and DWSS. He said SSHIX and DWSS were trying to identify potential shared cost savings. He indicated that it would be difficult to put a number on the cost. Additionally, SSHIX was unsure which fiscal year the costs would fall into. The determination would be made after receiving guidance from CMS.

Mr. Cook said the third area with unknown costs related to changes in federal regulations regarding the ACA, which may be enacted during the implementation or transition phase of the project. He said the vendor contract would allow for minor changes, such as data formats, requiring fewer than 200 person hours to implement. If significant changes were necessary that would exceed 200 hours, SSHIX had the option to utilize the additional programmer hours, and the negotiated change would go into effect to enact the modifications. After the go-live date, SSHIX would use the change request to accommodate modifications, but the agency would have the option to utilize the included programmer hours if it was deemed in the state's best interest to do so.

Assemblyman Sprinkle said each of the three areas mentioned by Mr. Cook required additional work by the vendor. He asked how that would impact the cost of the project. Ms. Korbolic replied that the agency knew there would be potential unknowns regarding the time and energy required for the project; therefore, a package would be built into the contract to include a specific number of programmer hours, which could be utilized by SSHIX if necessary. She said contract changes to add more programmer hours would not be necessary, because they would be included in the contract from the beginning.

In answer to a question from Assemblyman Sprinkle, Ms. Korbolic replied that the agency's request at the February 8, 2018, IFC meeting was for funds for design, development and implementation. She was hopeful the contract would be approved by the Board of Examiners on August 14, 2018.

In answer to a question from Senator Denis, Ms. Korbolic replied that SSHIX was unaware of additional costs that would require a work program aside from the three unknowns discussed by Mr. Cook.

Senator Gansert recalled discussion during the February IFC meeting about declining enrollment. She asked for the current status of enrollment. Also, she recalled that SSHIX initially intended to obtain a platform that had been proven effective in at least one other state. Ms. Korbolic replied that the vendor that was issued a letter of intent by SSHIX was called Get Insured. She said Get Insured was operational in California, Minnesota and Idaho. Get Insured was the only company that had successfully migrated a state (Idaho) from healthcare.gov to a state-based marketplace.

Senator Gansert asked if the state would receive a credit for any unused programmer hours. Ms. Korbolic said the programmer hours would be built into the contract as payment upon use; therefore, the agency would not pay for any unused programmer hours. She said the contract was currently being negotiated and had not been awarded.

In answer to a question from Senator Gansert, Ms. Korbolic said the percentage of the total contract value would be up to \$25 million for five years. She said SSHIX was currently assessing 3.15 percent of the premiums collected in Nevada. The fee for healthcare.gov was expected to increase to 3 percent in 2019, which would leave approximately 0.15 percent for operating revenue. Ms. Korbolic said the agency was confident the transition to a state-based marketplace would result in a savings without spending approximately 1.5 percent in current revenues on exchange technology and a consumer assistance center; therefore, SSHIX would experience a savings of approximately 50 percent after transitioning away from healthcare.gov. She noted that SSHIX previously estimated that \$12 million would be spent in 2020 to utilize healthcare.gov.

Senator Gansert asked for the current status of enrollment in the Exchange. Ms. Korbolic replied that in Plan Year 2018, 91,003 consumers were enrolled in a health care plan through SSHIX, an increase of 2 percent from the prior year. She noted that federally-facilitated states, which were states that were fully functional and using the healthcare.gov system, experienced enrollment declines of 5.5 percent.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE AGENDA
ITEM E-161.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson and Assemblyman Hambrick were not present for the vote.)

- 162. Silver State Health Insurance Exchange - Administration - FY 2019** - Transfer of \$370,576 from the Reserve category to the Navigators category to maintain a sufficient number of staff to continue consumer outreach and education as well as enrollment to uninsured and hard-to-reach populations. Requires Interim Finance approval since the amount transferred to the Navigators category exceeds \$75,000.
Work Program #C43214

Ms. Korbolic said Work Program #C43214 was a request to transfer \$370,576 from the Reserve category to the Navigators category to maintain a sufficient number of Navigators and In-Person Assistants (IPA) to fulfill outreach, education and enrollment functionalities for the Exchange. She said SSHIX contracted with Navigators and IPAs to staff events; promote and assist with open enrollment and special enrollment periods; perform outreach and educate consumers about the Exchange through grassroots efforts; and provide year-round consumer assistance. Approval of the work program would allow SSHIX to continue to successfully implement the agency's mission to reduce the number of uninsured Nevadans.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE AGENDA
ITEM E-162.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblywoman Benitez-Thompson and Assemblyman Hambrick were not present for the vote.)

- 163. Department of Employment, Training and Rehabilitation - Administrative Services - Information Development and Processing - FY 2019** - Addition of \$94,300 from the Employment Security Special Fund and deletion of \$37,084 from the Cost Allocation Reimbursement Fund to support the technical modifications for data collection related to veterans pursuant Senate Bill 137 of the 2017 Legislative Session. Requires Interim Finance approval since the 2017 S.B. 137 UI Modification category exceeds 10 percent of the legislatively approved amount for that category.
Work Program #C43316. RELATES TO AGENDA ITEM E. 105. RECEIVED AFTER SUBMITTAL DEADLINE, 5-30-18.

Refer to motion for approval under Agenda Item E.

- 164. Office of the Secretary of State- Secretary of State - FY 2019** - Transfer of \$131,590 from the Information Services category to the Operating category to provide adequate budget authority to pay for rent and security expenses for the new lease agreement with the City of North Las Vegas. Requires Interim Finance approval since the amount transferred to the Operating category exceeds \$75,000.
Work Program #C43555. RECEIVED AFTER SUBMITTAL DEADLINE, 5-31-18.

Scott Anderson, Chief Deputy Secretary of State, Office of the Secretary of State (SOS), testified on behalf of Secretary of State Barbara Cegavske. He said Secretary of State Cegavske was unable to attend the meeting due to pre-planned travel; however, she could be contacted via telephone if necessary. Mr. Anderson introduced Craig Kozeniesky, Deputy Secretary of State for Operations, SOS; Sheri Hudder, Management Analyst, SOS; and Diana Foley, Deputy Secretary of State for Securities, SOS.

Mr. Anderson said Work Program #C43555 was a request to allow the SOS to pay the necessary expenditures for a new lease agreement with the City of North Las Vegas. He said the Grant Sawyer office suite used by the SOS had become problematic for daily operations due to the health concerns and impacts to the office's workforce as a result of air quality and associated contaminants negatively affecting the environment. He stated that the first and foremost concern in relation to the work program was the health and welfare of SOS staff affected by the air quality in the office.

Mr. Anderson said the SOS and City of North Las Vegas, through State Public Works Division's (SPWD) Leasing Services, tentatively agreed to rental terms for 14,107 square feet within the City Hall Building. The SOS was prepared to sign a three-year lease to begin September 1, 2018, and the City of North Las Vegas offered a zero cost month-to-month lease through August 31, 2018, with shared security costs for Fridays when city offices were closed. Mr. Anderson said \$312,785 was available in Category 26 for FY 2019, because the agency switched to a lower cost vendor for offsite support of SOS FileNet servers. The unused contract authority would be utilized to pay the additional cost per square foot and the increased square footage in the new office space. He said there was an additional \$9,300 budgeted for phone and data wiring services for the new space, which would be absorbed within Category 26 authority during FY 2019. Also, the one-time cost to relocate staff during FY 2018 would be absorbed within the existing budget authority. Mr. Anderson said the SOS appreciated SPWD Leasing Services, the Governor's Finance Office, LCB Fiscal Division, City of North Las Vegas and SOS staff for assisting with the work program. He said the agency wished it was not necessary to move, but the main priority was the health and welfare of SOS staff.

Assemblywoman Carlton said the Grant Sawyer Building had experienced intermittent issues since it was built. She said everyone wanted to ensure that staff was safe; however, the Committee was receiving conflicting information. She said there were a couple doctor reports on the matter, one of which indicated that the mold remediation was effective, the problem had been removed, and that most of the mold issue would be resolved by the end of the summer of 2018. Assemblywoman Carlton said the first time she was informed about the issue was when the work program was brought forward. She was disappointed that someone from the SOS did not have a conversation with the Committee prior to the meeting today. She stated that LCB as well as other state agencies also had employees in

the Grant Sawyer Building. Assemblywoman Carlton said there needed to be a global discussion about the issue.

Mr. Anderson said there were reports indicating that the mold remediation had been effective; however, the SOS also met with the doctor who issued the report. In that meeting, it was stated most emphatically that any staff experiencing issues or symptoms related to the problems in the Grant Sawyer Building should not be there. In addition to the issues listed in the report, there was also ongoing maintenance and other remediation efforts that were causing problems in addition to the mold abatement efforts. Mr. Anderson said SPWD Buildings and Grounds could speak more to the overall plan in regard to the ongoing maintenance. He noted that the SOS was working extensively with SPWD Building and Grounds in regard to the mold issue. Mr. Anderson thought the Committee was notified about the matter and apologized that was not the case.

Mr. Anderson said 9 out of 34 SOS staff in the Las Vegas office had approved workers' compensation claims related to the conditions in the Grant Sawyer Building. He said the ongoing cycle of staff becoming symptomatic at work and having to be sent home could not continue, because it was unfair to staff or SOS customers. The SOS thought the recommended alternative would allow the SOS to carry out its business while SPWD Buildings and Grounds completed the required maintenance at the Grant Sawyer Building.

Assemblywoman Carlton reiterated that LCB staff was also located in the Grant Sawyer Building. She said everyone had concern for their staff and did not want them to be sick. She said she grew up around asbestos, and friends had died from exposure to it, so she understood environmental concerns.

Assemblywoman Carlton said the tenants that remained in the Grant Sawyer Building would be financially impacted if SOS vacated the building, because the cost of rent was based on the number of tenants. Not only would the state be financially responsible for helping the SOS relocate, it would also be responsible for the increased rent costs for the state agencies in the building. She thought other agencies were considering vacating the Grant Sawyer Building as well. Assemblywoman Carlton said it may be necessary to have a conversation with the SOS about how the move impacted everyone involved.

Assemblyman Frierson said he was baffled that a state agency was proposing to abandon 80 percent of the building and allow the remaining occupants to work in what was claimed to be an unhealthy environment. He said, if the environment in the Grant Sawyer Building was truly unhealthy, the agencies should come before the Committee as a collective group to request to move out of the building. He said he would suggest that the SOS discuss the matter with the remaining tenants rather than leaving them behind.

Mr. Anderson said he understood the concerns of the Committee. He said the agency was only aware of issues affecting the SOS offices on the fifth floor. The agency was unaware of how those issues were impacting other tenants in the building. The SOS offices were in proximity to the roof and other issues that could be exacerbating the problem.

Assemblyman Edwards said it was his understanding that one of the reasons SOS personnel were heavily impacted was because the problem in the building was intense. He said remediation efforts that should have resolved the problem actually created additional unforeseen problems. Assemblyman Edwards said it made sense to relocate staff rather than having 30 percent of staff out of the office on a regular basis.

Assemblywoman Carlton clarified that the state was the owner and landlord of the Grant Sawyer Building.

Patrick Cates, Director, Department of Administration, said the Department of Administration acknowledged the concerns of the SOS regarding the conditions of the Grant Sawyer Building. He said there was an ongoing Capital Improvement Program (CIP) project which required a lot of maintenance in the building, which was very disruptive to employees. Mr. Cates said there were approximately 700 people in the Grant Sawyer Building. As of June 15, 2018, there were 21 workers' compensation claims, 9 of which involved SOS staff.

Mr. Cates said in the fall of 2017, the Department of Administration was notified by the SOS and other occupants of problematic conditions in the building. He said he also became aware of deficiencies in the management of building maintenance throughout Southern Nevada. He thought there had been benign neglect of maintenance in Southern Nevada for a very long time. The Grant Sawyer Building had a long history of problems. Ceiling tiles began falling shortly after the building opened, and there was a mold problem in the 1990s. Mr. Cates said the Department of Administration began making significant personnel changes as soon as the depth of some of those problems came to light. He said a new Deputy Administrator was hired for Building and Grounds, and resources were reallocated to focus on the Grant Sawyer Building in particular, and Southern Nevada in general. Additionally, project funds were reallocated, and approximately \$600,000 from the FY 2018 Buildings and Grounds budget was used to replace ceiling tiles and plumbing fixtures. Mr. Cates said he was notified that plumbing fixtures were being bagged by maintenance staff and left unrepaired for weeks. Leaks in ceilings were not repaired and buckets were left in hallways. He said those conditions were completely unacceptable. The department accepted responsibility and began taking significant steps to correct the problems. In doing so, there was increased activity by maintenance staff in work areas, which created other problems. Mr. Cates said major CIP projects were underway, including the heating, ventilation and air conditioning (HVAC) system, which was a significant project that involved shutting down parts of the A/C system.

Mr. Cates said the SOS was the sole agency impacted by the installation of the replacement chiller. He said the chiller was located in the mechanical room above the SOS office suite. When the chiller was installed, the drains were opened to flush the new equipment; however, the drains were rarely used and cracks had developed, which caused water to come through the ceiling light fixtures into the SOS office space. Mr. Cates noted that when the Department of Administration became aware of the significance of the issues and how disruptive the maintenance work was for occupants, the department began providing weekly updates to all the tenants of the Grant Sawyer Building.

Mr. Cates said he understood the level of frustration among occupants; therefore, the Department of Administration engaged with medical professionals concerning the mold issues. In November 2017, an industrial hygienist took indoor air samples of the SOS suite and other places within the Grant Sawyer Building. The indoor air samples did not indicate elevated levels of mold in the building; however, the Department of Administration was not content with those results, because there were leaks in variable air volume (VAV) valves in the HVAC system, which raised suspicions. Mr. Cates said the department brought in Dr. James Craner, an occupational, environmental health medicine expert who had done work in the Grant Sawyer Building in the past. He noted that Dr. Craner was a PhD Mycologist. A study was set up to determine the levels and types of mold in the building, the results of which were provided to all the tenants of the Grant Sawyer Building, LCB Fiscal Division staff and the press. Dust samples were obtained from carpet and air plenums throughout the building and then subjected to petri dish and DNA analysis. Mr. Cates said Dr. Craner stated there were very low total and specific mold concentrations in the dust, which was indicative of a relatively clean building. He said Dr. Craner also indicated the samples were reflective of the outdoor Las Vegas environment. One exceptional finding was very low concentrations of two types of mold associated with water damage: *Aspergillus* and *Stachybotrys*. Dr. Craner's working hypothesis was that some people in the building were sensitive to low concentrations of those particular molds. Mr. Cates said that Dr. Craner's prescription to resolve the problem was to stop the source of the leaks, which was likely causing those molds. He indicated the source of the leaks was the VAV valves in the HVAC system. The VAV valves were located in the ceiling on every floor in the building. The valves were known to leak intermittently throughout the building. Mr. Cates said additional funds were available as part of the HVAC project; therefore, a contractor was hired to replace all the VAV valves. He said the replacement work was complete, and in theory, that should put an end to leaks and mold. Mr. Cates said Dr. Craner also prescribed hot water extraction and wet cleaning of carpets and large porous surfaces throughout the building to remove any possible mold or remnants of mold in the immediate work environment. He said the first three floors of the building had already been cleaned. When the work was complete throughout the building, Dr. Craner anticipated symptoms would dissipate for individuals who were experiencing health issues due to the mold. Another set of tests would be performed when the carpet and floor cleaning project was complete.

Mr. Cates said that Dr. Craner stated in a letter relative to his report that from a public health standpoint, the building was safe for occupancy. The indoor environmental problems were identified and measured, and a portion of the occupants were affected to varying extents by reversible, building related symptoms that primarily affected the upper respiratory tract and mucus membranes. The environmental conditions were expected to be rectified within the next four months, or approximately August 2018. Based on the available scientific and medical research, and Dr. Craner's extensive experience evaluating and treating occupants of water damage mold-contaminated buildings, there was a very low probability of any expected long-term health effects. For symptomatic occupants, a case-by-case determination should be made based on the individual's tolerance of the symptoms, the extent to which it impacted work activity, and personal medical conditions or concerns.

Mr. Cates said all 21 employees in the Grant Sawyer Building with workers' compensation claims related to the mold issue had been examined by the workers' compensation doctor and released to return to full duties.

Mr. Cates said, based on the opinion of medical experts, the Department of Administration did not believe the building was unsafe; however, conditions in the building were rough. Due to ongoing CIP work and maintenance activity, the department supported the request by the SOS to relocate. Roofing work had begun, but was currently on hold due to complaints about the smell and excessive dust in the work environment. He said it would be easier to complete the work if the fifth floor offices were empty. Mr. Cates said Buildings and Grounds was evaluating the Grant Sawyer Building as a whole to determine the next steps. Options were being considered for a CIP project for the 2019-21 biennium, and the work could be extensive and disruptive. He stated that additional occupants may need to be moved out of the building to undertake the scope of work that was being considered, which included completion of the HVAC project as well as plumbing, carpet, paint and other upgrades. From a revenue standpoint, it was better for the building to remain occupied while the work was taking place; however, conditions would be difficult for occupants.

Mr. Cates said the Department of Administration hoped to submit a work program for the August 2018 IFC meeting to transfer funds within the CIP and begin investigating and planning for the next CIP for the Grant Sawyer Building. In terms of loss of income and rent and the impact on other agencies, the department could absorb the loss of revenue for the remainder of the 2017-19 biennium if the SOS relocated. Additionally, rates would not increase for the remaining tenants. He said other agencies had expressed interest in leasing office space at the Grant Sawyer Building; however, he was unsure if any proposals had been fully developed. Mr. Cates said the Department of Administration thought it would be in the best interest of the SOS to vacate the building, which would allow the roofing project to be completed. The department would do further evaluations and develop

a plan for the next CIP. He noted there would not be a loss of revenue, because multiple agencies wanted to lease space in the building.

In answer to a question from Assemblyman Frierson, Mr. Cates confirmed that, based on the opinion of Dr. Craner who conducted the study, the Grant Sawyer Building was safe for occupancy.

Assemblyman Frierson asked if there was specific construction work that was solely impacting the SOS. Mr. Cates thought the location of the SOS offices in the building presented extra challenges. For example, the leaks in the ceiling light fixtures only occurred on the fifth floor where the SOS was located. Additionally, the roofing project impacted occupants on the fifth floor more than other floors.

Assemblyman Frierson stated that he worked at the Grant Sawyer Building. He was working in the building when tiles were falling and staff had to work under nets; therefore, he was sympathetic to the occupants of the building. He said a request to move due to health concerns was a different story than a request to move, because Buildings and Grounds required space for construction activity. Assemblyman Frierson said the final conclusion was that the building environment did not pose a health hazard, but there was still a desire to move by a small portion of the building's occupants despite that conclusion. He said he would like to see an assessment of the entire building and the tenants to determine who needed to move for construction purposes. From there, a global conversation should take place rather than an individual discussion, which was inefficient and disrespectful to other agencies in the building. He thought that one agency vacating the building over health concerns had the potential for mass hysteria over something that was no longer an issue.

Assemblyman Frierson said the Department of Administration indicated it would be submitting a work program for the August 2018 IFC meeting and presenting a plan concerning future remediation efforts at the Grant Sawyer Building. He stated that the method by which the SOS went about seeking authority to relocate was not supportive of other agencies in the building, and he found that disturbing.

Mr. Anderson said while the report stated the levels of mold in the Grant Sawyer Building were indicative of a safe building, Dr. Craner stated in a meeting with SOS staff that it was unsafe for employees who were symptomatic to be in the building. Nine SOS staff submitted workers' compensation claims had been confirmed, and others may be forthcoming, not just from the mold issue, but also due to remediation issues as discussed by Mr. Cates. He said some staff members had left the employment of the SOS because of health concerns brought about by the mold issues in the building. Additionally, some staff remained symptomatic. He noted that a former senator recently met with Secretary of State Cegavske at the SOS offices in Las Vegas and left feeling ill. Mr. Anderson said the SOS did not want to relocate, but it was necessary for the health and welfare of staff.

Mr. Anderson said the proposal was reasonable, and funding was available through savings in another area. Additionally, Buildings and Grounds would be able to complete the necessary building maintenance, which was anticipated to be a lengthy project. He said it was difficult to continue providing services from the Las Vegas office due to the significant issue that affected staff. Mr. Anderson said he had been to the Las Vegas office several times and personally witnessed a number of staff that were absent because they were symptomatic. He said the SOS would not be before the Committee today if the Grant Sawyer Building was in top shape and a safe building. The agency made great efforts to get the item on the agenda today, because of the urgent need to protect staff. Regardless of what the report said, environmental issues in the office were impacting staff and something had to be done.

Chair Woodhouse called a recess at 3:15 p.m. The meeting was reconvened at 3:52 p.m.

Senator Kieckhefer said it sounded as though the Department of Administration needed the space on the fifth floor of the Grant Sawyer Building for ongoing maintenance work. There was a need to finish the roofing and HVAC projects that were on hold. Based on that need, he moved to approve the work program through the end of the 2017-19 biennium as presented. Additionally, he requested that the department provide an update at the August 2018 IFC meeting in terms of an overall review of the Grant Sawyer Building and the work that was needed, understanding it was probably a long-term project.

SENATOR KIECKHEFER MOVED TO APPROVE AGENDA
ITEM E-164 AND REQUIRE THE DEPARTMENT OF
ADMINISTRATION TO PROVIDE AN UPDATE ON THE
STATUS OF THE GRANT SAWYER BUILDING AT THE
INTERIM FINANCE COMMITTEE MEETING IN AUGUST 2018.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

Assemblyman Frierson noted that it was the understanding of the Committee that the SOS was relocating to provide an opportunity for maintenance work to resume at the Grant Sawyer Building. Additionally, the Department of Administration would absorb the increased costs associated with the SOS vacating the building, and no additional requests for funds associated with the relocation of the SOS would be necessary.

Mr. Cates replied that the loss of revenue was relatively small, and the agency was confident that the Buildings and Grounds budget could absorb the cost.

In answer to a question from Senator Goicoechea, Mr. Anderson replied that the moving costs would be absorbed in the SOS budget.

Senator Parks asked if the new SOS lease agreement would be through the end of the 2017-19 biennium. He asked if the lease would be renegotiated after that time, or if the lease was month-to-month. Senator Kieckhefer replied that the Committee only had the authority to approve the work program through the end of the biennium. All external leases had funding out clauses if not funded by the Legislature; therefore, the new SOS lease would include the same clause.

In answer to a question from Assemblywoman Spiegel, Senator Kieckhefer replied that Work Program #C43555 was for authority for expenditures in the SOS lease category above what was currently available; therefore, the motion was to approve the increase in authority for SOS office needs as presented, which was in line with the Department of Administration's need for space in the building to complete the work, particularly on the roof and with the HVAC system.

In response to a question from Assemblywoman Diaz, Senator Kieckhefer clarified that the Legislature did not approve leases, but it did authorize funding for them. The IFC only had the authority to fund the lease through the upcoming fiscal year, which began July 1, 2018. Any increase in rent that the SOS accrued based on the execution of a new lease would have to be approved by the 2019 Legislature.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Hambrick was not present for the vote.)

RECLASSIFICATIONS:

Refer to motion for approval under Agenda Item E.

AGENCY	AGENCY/ ACCOUNT NUMBER	POSITION NUMBER	PRESENT CLASS, CODE, GRADE, SALARY	PROPOSED CLASS, CODE, GRADE and SALARY
Secretary of State – Commercial Recordings	040/1050	0136	Administrative Assistant II Code: 2.212 Grade: 25/01 Employee/Employer Paid Retirement \$32,029.92	Business Process Analyst II Code: 7.656 Grade: 36/01 Employee/Employer Paid Retirement \$50,508.72
Department of Agriculture	550/4470	0003	Auditor II Code: 7.145 Grade: 34/01 Employee/Employer Paid Retirement \$46,311.84	Public Health Rating & Survey Officer Code: 10.527 Grade: 37/01 Employee/Employer Paid Retirement \$52,742.88
Department of Business and Industry – Industrial Relations	742/4680	0077	Employee Development Manager Code: 7.513 Grade: 38/01 Employee/Employer Paid Retirement \$55,039.68	Chief Investigator Compliance/Audit Code: 11.360 Grade: 37/01 Employee/Employer Paid Retirement \$52,742.88

Department of Public Safety – Communication and Compliance	655/4702	11130	Public Safety Dispatcher III Code: 11.122 Grade: 31/01 Employee/Employer Paid Retirement \$40,862.16	Administrative Assistant III Code: 2.211 Grade: 27/01 Employee/Employer Paid Retirement \$34,681.68
Department of Public Safety – Parole and Probation	652/3740	0205	Parole and Probation Specialist II Code: 12.614 Grade: 31/01 Employee/Employer Paid Retirement \$40,862.16	Management Analyst 1 Code: 7.637 Grade: 33/01 Employee/Employer Paid Retirement \$44,474.40
Department of Transportation – Agency Risk Management	800/4660	022-003	Right of Way Supervisor Code: 7.412 Grade: 39/01 Employee/Employer Paid Retirement \$57,503.52	Professional Engineering Specialist P.E. Code: 6.231 Grade: 42/01 Employee/Employer Paid Retirement \$65,751.12
Department of Transportation - Administration	800/4660	071-011	Reprographics Technician II Code: 9.276 Grade: 27/01 Employee/Employer Paid Retirement \$34,681.68	Management Analyst III Code: 7.624 Grade: 37/01 Employee/Employer Paid Retirement \$52,742.88
Department of Transportation – District II C-201 Administration	800/4660	201-020	Administrative Assistant III Code: 2.211 Grade: 27/10 Employer Paid Retirement \$44,307.36	Program Officer I Code: 7.649 Grade: 31/08 Employer Paid Retirement \$48,274.56
Department of Veterans Services	240/2561	041001	Safety Officer Code: 11.263 Grade: 27/10 Employer Paid Retirement \$44,307.36	Transportation & Safety Attendant II Code: 3.535 Grade: 26/10 Employer Paid Retirement \$44,307.36 Retained Rate
Department of Veterans Services	240/2561	041006	Safety Officer Code: 11.263 Grade: 27/07 Employee/Employer Paid Retirement \$44,474.40	Transportation & Safety Attendant II Code: 3.535 Grade: 26/07 Employee/Employer Paid Retirement \$44,474.40 Retained Rate
Department of Veterans Services	240/2561	041007	Safety Officer Code: 11.263 Grade: 27/10 Employee/Employer Paid Retirement \$50,508.72	Transportation & Safety Attendant II Code: 3.535 Grade: 26/10 Employee/Employer Paid Retirement \$50,508.72 Retained Rate
Department of Veterans Services	240/2561	041005	Safety Officer Code: 11.263 Grade: 27/09 Employee/Employer Paid Retirement \$48,337.20	Transportation & Safety Attendant II Code: 3.535 Grade: 26/09 Employee/Employer Paid Retirement \$48,337.20 Retained Rate
Department of Veterans Services	240/2561	041002	Safety Officer Code: 11.263 Grade: 27/10 Employee/Employer Paid Retirement \$50,508.72	Transportation & Safety Attendant II Code: 3.535 Grade: 26/10 Employee/Employer Paid Retirement \$50,508.72 Retained Rate
Department of Veterans Services	240/2561	041003	Safety Officer Code: 11.263 Grade: 27/07 Employee/Employer Paid Retirement \$44,474.40	Transportation & Safety Attendant II Code: 3.535 Grade: 26/07 Employee/Employer Paid Retirement \$44,474.40 Retained Rate

Department of Veterans Services	240/2561	041004	Safety Officer Supervisor Code: 11.260 Grade: 29/08 Employee/Employer Paid Retirement \$50,508.72	Transportation & Safety Attendant III Code: 3.530 Grade: 28/08 Employee/Employer Paid Retirement \$50,508.72 Retained Rate
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F. DEPARTMENT OF ADMINISTRATION – STATE PUBLIC WORKS DIVISION

1. Request to modify the scope and funding to CIP Project 17- C04, Construct New Department of Motor Vehicles Service Office, Reno pursuant to NRS 341.145(1)(f).

Patrick Cates, Director, Department of Administration, introduced Ward Patrick, Division Administrator, SPWD. He said Gus Nunez, former Division Administrator, retired in December 2017, and Chris Chimits, Interim Division Administrator, also retired recently. Mr. Cates said that Mr. Patrick had been with the SPWD for over 20 years and brought a wealth of experience. He said he was happy to have Mr. Patrick on the team.

Ward Patrick, Division Administrator, SPWD, Department of Administration, introduced Terri Albertson, Director, DMV, and Tonya Laney, Division Administrator, DMV.

Mr. Patrick said the agency was requesting a change in scope for CIP Project 17-C04 from the 2017-19 CIP for a new DMV building in Reno. The project was for the design and construction of a new DMV facility. The agency was requesting to defer certain portions of the work from the 2017-19 CIP to the 2019-21 CIP. The deferred items included the commercial driver's license (CDL) course, a portion of the landscaping work, data telecom wiring and equipment, furnishing and equipment, the roofing maintenance agreement, and local government requirements. Mr. Patrick said the total cost of the deferred items was \$8.66 million, and the total project cost was anticipated to increase from \$42 million to \$50.67 million. He said the increased costs were primarily due to the recent unanticipated and unprecedented construction cost increases in Northern Nevada and inflation increases that were beyond the SPWD's estimates for the project.

SENATOR KIECKHEFER MOVED TO APPROVE AGENDA ITEM F-1.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Hambrick was not present for the vote.)

2. Information regarding the Project Exception Report pursuant to NRS 341.100(8)(g).

Mr. Patrick said the Project Exception Report included three items, one of which was the DMV office in south Reno discussed in Agenda Item F-1. The other two items were smaller projects for DHHS. One of the projects went out to bid; however, there was insufficient funding for the project. Mr. Patrick said the second item was CIP Project 17-M47. The engineer's estimates had been received and the project was ready to go out to bid; however, there was insufficient funding for the project. He said another 2017-19 CIP project had been completed and there was extra funding available; therefore, the SPWD would be bringing a request before the IFC to transfer the remaining funds to the other two projects to complete the work.

There was no further discussion on this item.

G. STATEMENT OF CONTINGENCY ACCOUNT BALANCE.

Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division, LCB, directed the Committee to the Statement of Contingency Account Balance on page 19 in Volume IV of the meeting packet ([Exhibit D](#)). The current balance of the unrestricted General Fund portion was approximately \$14.6 million. Allocation requests before the Committee totaled \$7.5 million, which would reduce the balance to \$7.1 million if approved. The balance of the unrestricted Highway Fund portion was \$1,676,000. The Committee approved an allocation request for \$8,691, which reduced the balance to \$1,668,000. The balance of the restricted portion of the General Fund was approximately \$15.3 million.

H. REQUESTS FOR ALLOCATION FROM THE IFC CONTINGENCY ACCOUNT (GENERAL FUND) PURSUANT TO NRS 353.268 (Note: IFC may approve a different amount for an allocation than the amount requested).

1. Judicial Branch – Request for an allocation for Fiscal Year 2019 for information technology projects that were unable to be completed in Fiscal Year 2018 for the following:
 - a) Supreme Court – ~~\$424,960~~, **\$167,998. REVISED 6-5-18.**
 - b) Court of Appeals – \$65,000

Robin Sweet, Director and Administrator, Administrative Office of the Courts (AOC), introduced Todd Myler, Manager of Budgets, AOC, and Rick Stefani, Director of Information Technology, AOC.

Todd Myler, Manager of Budgets, AOC, said the Supreme Court and Court of Appeals were requesting \$232,998 from the IFC Contingency Account for FY 2019 to complete information technology projects approved during the 2017 Legislative Session. He said language allowing the funds to be carried forward was inadvertently omitted from the Appropriations Act. He said various

aspects of the projects were complete; however, a final contract could not be executed until funding was received.

In answer to a question from Senator Denis, Mr. Myler replied that the original request was for approximately \$489,000 between the two budget accounts. He said the request was reduced by approximately \$250,000 due to various changes in the project scope and reductions in costs.

Senator Denis asked if there were any changes to the project. Rick Stefani, Director of Information Technology, AOC, confirmed that the project remained the same. He said the original quote from one of the vendors was \$325,000 to perform integration work between the case management system and document management system; however, the project scope was refined, which reduced the cost to \$125,000. He said the project cost was reduced by about \$200,000, but the funds were needed through FY 2019.

Senator Denis said it was nice to have a request for less money rather than to correct a mistake.

In answer to a question from Chair Woodhouse, Mr. Stefani confirmed that the \$232,998 being requested was sufficient to complete the two projects within FY 2019.

SENATOR DENIS MOVED TO APPROVE AGENDA ITEM H-1.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Hambrick was not present for the vote.)

2. Nevada Department of Corrections – Request for an allocation of \$3,174,606 in Fiscal Year 2018 to fund projected shortfalls for the following:
 - a) Director's Office – \$1,168,178
 - b) Northern Nevada Correctional Center – \$471,674
 - c) Stewart Conservation Camp – \$82,627
 - d) Pioche Conservation Camp – \$15,515
 - e) Southern Desert Correctional Center – \$405,490
 - f) Wells Correctional Camp – \$26,025
 - g) Humboldt Conservation Camp – \$19,673
 - h) Florence McClure Women's Correctional Center – \$236,939
 - i) High Desert State Prison – \$748,485

Agenda Items H-2 and M-7(a) were discussed jointly.

John Borrowman, Deputy Director, NDOC, said the department was requesting \$3,174,606 from the IFC Contingency Account to fund projected shortfalls in

the Personnel Services, Inmate Drivens and Utility categories for the remainder of FY 2018. He said the shortfall in the Personnel Services category was due to the loss of State Criminal Alien Assistance Program (SCAAP) grant funding in the Director's budget account in the amount of approximately \$1.1 million, with an additional \$700,000 in other institutions' Personnel Services categories due to overtime coverage for vacant posts attributable to unbudgeted inmate transportation and hospital coverage. Additionally, the department was projecting a shortfall in the Inmate Drivens category in the amount of \$619,000 and the Utility category in the amount of approximately \$689,000, which brought the total to approximately \$3.2 million.

Mr. Borrowman said the department experienced an increase in food costs as well as an unanticipated, unbudgeted increase in utility rates. Despite operational adjustments to reduce the deficit, access to the Inmate Welfare fund, and a reduction in agency expenditures, there was still a remaining balance of approximately \$3.2 million that required relief.

Assemblyman Sprinkle recalled public testimony as well as e-mails expressing concern for the safety of NDOC employees due to some of the changes that had been implemented at the institutions. He asked the agency to address those issues.

James Dzurenda, Director, NDOC, said he shared those concerns. He said it was vital that staff was safe, because that meant the community was also safe. When the department began implementing changes to reduce overtime, it was monitored daily to ensure that incident rates were not rising. The department expanded intelligence efforts to determine if gang activity was increasing. He said the Wardens were told to take action at any cost if incident rates or gang activity increased. Mr. Dzurenda said only one facility had experienced a rise in incidents since January 1, 2018. He said Northern Nevada Correctional Center had shown a small increase in assault rates attributable to gang activities unrelated to the minimum staffing plan that was enacted at the facility. Since Memorial Day, the department increased its security by adding two additional shake-down teams, one in Northern Nevada and one in Southern Nevada. The teams specifically targeted gang members in housing units that were suspected to be high in contraband. He said the shake-down teams were enacted for the summer months, because tempers had a tendency to flare due to the hot temperatures, which led to an increased number of incidents. Mr. Dzurenda said the department was still on target to meet its overtime reduction goal for FY 2018.

Assemblyman Sprinkle asked if the department thought the institutions were still a safe work environment in spite of the overtime reduction plan. Mr. Dzurenda said he believed the work environment was safe at the current time; however, as shake-downs and inmate monitoring decreased, contraband issues would gradually increase. Additionally, inmates would begin to realize they could manipulate the system if there were fewer staff in a particular area. Mr. Dzurenda

said the increased inmate monitoring and shake-down teams were only short-term solutions. Assemblyman Sprinkle said it sounded as though the department recognized the potential for increased security problems.

Assemblyman Sprinkle asked if NDOC implemented other changes to help reduce overtime. Mr. Dzurenda replied that the department changed the policy for overnight hospital stays to be consistent with local law enforcement agencies. The previous policy allowed for two officers per inmate regardless of the inmate's classification level; however, the new policy allowed for one officer per inmate, up to four inmates, with an additional officer to help with transferring inmates and breaks. He said most local law enforcement agencies utilized someone from the community to help with reliefs. Mr. Dzurenda said the new policy would reduce overtime significantly and keep the hospitals safe.

Mr. Dzurenda said another change that was implemented to assist with overtime reduction was the required number of weeks for Peace Officers Standards and Training (POST). He said in the past, Category 3 officers were required to attend POST for eight weeks; however, the number of weeks was reduced to six. In doing so, two weeks of overtime was eliminated, because the institutions only had to have posts covered for six weeks instead of eight. He said in-service training was provided at the facilities to compensate for the reduced time at the POST academies. Mr. Dzurenda said not only did the reduced number of weeks result in fewer overtime hours, staff remained on facility grounds in case of an emergency.

Mr. Dzurenda said the department was having a difficult time filling a number of vacancies at Ely State Prison due to the location; therefore, a number of position control numbers (PCN) were transferred to HDSP and Southern Desert Correctional Center to cover overnight hospital stays and transportation posts as well as unbudgeted overtime locations. In order to transfer the PCNs, one of the housing units that required a large number of staff was closed, and the inmates were temporarily transferred to Eloy, Arizona.

Mr. Dzurenda said approximately 370 inmates were still on overflow status, but they were located inside a housing unit where an officer was posted. Subsequently, evidence-based programming was not impacted and overtime was not necessary to monitor inmates on overflow status. He noted that in the past, inmates on overflow status were placed in areas intended for evidence-based programming.

Mr. Dzurenda said all of the aforementioned efforts helped reduce overtime. The reduction in POST academy training, addition of in-service training, and reduction in the number of officers required for overnight hospital stays were all permanent changes. He said the relocation of Ely State Prison PCNs was temporary until the post charts were reviewed. The department, along with LCB Fiscal Division staff and outside auditors, were currently reviewing the

legislatively approved post charts for every institution. He said the audit would determine the appropriate staffing levels for each facility compared to the current legislatively approved post charts. Mr. Dzurenda said he questioned some of the reasoning behind the current post charts. For example, the post charts did not include an assigned post for the youth housing unit at Lovelock Correctional Center; the post charts for Ely State Prison and Lovelock Correctional Center did not include an assigned post for the graveyard shifts in the minimum-security housing units; and the post charts for Florence McClure Women's Correctional Center allowed for only one officer for transportation duties instead of two. Mr. Dzurenda said the examples he provided contributed to overtime hours. He said upon completion of the audit, NDOC would have a true indication of the posts that were necessary at each institution, which would reduce future overtime.

Assemblyman Sprinkle thanked Mr. Dzurenda for the comprehensive update. He requested that the department continue to work closely with LCB Fiscal Division staff to ensure the Committee was receiving up-to-date information, and Mr. Dzurenda agreed.

In answer to a question from Assemblywoman Benitez-Thompson, Mr. Dzurenda replied that NDOC would know in August 2018 (FY 2019) whether the state would be awarded the SCAAP grant for approximately \$1.3 million. He said the grant was currently on hold by the federal government, but the department had been verbally advised that Nevada would be awarded the grant.

Assemblywoman Carlton recalled public comment at the meeting today in support of NDOC's request. She stated that she received approximately 20 telephone calls the previous day regarding the shift relief factor. The individuals that contacted her were under the impression that she was responsible for denying 12-hour shifts at the prisons. She wanted it to be perfectly clear that the Legislature did not have authority to authorize 12-hour shifts; therefore, NDOC administrative staff needed to be corrected on the matter rather than falsely accusing the Legislature. Assemblywoman Carlton said the department was responsible for authorizing 12-hour shifts, and the Legislature supported the shifts if they were fiscally viable. She said it was important for the department to determine if implementing 12-hour shifts would do more harm than good. Assemblywoman Carlton said she would be happy to join Mr. Dzurenda when he clarified the matter with NDOC administrative staff.

Mr. Dzurenda replied that one of the reasons for the audit was to determine whether 12-hour shifts would be beneficial for the department. He said he would send a memo to NDOC staff clarifying that the Legislature was not responsible for denying 12-hour shifts. He said he would also copy LCB Fiscal Division staff on the memo.

Assemblyman Frierson said it was important for NDOC to have the necessary resources. He said if there was a discrepancy in the legislatively approved post charts then the issue needed to be resolved. He asked the department to provide more accurate post charts so the Committee could see where there was a need and how the situation should be handled differently. He said the sooner the information was available, the sooner the matter could be corrected. Mr. Dzurenda agreed and hoped to provide updated post charts soon.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE AGENDA ITEM H-2.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Araujo and Assemblyman Hambrick were not present for the vote.)

3. Nevada Department of Public Safety – Nevada Highway Patrol – Request for an allocation of \$32,300 to cover the cost of providing protective services to dignitaries visiting Nevada in Fiscal Year 2018. **WITHDRAWN 6-7-18.**
4. State Department of Conservation and Natural Resources – Forestry Division
 - a) Request for an allocation of ~~\$2,154,240~~ **\$1,621,538** to fund emergency response expenses in Fiscal Year 2018. **REVISED 6-11-18.**
 - b) Request for an allocation of \$2,500,000 to fund projected emergency response expenses in Fiscal Year 2019.

Kacey KC, State Forester Firewarden, Division of Forestry (NDF), Department of Conservation and Natural Resources (DCNR), introduced Dave Prather, Deputy Administrator, NDF, and John Christopherson, Deputy Administrator, NDF.

Ms. KC said the agency had two requests totaling \$4,121,538. She said Agenda Item H-4a was a request for funds for the remainder of FY 2018 to support increased fire suppression costs from FY 2017 and FY 2018. Agenda Item H-4b was a request for \$2.5 million to fund projected emergency response expenses in FY 2019.

Ms. KC said to the best of her knowledge, all fire billings for FY 2017 and FY 2018 had been processed through the incident billing unit. The NDF was still awaiting bills from some cooperators and approval of cost share agreements, but everything up to the last two months had been reviewed. She said two fires had started just today. Although the fire billing had not been started for those two fires, the division was entering the fire season somewhat prepared.

Ms. KC said the division processed many bills in the past three months. She said the cooperators were paying their bills quickly, so NDF received more

cooperator revenue than anticipated. Continuing, Ms. KC said the division had been working very closely with FEMA, because a number of fires qualified for Fire Management Assistance Grants (FMAG). She stated that FEMA understood the division's situation and processed FMAGs for four fires in the last month. She said FMAGs for two fires were processed with partial bills covering receipts the division had to date. Ms. KC said NDF was still missing cooperator receipts for some fires, but FEMA processed the FMAGs as receipts were received. She said FEMA had paid bills in full for two fires, and the division should receive funding for three fires very soon totaling approximately \$250,000. Ms. KC said \$5 million in grant funding was still being reviewed in Washington, D.C. The division hoped to receive those funds in FY 2018, but it was not guaranteed.

Ms. KC said thus far in the current fire season 118 fires that impacted 8,205 acres in Nevada. She said the fire season was beginning as expected due to a lot of grass fuels added by spring moisture. Approximately 92 percent of the fires in the current season were human caused, which was slightly below the number of human-caused fires during the same time last year. She said 10 fires were caused by lightning with minimal impact on acreage; however, that would probably increase in July and August if dry lightning occurred.

Assemblywoman Titus thanked the fire departments in the state for their rapid response to fires in her community of Smith Valley over the last two weeks. She said both of the fires in Smith Valley were human-caused. She said she spoke with an individual who was found guilty of starting a fire about their reimbursement to the state for fire suppression costs. Assemblywoman Titus inquired about the success rate of prosecuting individuals accused of starting wildfires. She also asked how successful the state had been at recouping fire suppression costs, and how those funds were used. Ms. KC said to the best of her knowledge, the state did not keep a record of that information. She said during the short time in her position, the division had not gone through the prosecution process. The Bureau of Land Management and U.S. Forest Service were responsible for prosecuting human-caused fires in their own jurisdictions; however, many of the human-caused fires in the current season were started in local jurisdictions with which the NDF had cooperative agreements. She said the division's Deputy Attorney General was currently working with the attorneys that represented the local jurisdictions concerning the legal process.

Assemblywoman Titus asked if the division could find out how much the state had been able to recoup for costs associated with human-caused fires, and if those funds were placed in the General Fund. Ms. KC said she would research the information and provide it to the Committee.

ASSEMBLYMAN SPRINKLE MOVED TO APPROVE
AGENDA ITEM H-4.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Edwards and Assemblyman Hambrick were not present for the vote.)

- I. REQUEST FOR ALLOCATION FROM THE IFC CONTINGENCY ACCOUNT (HIGHWAY FUND) PURSUANT TO NRS 353.268** (Note: IFC may approve a different amount for an allocation than the amount requested) – Nevada Department of Public Safety – Investigations Division – Request for an allocation of \$8,691 to cover a projected shortfall in Personnel Services for the remainder of Fiscal Year 2018. **RELATES TO AGENDA ITEM E. 134.**

This item was discussed in conjunction with Agenda Item E-134. Refer to testimony and motion for approval under Agenda Item E-134.

- J. STATE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES – DIVISION OF STATE LANDS – FUND TO PROTECT THE LAKE TAHOE BASIN –** Request for approval to reduce the amount authorized for water quality, erosion control and stream restoration and enhancement projects by \$3,706,659 and increase the amount authorized for enhancements of recreational opportunities by \$1,541,659, forest health, restoration and fuels management projects by \$738,000, control of sensitive species and improvement of wildlife habitat projects by \$127,000, and increase contingency money to carry out environmental improvement projects by \$1,300,000 to implement several high-priority projects that are currently in design, pursuant to Senate Bill 438, Section 2, subsection 2(b) (2011 Legislature). **RELATES TO AGENDA ITEM M. 9a.**

Agenda Items J and M-9a were discussed jointly.

Charlie Donohue, Division Administrator, Division of State Lands (State Lands), DCNR, introduced Elizabeth Kingsland, Lake Tahoe Program Manager, State Lands, DCNR.

Mr. Donohue said Agenda Item M-9a was the semiannual report to the Committee on the Environmental Improvement Program (EIP). Highlights within the report included the acquisition of a sensitive parcel in Douglas County totaling 7.6 acres immediately adjacent to Edgewood Creek. He said the Lake Tahoe resource team utilized excess coverage mitigation fees secured from the Tahoe Regional Planning Agency (TRPA) for the acquisition of the parcel. The team planned to restore coverage on the site for retirement purposes, as well as reserve a portion of the coverage to be made available to other private development projects for a fee. Mr. Donohue said the parcel would be retired and managed for conservation purposes.

Mr. Donohue said in the fall of 2017, the division worked closely with TRPA, the Lake Tahoe Invasive Species Coordinating Committee, and the Division of State Parks to address the Asian clam population at Sand Harbor boat launch facility. Six acres of

lakebed were currently being treated with bottom barrier mats to suffocate the clams and limit reproduction capability.

Mr. Donohue provided a status of the history of the Lake Tahoe bonds program. He said the agency had the ability to expend between \$4 million and \$4.5 million annually on project implementation. For the EIP to perform at an optimal level, sufficient funds were required to enter into funding agreements as well as contracts. An outstanding authority of \$6.5 million still remained from Senate Bill (S.B.) 438, with \$2.5 million slated to be sold by the Office of the State Treasurer in the fall of 2018. He hoped that in addition to the remaining \$4 million from S.B. 438, the agency would have the opportunity to work with the Interim Committee for the Oversight of the TRPA to sponsor legislation for an additional \$4 million in new authority.

Mr. Donohue said the remaining \$6.5 million in authority from S.B. 438 was the subject of Agenda Item J. At the time S.B. 438 was authorized in 2011, the division anticipated that the local governments would have a greater need for water quality funding to implement the Tahoe Basin Total Maximum Daily Load. He said, while water quality implementation had been occurring, the need for funds in other programmatic areas was now greater for forest restoration and recreation projects that were ready to go. Mr. Donohue said the program areas were included in S.B. 438. He said an approval of the division's request would also help meet the requirement of expending 85 percent of the bonds sold within a three-year period as outlined by the Office of the State Treasurer.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE AGENDA
ITEM J.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (Assemblyman Hambrick
was not present for the vote.)

K. ECONOMIC FORUM – Report required pursuant to NRS 353.228(1)(f) regarding the Economic Forum meeting conducted on June 8, 2018.

Russell Guindon, Principal Deputy Fiscal Analyst, Fiscal Analysis Division, LCB, said Linda Rosenthal, newly elected chairwoman of the Economic Forum, was unable to provide the statutorily required presentation of the Economic Forum's required interim meeting, held on June 8, 2018, to the IFC. He said Chairwoman Rosenthal asked Mr. Guindon, as staff to the Economic Forum, to make the presentation in her absence.

Mr. Guindon referred the Committee to the handout titled *Economic Forum Report to the Interim Finance Committee – June 2018*. He said the document summarized what occurred during the June 8, 2018, meeting of the Economic Forum. He said one of the most important provisions under A.B. 332 was the requirement for the Economic Forum to review the status of current actual fiscal year-to-date (YTD) collections compared to the Economic Forum's latest General Fund revenue forecast.

Mr. Guindon said at the June 8, 2018, meeting, the Economic Forum was provided with a status report of the actual General Fund revenue collections through May 2018 for the revenue sources, which the Economic Forum was responsible for forecasting. The status report encompassed about 9 to 11 months of the monthly revenue sources as well as the first three quarters of the quarterly revenue sources. Mr. Guindon directed the Committee to Table 2 located in the handout ([Exhibit G](#)). Table 2 displayed the General Fund revenues actual collections versus the forecast before the application of tax credits that were taken for the various programs. He said the Economic Forum was responsible for forecasting gross revenue, which was easier than trying to account for the various tax credit programs. Mr. Guindon said the yellow column displayed FY 2017 actual YTD, the orange column displayed FY 2018 actual YTD, and the green column displayed the fiscal YTD difference of the actual less the forecast for FY 2018 for the revenue source. He said the far right columns indicated dollar and percent differences.

Referring the Committee to the first revenue source listed under Major General Fund Revenues on Table 2, Mr. Guindon said the actual Sales and Use Tax collections through the first nine months of FY 2018 were approximately \$8.7 million below the forecast YTD, or about 1 percent, and the Gaming Percentage Fee Tax was about \$7.9 million above the forecast. He said Commerce Tax collections, located at the bottom of the Major General Fund Revenues section, were \$12.5 million for the fiscal YTD. He said it was important to note that the Commerce Tax for FY 2018 was not due until August 14, 2018, after the completion of the fiscal year business activity period. Mr. Guindon said the \$12.5 million most likely reflected taxes from FY 2017 that were collected and reported in FY 2018; however, the dollar figure could also include FY 2018 returns for entities that were going out of business or FY 2016 returns that were filed late.

Mr. Guindon said actual fiscal YTD collections for the state's seven major General Fund revenue sources, which accounted for about 75 percent of total General Fund revenues, were approximately \$27.2 million, or 1.1 percent above the forecast.

Mr. Guindon directed the Committee to the All Other General Fund Revenues section located on Table 2, which included approximately 80 different General Fund revenue sources and accounted for about 5 percent of the General Fund revenue. He said the All Other General Fund Revenues category was approximately \$28.1 million above the forecast fiscal YTD. One of those revenue sources, the Net Proceeds of Minerals Tax, was approximately \$18 million above the forecast. He said nearly all the collections for FY 2018 for this revenue source had been reported by the Department of Taxation and posted in the Office of the State Controller's system. Mr. Guindon noted that the Net Proceeds of Minerals Tax was difficult to forecast. He said total General Fund revenues before tax credits were approximately \$61 million, or about 2 percent above the forecast YTD.

Mr. Guindon said with regard to Commerce Tax credits, under the provisions established by the 2015 Legislature, businesses were allowed a credit equal to 50 percent of their Commerce Tax liability in the preceding fiscal year against their Modified Business Tax

(MBT) for the current fiscal year. He said the estimated credits that could be taken against the MBT in FY 2018 for the Commerce Tax paid in FY 2017 was approximately \$88 million; however, the actual amount of credits taken was only \$54.5 million through the first three quarters of FY 2018, which generated a net positive difference of approximately \$34 million. Although additional credits were expected to be taken in the fourth quarter of FY 2018, it was anticipated that the actual amount would remain significantly below the forecast. Mr. Guindon said the forecast for the Commerce Tax credits was too high, and as a result, the state would see a net positive effect after everything was accounted for at the end of the fiscal year.

Mr. Guindon directed the Committee to the Tax Credit Program section of Table 6 in the handout ([Exhibit G](#)). He said the Film Transferrable Tax Credit program was forecast at about \$11.7 million based on the actions of the 2017 Legislature; however, no film tax credits had been taken fiscal YTD through May 2018. He said the Film Transferrable Tax Credit program may result in a net positive impact to the General Fund if credits were not taken by the end of FY 2018.

Moving on to the Economic Development Transferrable Tax Credits program, Mr. Guindon noted that the tax credit program was only available to Tesla. The forecast for the Economic Development Transferrable Tax Credits program was approximately \$31.1 million; however, Tesla had taken \$73.8 million YTD. He thought that figure would remain stable, because it was unlikely that an audit would be done in time to award additional tax credits before the end of FY 2018. Mr. Guindon said the \$73.8 million in tax credits awarded to Tesla would result in a \$43 million net negative impact on the General Fund, because the figure was more than twice the amount forecast for that tax credit program. He noted that Tesla was very close to reaching \$3.5 billion in capital investment. In fact, he thought Tesla was about \$227 million short of that, which was only about \$6 million or \$7 million more in tax credits that could be earned by Tesla for capital investment. Therefore, Tesla tax credits with regard to capital investment would most likely be fully utilized in FY 2019. From there, Tesla would earn \$12,500 per qualified employee, which was only tested at the end of each fiscal year. He said the employee based tax credits would be a little easier to forecast and would have less impact on the General Fund.

Mr. Guindon said with regard to the Nevada New Markets Job Act tax credits, the gap between the forecast and actual YTD was expected to decrease in the final quarter of FY 2018. Moving on to the Education Choice Scholarship Tax Credits program, he said the forecast was \$26 million, \$6 million of which was from the original legislation and \$20 million was from legislation passed during the 2017 Legislative Session. He said approximately \$12.6 million in Education Choice Scholarship tax credits had been taken YTD. Historically, about \$4 million in Education Choice Scholarship tax credits were taken in the first three quarters. If the program continued on trend, the result would be a net positive impact on the General Fund for FY 2018. Mr. Guindon said it appeared there would be an overall wash of the tax credit programs for FY 2018 based on the positive and negative impacts.

Mr. Guindon noted that the material presented to the Economic Forum at the June 8, 2018, meeting, as well as the *Economic Forum Report to the Interim Finance Committee – June 2018*, could be located on the Economic Forum page of the Legislative Counsel Bureau's website (<https://www.leg.state.nv.us/App/InterimCommittee/REL/Interim2017/Committee/1366/Meetings>). Mr. Guindon said staff would be working with Chairwoman Rosenthal over the next few months to establish the schedule of meetings for the fall of 2018 to prepare the unrestricted General Fund forecast for FY 2019, FY 2020 and FY 2021 that the Governor was required to use in preparing The Executive Budget for the 2019-21 biennium.

Assemblywoman Bustamante Adams noted the Live Entertainment Tax (LET) was below the forecast for the second time. She asked why the LET continued to underperform. Mr. Guindon said only LET collections were reported. Information such as the number of tickets sold or the price of tickets was not provided, which made it particularly difficult to forecast the Gaming portion of the LET. He said the LET was over projected for the 2017-19 biennium; therefore, the Economic Forum would reevaluate it when the forecast was prepared for the 2019-21 biennium in the fall of 2018. Mr. Guindon said during the 2015 Legislative Session, gaming and non-gaming LET were aligned, but they remained separate revenue sources. He noted that T-Mobile Arena was considered a non-gaming establishment rather than a gaming establishment for the purpose of the LET. Additionally, revenue for events such as the Electric Daisy Carnival, Burning Man and the Harvest Festival was also non-gaming revenue. He said it was easier to forecast and monitor the non-gaming side of the LET, because internet reports indicated how many tickets were sold and the cost of tickets. Mr. Guindon said professional sporting events involving a Nevada team were exempt from the LET; thus, Las Vegas Raider games would be exempt from the LET.

Assemblywoman Bustamante Adams said she did not think a professional Nevada team was in place when the revision was made to the LET concerning professional sporting events so it was good insight now that Nevada had a professional team.

Assemblywoman Bustamante Adams noted that the Cigarette Tax was also below forecast for the second time. She asked if people were still purchasing cigarettes in bulk. She also asked if more people were switching from smoking to vaping, because Nevada did not have a vaping tax. Mr. Guindon replied that cigarette pack sales were down, which resulted in lower than anticipated Cigarette Tax collections. In FY 2017, Nevada experienced an increase in Cigarette Tax collections, because California increased its cigarette tax. He thought Assemblywoman Bustamante Adams' hypothesis concerning vaping was viable. He said it was likely the trend in smokers per capita was continuing to decline, or smokers were substituting vaping for cigarettes, both of which would contribute to the decline in cigarette consumption per capita. Mr. Guindon said the Cigarette Tax, like the LET, was over projected and would be closely examined as the 2019-21 biennium forecast was being prepared.

Assemblyman Frierson asked if the LET was based on the face value of the ticket or the sales price. Mr. Guindon replied that the LET was based on the face value of the ticket,

not the price it was resold for in the secondary market. He noted that tickets must indicate whether LET was included in the price.

- L. ACCEPTANCE OF GIFTS AND GRANTS PURSUANT TO NRS 353.335(2)(a) – ACCEPTED BY THE GOVERNOR BECAUSE OF AN EMERGENCY AS DEFINED IN NRS 353.263 OR FOR THE PROTECTION OF LIFE OR PROPERTY –** Department of Public Safety – Division of Emergency Management – Acceptance of Federal Emergency Management Agency grant funding of \$2,608,623 in Fiscal Year 2018 to cover emergency response and recovery costs associated with the January and February 2017 Northern Nevada flood events.

Justin Luna, Administrative Services Officer, Division of Emergency Management (DEM), DPS, said the DEM would be receiving additional Federal Emergency Management Agency (FEMA) grant funding to pass through reimbursements for eligible costs for jurisdictions affected during the January and February 2017 flood events.

There was no further discussion on this item.

M. INFORMATIONAL ITEMS.

The Committee expressed interest in hearing testimony on the following items: Agenda Items M-7a, Nevada Department of Corrections, and E-9a, Department of Conservation and Natural Resources, Division of State Lands.

Assemblyman Sprinkle requested further testimony on Agenda Item M-5d, DHHS, Division of Child and Family Services (DCFS).

Senator Kieckhefer requested further testimony on Agenda Item M-5a(2), DHHS, Aging and Disability Services Division.

Senator Denis request further testimony on Agenda Item M-8a, Department of Public Safety, Director's Office.

1. OFFICE OF THE GOVERNOR

- a) State Energy Office – Notice to eliminate one full-time equivalent (FTE) position due to it no longer being necessary for current grant-related activities and the position being vacant for more than one year. **WITHDRAWN 5-31-18**
- b) Governor's Finance Office – Budget Division
 - 1) Report on the study regarding credit card transactions and associated fees (letter of intent, 2017 Legislature).
 - 2) Quarterly report of the agency activity relating to contracting with current or former employees of the state, for the period ending March 31, 2018, pursuant to NRS 333.705(5).

There was on discussion on these items.

2. DEPARTMENT OF ADMINISTRATION

- a) Nevada State Library, Archives and Public Records – Notice to add four full-time equivalent (FTE) positions to provide continuing education support for library development and customer assistance. **WITHDRAWN 5-24-18.**
- b) Purchasing Division – Six-month report on preference for bid or proposal submitted by a local business owned by a veteran with a service-connected disability for the period ending March 31, 2018, pursuant to NRS 333.3368.

There was no discussion on this item.

3. NEVADA SYSTEM OF HIGHER EDUCATION – Quarterly report on the progress made by the University of Nevada, Reno School of Medicine in obtaining federal approval for the research program on the medical use of marijuana, as well as the status of activities and information received through the program, for the period ending March 31, 2018, pursuant to NRS 453A.600.

There was no discussion on this item.

4. DEPARTMENT OF BUSINESS AND INDUSTRY – Home Means Nevada – Quarterly report concerning the status of the Foreclosure Mediation Assistance program for the period ending March 31, 2018, pursuant to Senate Bill 490, Section 16(a) (2017 Legislature).

There was no discussion on this item.

5. DEPARTMENT OF HEALTH AND HUMAN SERVICES

- a) Aging and Disability Services Division
 - 1) Quarterly report for the Senior Rx and Disability Rx Prescription Caseload Data for the period ending March 31, 2018, pursuant to NRS 439.630(1)(c).

There was no discussion on this item.

- 2) One-time report on the 5 percent rate increase effective June 1, 2018, for Supported Living Arrangements and Jobs and Day.

Senator Kieckhefer said he only became aware of the 5 percent rate increase for the Jobs and Day Training (JDT) and Supported Living Arrangements (SLA) programs during public comment earlier in the meeting today. It was his understanding the rate increase approved by the division was based on existing authority within those categories. He asked where that authority came from. Senator Kieckhefer also asked if there was a wait list for either program.

Senator Kieckhefer asked if the rate increase was intended to be a one-time occurrence. If so, he asked if providers were notified of the division's intention. He said the annualized cost in FY 2019 was almost

\$8 million. In order to include the increase in the budget, the division would require an enhancement of approximately \$17 million. He asked how the agency planned to fund the increase for the long term.

Dena Schmidt, Division Administrator, Aging and Disability Services Division (ADSD), Department of Health and Human Services (DHHS), said the division had not yet implemented the 5 percent rate increase. She said the ADSD wanted to discuss it with the Committee prior to taking action. The division had budget authority to implement the increase, which was a 5 percent aggregate increase. Ms. Schmidt said the ADSD would like to propose that the increase be retroactive from June 1, 2018, so providers would receive the increase beginning with June payments through the end of the fiscal year. She said the division had projections to maintain the increase. Ms. Schmidt said both programs had wait lists due to a decrease in access to those services, because many providers were struggling to retain staff.

Senator Kieckhefer asked if the wait lists were due to a lack of providers or if the programs were capped. Lisa Sherych, Deputy Administrator, ADSD, DHHS, replied that part of the reason for the wait lists was because there was not enough provider capacity for the network. Additionally, some individuals were behaviorally complex and required services beyond what current providers were able to appropriately support.

Melissa Lewis, Administrative Services Officer, ADSD, DHHS, said the SLA and JDT categories had surpluses due to the wait lists. The surplus in the JDT category was also caused by required certification from the Department of Employment, Training and Rehabilitation (DETR). She said DETR currently had a backlog of certification applications. Until the backlog was processed, JDT services could not be provided for clients.

Ms. Lewis said, with regard to the 5 percent rate increase, the division would ask to continue the increase in the agency budget request. She said the 5 percent increase would probably be part of the adjusted base budget; however, the division would verify that with the Governor's Finance Office and LCB Fiscal Division.

Senator Kieckhefer said, if the increase became effective in June 2018, it may impact whether the increase would be included in the base budget or as an enhancement. He said the 5 percent increase, when annualized over the biennium, was a significant dollar amount.

Senator Kieckhefer said he did not want to set unreasonable expectations. He said JDT and SLA services were critical, and he had been a proponent of growing and expanding those services over his legislative career; however, he wanted to be cautious.

- b) Division of Health Care Financing and Policy – Quarterly report on the Disproportionate Share Hospital Supplemental Payment Program for the period ending March 31, 2018, pursuant to NRS 422.390.

There was no discussion on this item.

- c) Division of Public and Behavioral Health – Progress report on the elimination of the inspection backlog and achieving compliance with the Centers for Medicare and Medicaid Services (CMS), as requested during the December 7, 2017, meeting of the Interim Finance Committee.

There was no discussion on this item.

- d) Division of Child and Family Services – Report on the specialized foster care programs implemented in Clark and Washoe Counties for the first six months of Fiscal Year 2018 (letter of intent, 2017 Legislature).

Assemblyman Sprinkle said originally he did not intend to request additional testimony on Agenda Item M-5d; however, issues were raised during public comment so he thought it was an opportune time for the Committee to receive an update regarding basic skills training (BST) in Clark County. Additionally, the Division of Child and Family Services (DCFS) could respond to remarks made during public comment.

Reesha Powell, Deputy Administrator, DCFS, DHHS, said the division submitted the outcome report concerning the specialized foster care (SFC) programs on January 31, 2018. The report indicated that the SFC programs were beneficial. She said only one SFC model was being used statewide in SFC homes as well as Advanced Foster Care homes, also referred to as Enhanced Foster Care homes in Washoe County. Ms. Powell said the single SFC model was working well. There was increased placement stability among SFC youth, which was good, because it was better for children to move less frequently. Children in the SFC program were also provided increased access to mental health services. Lastly, children and foster parents who were surveyed indicated they had more customer satisfaction. Ms. Powell said children and foster parents liked the new SFC model, and they felt supported and were more satisfied.

Ms. Powell said, with regard to BST, Washoe County did not incur any BST billing during the last six months. She said Clark County providers continued to bill for medically-necessary BST. Although some fiscal issues still needed to be resolved, she said the SFC programs were working well, and children were benefitting from the implementation of a single, statewide model.

In answer to a question from Assemblyman Sprinkle, Ross Armstrong, Division Administrator, DCFS, DHHS, replied that Medicaid oversaw BST billing.

Jill Marano, Assistant Director, Clark County Department of Family Services (CCDFS), recalled discussion at the December 2017 IFC meeting about the use of BST to fund SFC. She said there was concurrence statewide that BST was not an ideal funding solution for SFC; therefore, CCDFS had been collaborating with Medicaid for almost 18 months to identify an alternative funding source, and the agencies were close to making a determination. Additionally, the agencies were deliberating about whether a waiver or state plan amendment for Medicaid would be necessary. She said bundled and unbundled rates were also being discussed; however, minimal progress had been made in that area. Ms. Marano said it was the intention of CCDFS to transition to a different funding model for the Clark County SFC program in FY 2019; however, transition planning was delayed, because an alternate funding source had not been determined.

Ms. Marano said the public comments regarding the Clark County SFC program were concerning. The agency was under the impression that changes to the current funding model would not be implemented until a permanent, sustainable model was in place; however, CCDFS recently learned that was not the case. She said there was some concern about placement stability for SFC youth in Clark County.

Assemblyman Sprinkle said Ms. Marano's concern made him concerned as well. He asked if there was a contingency plan in place to ensure that SFC youth continued to receive services. He said there was a single statewide SFC system in place, which was outstanding compared to two years ago. Ms. Marano replied that CCDFS learned at a public workshop held on June 6, 2018, that changes would be made prior to having a sustainable plan in place; therefore, the agency had only recently begun to develop a contingency plan. She said CCDFS increased communications with Medicaid in an effort to understand what options were available, and determine if there was an opportunity to extend the status quo for this small population of approximately 350 youth. Ms. Marano said CCDFS was very interested in working with Medicaid to extend the present circumstances for the SFC population or expedite a solution.

Assemblyman Sprinkle said the comments made during public comment were legitimate concerns. He said he would be in contact with CCDFS to discuss the matter further.

6. DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION – Report on progress eliminating reliance on transfers from the Special Fund budget to support routine Unemployment Insurance (UI) operations (letter of intent, 2017 Legislature).

There was no discussion on this item.

7. DEPARTMENT OF CORRECTIONS

- a) Quarterly report on department-wide overtime for the period ending March 31, 2018, as requested during the August 24, 2017, meeting of the Interim Finance Committee.
- b) Director's Office – Quarterly report on the capacity issues and transfer of inmates out of state for the period ending March 31, 2018 (letter of intent, 2017 Legislature).

There was no discussion on these items.

8. DEPARTMENT OF PUBLIC SAFETY

- a) Director's Office – Quarterly report regarding the operations and effectiveness of the Nevada Office of Cyber Defense for the period ending March 31, 2018 (letter of intent, 2017 Legislature).

Senator Denis said he was pleased to see the quarterly report provided by the Office of Cyber Defense Coordination (OCDC). He thought it was important for the Committee to understand the responsibilities of the OCDC. He noted that the agency was doing more outreach in the community. Senator Denis said he appreciated that the OCDC provided a list of entities it had been in contact with, which included multiple government agencies.

Senator Denis noted that the OCDC had analyzed a number of network log entries. For example, in January 2018 approximately 14 billion network log entries were analyzed. He asked the agency for clarification.

Shaun Rahmeyer, Division Administrator, OCDC, DPS, replied that the information provided by the agency was specifically requested by the Committee. He said he worked closely with the State Chief Information Officer and Chief Information Security Officer to develop the figures listed in section 4 on page 258 in Volume IV of the meeting packet. The figures included the number of log entries identified by the state security apparatus ([Exhibit D](#)).

In answer to a question from Senator Denis, Bob Dehnhardt, Chief Information Security Officer, EITS, Department of Administration, said he provided the analytical information for the report at the request of Mr. Rahmeyer. He said the 42 billion log entries were individual entries, the vast majority of which were normal events. He said security incidents were individual events that manage security operations center analytics and correlation engines kicked out for further investigation. Events that were validated positive were incidents which required further investigation after review by OCDC analysts. Mr. Dehnhardt said incidents were ranked as informational, warning, critical or emergency, and the majority that were analyzed fell into the informational and warning areas. Between January and March 2018 there were 26 critical or emergency incidents, which were items such as malware, ransomware or viruses. He said those types

of incidents were forwarded to EITS, where staff identified which agency needed to respond to the incident. He said EITS also provided the agencies with assistance in resolving the matter. Incidents that were classified as warnings were not necessarily bad or malicious; however, EITS still analyzed those incidents and worked with agency information security officers to determine if further action was necessary.

Senator Denis said it did not appear there were any major issues such as security breaches. Mr. Dehnhardt confirmed there had been no security breaches during that time period. He said the state system was fairly clean compared to other organizations, and the number of actual incidents that transpired was lower than average. He said EITS had good reporting on the number of events provided to the manage security operations center. Senator Denis said a major security breach was always a concern.

Mr. Rahmeyer said the volume of events on a monthly basis was somewhat arbitrary. He said the volume of attacks did not correlate to whether the state system was safe from one month to the next. Just one incident could be a major data breach that could cost millions of dollars to remediate. Mr. Rahmeyer suggested that it might be in the interest of the Committee to reevaluate the actual information that was being analyzed by EITS Information Security staff to have a more tangible understanding of the threat environment. Senator Denis agreed. He said it was important to understand the threat environment to ensure the state's data was safe.

In answer to a question from Senator Denis, Mr. Rahmeyer replied that some entities had reached out to the OCDC, and in other cases, the agency initiated contact. He said the majority of agencies were excited to partner with the OCDC. He said there seemed to be a long-standing need for a more holistic approach to cyber security management across Nevada. Mr. Rahmeyer said there were a lot of disparate programs in the state. He said it was beneficial to have entities that could create more efficient processes, and limit investing in a variety of programs or wasting fiscal resources to reinvent something that was already established in another area of the state. Mr. Rahmeyer said he did a lot of outreach in the Clark County area with the Registrar of Voters through the last primary election season. He said a lot of entities in Clark County, specifically in Henderson, were interested in partnering with the OCDC and moving cyber security forward in the state.

Senator Denis said he appreciated that the OCDC was reaching out to private organizations in addition to state agencies. He said it was beneficial for organizations to have a resource available for cyber security matters, because it would help maintain a safe cyber environment for everyone.

Mr. Rahmeyer said the OCDC was very new. As the representative for the agency, he engaged with entities across the state in an advocacy role. He said,

as mentioned by Senator Denis, not everyone had the resources or technical capability to improve their security apparatus, particularly in the rural areas. Mr. Rahmeyer said it was his goal to create a voice for entities that did not have that ability.

- b) Division of Parole and Probation – Quarterly report on the status of the agency’s pre-sentence investigations backlog for the period ending March 31, 2018 (letter of intent, 2017 Legislature).

There was no discussion on this item.

- c) Division of Emergency Management – Emergency Assistance Account – Quarterly report on the status of the Emergency Assistance Account for the period ending March 31, 2018, pursuant to NRS 414.135(5).

There was no discussion on this item.

9. NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

- a) Division of State Lands – Semiannual report on the status of the state’s Environmental Improvement Program (EIP)/Fund to Protect the Lake Tahoe Basin (FPLTB) for the period ending December 31, 2017, pursuant to Chapter 514, Statutes of Nevada 1999. **RELATES TO AGENDA ITEM J.**
- b) Division of Environmental Protection – Notice to add one full-time equivalent (FTE) position due to a high volume of public documents related to the mining regulatory and reclamation program to be scanned and archived in accordance with the Governor’s Strategic Planning Framework.

There was no discussion on these items.

- 10. DEPARTMENT OF TRANSPORTATION – Report on the activities of the Advisory Committee on Transportational Storm Water Management and the implementation and efficacy of the department’s storm water program pursuant to NRS 408.439.

There was no discussion on this item.

- 11. LEGISLATIVE AUDITOR – Six-month report on the agency’s implementation of recommendations made by the Legislative Auditor pursuant to NRS 218G.270 – Department of Health and Human Services – Division of Public and Behavioral Health – Medical Marijuana Program.

There was no discussion on this item.

- 12. DEPARTMENT OF EDUCATION – Report summarizing Class Size Reduction Variances for the third and fourth quarters of the 2013-14 school year, pursuant to NRS 388.700(5). **RECEIVED AFTER SUBMITTAL DEADLINE, 6-4-18.**

There was no discussion on this item.

N. PUBLIC COMMENT.

There was no public comment.

Assemblywoman Carlton congratulated Jim Wells, Director, Governor's Finance Office, on his upcoming retirement and thanked him for his service to the state.

O. ADJOURNMENT.

Chair Woodhouse adjourned the meeting at 5:20 p.m.

Senator Joyce Woodhouse, Chair
Interim Finance Committee

Rick Combs, Director, Legislative Counsel Bureau,
and Secretary, Interim Finance Committee

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