

AVAILABILITY OF LIABILITY AND
EMPLOYEE GROUP INSURANCE
TO LOCAL GOVERNMENTS



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OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

August 1978

REPORT ON THE AVAILABILITY OF LIABILITY AND
EMPLOYEE GROUP INSURANCE TO LOCAL GOVERNMENTS

TABLE OF CONTENTS

	<u>Page</u>
1. Senate Concurrent Resolution No. 37, 59th Session of the Nevada Legislature	1
2. Report of the Legislative Commission	2
3. Summary of Recommendations	3
4. Legislative Counsel's Legal Opinion on the Extent of Protection Afforded to Political Subdivisions Under NRS 41.0305 to 41.039, Nevada Tort Liability Act	4
5. Report to the Legislative Commission from the Sub- committee to Study the Availability of Liability and Employee Group Insurance to Local Governments	
I. Introduction	7
II. Insurance Consultant's Report	11
1. Introduction	12
Why This Study was Undertaken.	12
Methodology for Data Collection	12
2. SCR 37 Recommendations	14
Recommended Position - Chief of Risk Management.	14
Reform Within the Tort System.	17
Alternatives to Commercial Insurance	18
Utilization of In-House Facilities	21
Agents' and Brokers' Contributions	21
Premium Tax Expenditures	22
Employee Benefit Plans	23
Illustration of Organized Approach	24
3. Summarization.	25
4. Appendices:	
A. Joint Pooling Outline.	27
B. SCR 37 Questionnaire Data.	44
C. Insurance Companies Offering Excess Umbrella	52
D. Insurance Companies Offering General and Liability.	55

	<u>Page</u>
E. Insurance Companies Offering Group Insurance	59
F. Percentage Annual Premium Increases or (Decreases)	
County	62
Cities	63
School Districts	64
G. General Liability Premiums and Limits	
County	65
Cities	66
H. Insurance Premiums 1977 - County	67
I. Insurance Premiums 1977 - Cities	70
J. Group Insurance Comparison	
County	72
Cities	73
School Districts	74
III. Nevada Sovereign Immunity Doctrine	75
IV. Recommended Legislation:	
<u>Appendix A:</u> BDR 18-1--A bill to create risk management division in department of administration	84
<u>Appendix B:</u> BDR 3-87--A bill that changes certain procedures for defending actions against public officers and employees	92
<u>Appendix C:</u> BDR 2-88--A bill to allow costs in cases involving public bodies	102

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Senate Concurrent Resolution No. 37—Senator Dodge

FILE NUMBER....153

SENATE CONCURRENT RESOLUTION—Directing the legislative commission to study local government liability insurance and employee group insurance available to local governments.

WHEREAS, Local governments in Nevada are faced with an inordinate increase in premiums for insurance against liability, which insurance is necessary to protect taxpayers against any award which might be given by a court in personal injury or property damage cases; and

WHEREAS, The provision of accident and health insurance to public employees results in benefits both to the employee and the local government employer; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring. That the legislative commission make a comprehensive study of liability insurance and employee group health insurance available to local governments, and the financial burden which those local governments are required to undertake to obtain protection, and report its findings with recommendations for any appropriate legislation to the 60th session of the Nevada legislature.

REPORT OF THE LEGISLATIVE COMMISSION

To Members of the 60th Session of the Nevada Legislature:

This report is submitted in compliance with Senate Concurrent Resolution No. 37 of the 59th Session which directed the Legislative Commission to study liability insurance and employee group insurance available to local governments.

The subcommittee appointed to conduct this study included Assemblyman Harley L. Harmon, Chairman; Senator Carl F. Dodge, Vice Chairman; Senator Norman D. Glaser, member; Assemblyman James J. Banner, member and Assemblyman Robert R. Barengo, member. The subcommittee was assisted in its study by Mr. Robert L. Pidcock, Insurance Consultant of Professional Advisory Services, Las Vegas.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada

SUMMARY OF RECOMMENDATIONS

The recommendations presented below are the conclusions reached by the subcommittee based upon the questionnaire sent to local governments; public hearings in Las Vegas, Reno and Carson; written testimony provided to the subcommittee and the insurance consultant's report.

1. A Risk Management Division be established within the Department of Administration to centralize the state's insurance program and to provide assistance to local governments on an "on call" and "as needed" basis. BDR 18-1.
2. Amend chapter 41 of NRS to include a new section providing that upon certification of an officer or employee for the defense, a "rebuttable presumption" would immediately arise that the officer or employee has acted within the scope and course of his employment when the tort occurs. BDR 3-87.
3. Amend chapter 41.0337 subsection 9 of NRS to clarify that indemnification by the state or a political subdivision for their officers and employees for acts only within the scope of their employment. BDR 3-87
4. Amend chapter 41.0337 of NRS to permit the chief legal officer of a political subdivision to transfer his responsibility to tender the defense of a public officer or employee when the political subdivision has purchased a liability insurance policy where the insurance carrier is willing to tender the defense. BDR 3-87.
5. Amend chapter 18 of NRS to require:
 - a. The court to award actual costs incurred by a public body when defending against spurious lawsuits. BDR 2-88.

The requirement to pay court costs should be based on the court finding that:

- (1) The action was frivolous, unreasonable or groundless.
 - (2) The plaintiff continued to litigate after his action clearly became frivolous, unreasonable or groundless.
 - (3) The action was brought in bad faith.
- b. The court to award actual costs incurred by a person when defending against a spurious lawsuit brought against him by a public body.

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March 13, 1978

Senator Carl F. Dodge
P. O. Drawer 31
Fallon, Nevada 89406

Dear Senator Dodge:

The following is my opinion of the extent of the protection from civil liability which has been granted to the state and its political subdivisions under NRS 41.0305 to 41.039, inclusive.

The legislature, in enacting these provisions, has replaced the common-law rules of sovereign immunity and their exceptions with statutory rules. It was the intent of the legislature to do away with the entire doctrine, including the exception for proprietary activities as opposed to governmental activities. In Harrigan v. City of Reno, 86 Nev. 678, 475 P.2d 94 (1970), the supreme court said: "We eliminate first the concept that the government is amenable to lawsuits when it is engaged in a proprietary capacity * * *. The governmental-proprietary test no longer applies."

The statute effectively divides civil causes of action into two major types, by the ability of the plaintiff to bring suit and to recover: causes of action under which a suit cannot be successfully brought and causes of action which may be the subject of court determination and for which the plaintiff may recover \$35,000 or less.

NRS 41.031 requires that any action be brought in a court of competent jurisdiction of Nevada. The state must be named as a defendant, and process must be served upon the secretary of state.

Actions of the first class listed above, under which no action may be brought against the state, a political subdivision, or an officer or employee of either, are:

Senator Carl F. Dodge
Page 2
March 13, 1978

1. Those which arise out of the execution of a statute or regulation, whether or not the regulation or statute is valid, if due care is exercised and the regulation or statute has not been previously declared by a court to be invalid (NRS 41.032).

2. Cases which arise out of the exercise of a discretionary function of the state, its agencies and subdivisions (NRS 41.032).

The Nevada supreme court has construed "discretionary function" in a very narrow sense, taking it to mean only the major decisions to begin operating various types of facilities. In Harrigan v. City of Reno, supra, and in several cases including one as late as 1975, Williams v. City of N. Las Vegas, 91 Nev. 662, at 626, 541 P.2d 652 (1975), the court held that the decision to construct a parking facility was a discretionary action, but its operation was not, and could be the subject of civil suit against the public body. If the act which gives rise to a cause of action is not entirely discretionary, the immunity does not apply. Initial selection of inmates for a prison honor camp was discretionary, but the manner in which the camp was supervised and controlled was mainly operational in nature, State v. Silva, 86 Nev. 911, 478 P.2d 591, (1970). A decision to build a freeway was a discretionary act, but its construction and operation, including the failure to place a cattle guard, was operational, State v. Webster, 88 Nev. 690, 504 P.2d 1316, (1972).

3. Those which arise from failure to inspect a building, structure, highway, vehicle or public work, or failure to discover a defect, whether or not an inspection was made, NRS 41.033; Fischmann v. City of Henderson, 92 Nev. 659, 556 P.2d 923, (1976).

4. Actions against members and employees of the National Guard, when on training or active duty, arising out of their acts whether within or without the state (NRS 41.0333).

5. Actions against sheriffs for acts of their deputies and against police chiefs for the acts of their officers, except for actions on bonds or insurance policies provided on behalf of persons who might be aggrieved or wronged, NRS 41.0335; Schultz v. Lamb, 504 F.2d 1009, 9th Ct. (1974). This limitation probably does not protect the chief of the highway patrol or constables.

Senator Carl F. Dodge
Page 3
March 13, 1978

Awards for damages in actions sounding in tort are limited to \$35,000 to or for the benefit of any claimant (NRS 41.035). This, of course, provides this limitation for each claimant, and an incident which involves many victims who are damaged in a way in which the state, a political subdivision, or an employee or officer of a public body becomes liable, the combined recovery may be much more.

Very truly yours,

FRANK W. DAYKIN
Legislative Counsel

By DGS
David G. Stankow
Deputy Legislative Counsel

DGS:ke

REPORT OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE
TO STUDY LOCAL GOVERNMENT LIABILITY AND
EMPLOYEE GROUP INSURANCE AVAILABLE
TO LOCAL GOVERNMENTS

I. INTRODUCTION

The need for liability insurance was created in 1965 when the Nevada Legislature waived sovereign immunity and adopted partial sovereign immunity. Partial sovereign immunity allowed citizens wronged by a governmental action or omission to bring suit for monetary recovery for the wrongful action or omission except in specified circumstances. Recovery for damages upon waiver of sovereign immunity was initially limited to awards up to \$25,000, but since has been increased by the 1977 Legislature to awards up to \$35,000 per claim.

State and local governments, no longer immune from tort actions, purchased liability insurance to replace the protection previously provided by sovereign immunity. Liability insurance which was necessary to safeguard the entity's financial resources from large awards was readily available for a competitive and reasonable premium. However, in the past few years the availability and the premium requested has changed dramatically. This change caused the State of Nevada to forego the purchase of liability insurance and to self-insure in August of 1977. However, political subdivisions were not in a position to afford this luxury and the only viable means available to protect themselves against tort actions was to purchase liability insurance. In recent years, political subdivisions have been forced in many cases to reduce their primary liability coverage and in certain cases eliminate their excess liability coverage because of high premiums requested. In recognition of the above reasons, the 1977 Legislature enacted SCR 37 directing the Legislative Commission to conduct a study of local government liability and employee group insurance.

The Nevada Legislative Commission, at its meeting of June 2, 1977, appointed a legislative subcommittee to study local government liability and employee group insurance available to local governments. The Legislative Commission appointed the following legislators to conduct the study: Assemblyman Harley L. Harmon, Chairman; Senator Carl F. Dodge, Vice Chairman; Senator Norman D. Glaser; Assemblyman James L. Banner; and Assemblyman Robert R. Barengo. In addition to appointing the study subcommittee, the Legislative Commission authorized the subcommittee to hire an insurance consultant to assist it. The consultant selected was Mr. Robert L. Pidcock of Professional Advisory Services, officed in Las Vegas, Nevada.

The subcommittee held five formal meetings--three in Carson City, one in Reno, and one in Las Vegas. In addition, Mr. Pidcock met informally with local government representatives in several communities, insurance industry representatives, the Nevada League of Cities, the Nevada Association of County Commissioners, and the state Insurance Commissioner.

In its initial meeting held in Carson City on August 23, 1977, the subcommittee heard from Mr. Pidcock, Consultant to the subcommittee, regarding the scope of the study. The objectives of the study were presented, as follows:

1. Review, and if necessary, recommend changes or establishment of a risk management insurance philosophy for the State of Nevada.
2. Study and consider the creation of a possible risk management division for the State of Nevada.
3. Analyze the current practices of risk management techniques, insurance administration, insurance purchasing procedures, and statutes regulating the above activities for various governmental bodies.
4. Review and analyze the insurance statistics and records provided by local governments.
5. Identify the risks as related to the state and other governmental bodies, including but not limited to:
 - a. Third-party liability
 - b. Liability of elected officials
 - c. Property losses
 - d. Liability and responsibility to employees of governmental units
 - e. Indirect risk or loss due to damaged property of public bodies
 - f. Losses due to criminal action of employees or others
6. Analyze insurance markets available and obtain information from various insurers as to recommended methods for providing a more competitive and available insurance market in Nevada.
7. Review and identify problems relating to the partial sovereign immunity statute in Nevada.
8. Review the tort liability situation on public bodies.
9. Review the possibility of establishing a state insurance fund, insurance pool or a joint power agreement.

10. Review the practice related to the granting of additional employee benefits under the various local government group health insurance programs.
11. Review the possibility of establishing a state employee benefit health program administered independently or by the state which would include all governmental bodies of the state.
12. Consider the establishment of interlocking arrangements among cities, counties, school systems, hospitals, and other political subdivisions which might assist in reducing their insurance cost.
13. Review the current working arrangement between local political subdivisions and their insurance representatives to develop, where possible, lower insurance costs and facilitate greater rapport.

To insure that many of the above objectives would be achieved, the subcommittee scheduled public hearings in Reno, Las Vegas, and Carson City. Additionally, the subcommittee authorized that a questionnaire be sent to all cities, counties, school districts, and on a random basis to other political subdivisions, such as, water districts, TV districts, improvement districts, fire districts, and others.

Public hearings were held in Reno on October 13 and October 14, 1977; Las Vegas on December 15, 1977, and Carson City on February 8 and February 9, 1978. In order to insure maximum input, personal invitations were sent by the subcommittee to all mayors, chairmen of county commissions, school superintendents, insurance industry representatives and other selected local government representatives. The meetings in Reno and Las Vegas were well attended. In addition to the meetings in Carson City on February 8 and February 9, which completed public testimony, the subcommittee held a work session to review the testimony and information received and to set forth the guidelines for its report to the Legislative Commission. The final meeting, held in Carson City, was to approve the final written report for submission to the Legislative Commission and the 1979 Legislature.

The findings and recommendations of the subcommittee are set forth in the following sections. Section II is the consultant's report which basically outlines the objectives of the study, the methodology used for the study, the problems encountered by local governments in purchasing liability and employee group insurance, an analysis of local government insurance data and the

alternative solutions and recommendations to assist local governments in their insurance problems. Section III is a brief overview of Nevada's sovereign immunity doctrine, the problems encountered by local governments because of the current doctrine and recommended changes to the doctrine.

II. INSURANCE CONSULTANT'S REPORT

on

LOCAL GOVERNMENTAL INSURANCE

on behalf

of the

NEVADA LEGISLATIVE COUNSEL BUREAU

May 1978

Report by
Professional Advisory Services
302 East Carson Avenue, Suite 500
Las Vegas, Nevada 89101

1. INTRODUCTION

Time and again representatives from public entities within the State of Nevada have expressed concern over problems they encounter administering insurance programs within their respective governments. Due to this, the Legislature created a subcommittee to study local government liability insurance and employee group insurance. As a result of a contract between the consultants and the Legislative Counsel Bureau, the subcommittee is hereby provided with a study setting forth the problems, findings, and alternative solutions as directed in S.C.R. 37.

Why This Study was Undertaken:

By authorization of the legislative subcommittee of the Nevada Legislature, we have participated as advisors during the hearings on the governmental insurance, as well as carrying on a study to define the problem and hopefully develop an approach which might answer the many concerns received from the various governmental units throughout the State of Nevada.

In broad terms, the most pressing concerns expressed during the hearings and in our personal interviews were those on the availability as well as the affordability of the various types of insurance for governmental units. It seems universal that all of the representatives confirm their feelings of a need to provide insurance for their agency. Their sentiments have resulted in these agencies purchasing insurance along the traditional lines of private corporations over the years. Similar to the problems facing private industry, it now appears that governmental insurances have risen to record premium levels and in certain instances appear unaffordable.

Methodology for Data Collection:

Recognizing this problem, we guided our study toward objectives which might provide us with alternatives. In order to evaluate these alternatives, we directed our activities in the following areas:

1. Personally interviewed representatives from various governmental units throughout the state.
2. Held discussions and meetings with various insurance company representatives and brokers.
3. Designed and worked with the Legislative Counsel Bureau in developing the questionnaire with which to obtain the necessary data upon which to base and confirm our conclusions.
4. Personally reviewed and studied insurance contracts and procedures of various diverse type agencies throughout the state.

5. Met with representatives of the Nevada League of Cities and of the Nevada Association of County Commissioners to discuss their concern and interest in this area.
6. Contacted various other states, and agencies within those states, and studied their positions on the problems relative to insurance.
7. Undertook research with the Legislative Counsel Bureau to uncover alternative solutions to the problems encountered by the public bodies.
8. Detailed premium and loss experiences by classifications of the various units that responded to the questionnaires.
9. Made a search of the insurance industry in order to determine what markets or insurers were participating in the writing of governmental insurances.
10. Called upon the Legislative Counsel Bureau to provide us with historical, as well as legal background, in specific problem areas relative to the insurances of public units, including the State of Nevada itself.

All of these activities were carried out in a three-step approach which consisted of:

1. Personal contact by direct interview and during the public hearings held by the Nevada legislative subcommittee.
2. Direct mail approach through the use of the questionnaire.
3. The study itself which includes the compilation of results from the personal interviews, questionnaires, and investigation of the various alternatives.

2. S.C.R. 37 RECOMMENDATIONS

Recommended Position - Chief of Risk Management:

1. Development of a Risk Management Program

Over the years, risk management has developed into a high level business management science. This development was initially brought forth in the private sector. The degree and caliber of risk managers within the private sector has reached an extremely high level of sophistication. It has only been within the last 5 years that risk managers within the public sector have come forth to start an organized effort of development in the area of public risk management.

The starting point for educating governmental units in the concepts and practices of risk management should be the state itself. We feel that consideration of the development of a risk management program by the State of Nevada is the only logical starting point.

At the time of this study, we found only two or three public units practicing any type of risk management procedures. Our research concluded that this was principally due to the lack of experienced risk management personnel within the state from the public and the private sectors. A surge of interest has appeared, but without known procedures to follow. Most entities have not taken an active part for fear that ignorance of the concepts would only result in improper actions on their part.

As a point of discussion and consideration along these lines, we have concluded a recommended risk management position within the state. Supported by the state, such a department operating from the executive branch could be expanded to provide guidance and consultation to the smaller governmental units that could not economically purchase risk management expertise.

It is important that the development of such a department and program within the state be on a logical and practical level. The known steps necessary to implement a day-to-day risk management system must be followed. Important to the initial proposal and development would be the administrative support of the risk management function. This support should initially come through the written guidelines establishing the position and the responsibility relative to the position.

We would like to suggest that the following steps be considered in the development of such a program:

- a. Written definition of the program and explanation of the policies and authority to be provided within the risk management program.
- b. A detail of the responsibilities of the position and the department, taking into consideration the involvement with other departments.
- c. Issuance of a formal written policy statement with specific attention to any areas of assumed risk by the state.
- d. An organized program to educate the other related department heads to the responsibilities and importance of the risk management function.

We feel the impact of the program will result in:

- a. Overall reduction of risk and the cost of risk faced by the State of Nevada.
- b. The logical approach to the protection of the state's assets.
- c. Safe environment for the employees of the State of Nevada and the public.
- d. Maintaining the services on a continuing basis in the event of an accidental loss to any of the state's facilities.

Obviously, it is not practical to detail fully the implications of such a program; however, we feel these guidelines should establish the initial steps. We would consider it an honor to assist in the further designing and development of such a program.

2. Position Specifications

a. Location

Department of Administration

b. Pay

Depending upon qualifications, the annual salary recommended would be between \$19,596 and \$25,044.

c. Job Description

The appointee will be responsible for directing the Risk Management Unit in coordinating and carrying out the risk management activities for the State of Nevada.

The emphasis of this position is on the reduction of loss through professional attention to scientific loss control techniques. The following are risk management responsibilities:

- (1) Establish, coordinate, and implement a statewide risk management policy.
- (2) Direct state risk management activities.
- (3) Provide liaison between agencies on difficult risk management issues.
- (4) Identify and evaluate the state's exposure to loss and implement loss control and prevention procedures.
- (5) Arrange for insurance contracts and provide expertise in technical aspects of arrangements with commercial insurers.
- (6) Establish training of risk management on a statewide basis.

The above activities should be handled in coordination with the Insurance Commissioner's office, the Attorney General's office and top administrators in state agencies.

d. Qualifications

(1) Training and Experience:

College degree in business administration, finance, fire protection engineering, insurance, law or a closely related field, or its equivalent in relevant experience followed by 5 years of progressively responsible professional experience with ongoing direct responsibility for major components of a risk management program in a large governmental body, private corporation or consulting firm. At least one year of this experience must have been in a position with managerial authority and program responsibility. This one year must have involved directing major segments of a Risk Management program with wide latitude for planning and decision-making within broad general policy, and little or no direct supervision as to means and methods. It is desirable that candidates for this position possess one of the following certificates: Associate of Risk Management or Chartered Property and Casualty Underwriter.

(2) Managerial Behavior Dimensions Which are Most Important in this Position:

Communication skills--oral and written. Interpersonal skills--leadership, initiative, risk-taking. Management skills--problem analysis, decision-making, planning and organization, decisiveness, delegation and responsiveness.

(3) Other Essential Skills, Aptitudes, Knowledge and Personal Characteristics:

Extensive expertise in the field of risk management including a thorough knowledge of safety and other loss prevention techniques, casualty and liability insurance, and training techniques relevant to presenting technical risk management procedures. Ability to establish and maintain effective working relationships with other administrative officials and the general public.

e. Examination

The examination will include a review of applications to identify those candidates who appear best qualified for this position by training, experience, and achievements.

Reform Within the Tort System:

Insurance company officials have indicated little support in the belief that the limited sovereign immunity in Nevada will be continually upheld. They report upon the erosion of various immunity statutes as well as the continued disapproval by various state supreme courts of limitations built into these acts. With this in mind, we feel that it is important to deal with the question of immunity as a part of the overall tort system.

The immunity statute as it now exists with the limitation of \$35,000 per cause appears solid due to the fact it has been reaffirmed by the Nevada Supreme Court several times during the past few years. This affirmation is an important factor in maintaining insurance markets within the state on behalf of our public entities. California illustrates what happens when a total erosion of this immunity takes place. Virtually all of California's public bodies have been forced to either "go bare," self-insure, or join in some type of joint pooling in order to protect themselves against catastrophic loss.

We feel that any reform or solution to the overall tort question must include consideration of the governmental immunity act.

Testimony, as well as written response throughout the state, has given rise to questions concerning the clarity of the act as it now exists. This was pointed out in hearing testimony of George Franklin, attorney, and Larry Struve, deputy district attorney, Washoe County, Nevada. With this in mind, we feel that direct attention must be given by the Legislature to revisions which would provide the clarity and assurances needed in the immunity act.

Here again, specific responsibility for support by the legal divisions of the public bodies should be designed as to provide confidence by the public body and its employees. This clarity and support should come in the way of a directive and review of the existing statute in conjunction with the development of revisions in NRS 41.031, NRS 41.032 and related statutes.

In dealing with the general tort reform questions, there are many areas which need attention; however, we feel the most successful direction for a public body would be to utilize its facilities toward changing the public's attitude. An increasing attack upon the public bodies through suits will only result in increased taxes. Education of the public regarding the tort syndrome should be a part of any tort reform consideration. The legal aspects of this issue are included in the report by the Legislative Counsel Bureau.

Alternatives to Commercial Insurance:

In conjunction with the operation of sound risk management programs by public bodies, there have arisen several types of risk sharing alternatives, some of which were born out of the total inavailability of commercial insurance to public bodies in high litigation states such as California. These programs in many instances were put together hastily, without sound guidance or professional forethought toward the management and potential operations. In other instances, the programs have matured into successful ongoing alternatives. It should be noted that each of these must be studied in detail as to its structure in order to determine the merit or worth to the public body. We have done research on several of the alternatives and determined that with proper development, some of them may be viable options open to specific groups of public entities.

1. Pooling

In order to be protected, these entities have joined in pooling arrangements. These arrangements are the establishment of reciprocal insurance companies, joint power and joint underwriting authorities, the establishment of their own mutual insurers, and frankly, a pure pooling of risks.

Due to an indepth study of pooling arrangements and the characteristics of the State of Nevada, i.e., sparse population, the consultants do not recommend a pooling arrangement. However, for the information of the subcommittee, Appendix A describes the organization and function of a joint pooling authority. Please note that the figures depicted are subjective and based on an acceptance of the arrangement by a preponderance of the cities and counties.

2. Self-Insurance

One of the most appealing alternatives for the purchase of insurance is probably also one of the most misunderstood. This is the "self-insurance" program. At present, self-insurance has become commonplace among many of the larger public bodies. Self-funded or self-insured programs are not new. In many areas, such as Madison, Wisconsin, self-insurance has been in operation for over 20 years. In analyzing the merits of self-insurance, we have noted that the historic programs do not have direct application in the present. The lesson we learn in looking at these is the newer programs established in the last 3 to 5 years grew out of the question of availability and affordability. The original programs, those referred to as historic, seemingly grew out of innovated ideas to provide substantial economic savings to the entity involved without consideration of availability.

The current self-insured programs, which we have studied, appear to have been born of the severe economic pressure brought upon public bodies by the ever-inflating insurance premium dollars. This, tied with the total unavailability in areas such as California, forced entities to look in this direction as one alternative to the purchasing of commercial insurance. Often these entities approached the issue with a simple comparison of their premium cost against the net losses over a period of time. This, at face value, appears to provide substantial savings. Realistically, many of these entities have now recognized that such a comparison is actually misleading. A more true and meaningful representation includes all of the various costs relevant to a self-insurance program, not just the actual loss experience. These costs will also include provisions for anticipated costs, inflation of incurred but not paid claims, as well as some contingency of reserves for the probability of the occurrence of a large catastrophic loss. In many instances, some of this is protected by the purchase of various types of excess or aggregate loss insurance from a commercial insurer. Frequently, these are referred to as high self-retention or excess surplus programs. To be actuarially sound, it is important that the program give recognition to the probability of a large loss occurring.

In meeting with representatives who handle these programs throughout the United States, we have noted that one of the most dangerous pressures upon them is from a political point of view. Political pressure may often conflict with sound actuarial principles, which results in one estimating too optimistically for such a program. In addition, the designing of the program itself may be adversely affected. We particularly point to the sound actuarial need to provide proper reserves for catastrophic and future losses. Any political bodies making decisions as to the design of a self-insured policy should, in good faith, provide statutory standards requiring financial stability and solidarity on the same basis that would be required by the regulatory bodies controlling insurance carriers. The fact of the matter is that the operation of the department should in itself be designed along similar lines to an insurance company. It is also true that the measure of success of a true self-insurance program should meet the same criteria as a commercial insurer.

In our opinion, the two areas which caused the failure of some programs were the diversion of contingency funds by legislators and the establishment of a program not based on actuarially sound self-insurance principles.

3. State Funding

Within the same general area of pooling and self-insurance, the question has been raised concerning a state funded program. Several states have moved in this direction; however, in most instances, it appears that the local governmental unit may join in on an optional basis. Most of these have limited themselves to the area of property insurance, leaving the public body to search out other means of providing the liability protection. Once again, one of the more mature plans is in Wisconsin, where approximately 40 percent of the incorporated cities, towns and villages have joined in their property program. In speaking with Gordon Gronert, the Risk Manager for the State of Wisconsin, who administered this plan for some time, he indicated that the main reason the entities did not join in is that they were able to obtain other insurance more advantageously by including the property with the commercial insurance. When they gave the property to the state plan, then the ratings on the other lines increased, thus defeating the premium advantage of the state program. He also stated that the assistance and help of the broker, or agent, was more readily available when he could manage the entire account and provide complete service upon it.

It is our opinion at this time that such a program would be extremely difficult to initiate and probably not succeed.

Our opinion is based upon two factors, the first being the political implications, the second being that the premium dollars and number of entities involved throughout Nevada do not provide a sufficiently reliable basis for an actuarial spread.

Utilization of In-House Facilities:

Our consideration of the problems posed to the subcommittee seemed to be more directed toward smaller outlying units. In direct interviews, we found that much of the problem lay in the area of communication and lack of knowledge. With this thought in mind, we had made our initial recommendation of the consideration of a state risk management position and feel that his function must be on a need approach to include the in-house expertise available to him throughout the state. If his responsibilities included the providing of consulting and advisory services to the smaller entities, it would be normal to also suggest that utilization of other in-house expertise be coordinated with him in specialty areas. We particularly relate these to loss prevention activities and the OSHA representatives from the NIC, legal from the Attorney General's office, funding technique from the budgeting officer, the state Fire Marshal, and others who presently represent specific functions.

These personnel could form the nucleus of a risk management team operating under the chief of risk management in such a way as to utilize their expertise. He should be responsible to coordinate and collect materials from them to be communicated and implemented either in person or by correspondence to any entity requesting it. We should not expect the risk manager to carry the burden alone. Other members of the administration should be called upon to share their knowledge and experience.

Agents' and Brokers' Contributions:

In considering the viable alternatives, it is our opinion that the local insurance agents and brokers can provide needed advice and expertise in the management of public entity risks. Too frequently this individual is blamed for the rapid inflation of premium without the realization that he sometimes has very little input or control over the pricing position of the insurance company. The agent's knowledge of his local area should be invaluable to any insurance company and helpful in pricing the insurance on a public unit. One of the concerns which is generally expressed by agents and brokers is that of the question of competitive bidding.

Experience has shown that controlled or closed bidding by invitation is becoming more commonplace. Among the larger private corporate clientele, it is even common to find negotiated

renewals and service contracts with their agents. Even in instances where groups have formed their own pool or reciprocal, they are obligated to deal with the insurers and their representatives to purchase the various excluded lines or stop loss coverages. Keeping all of this in mind, it is our feeling and contention that the majority of brokers with whom we have dealt in this survey exhibit capabilities which should be utilized by the public bodies.

Insurance is an extremely specialized field which requires professional competence to properly operate. Familiarity with a local unit by the broker or agent should make him a logical person to conduct properly a survey of the insurance or risks for the entity. His experience and familiarity in the area should also enable him to give advice concerning marketability as well as the service of the insurer.

Prior to any insurance program, be it self-insured or otherwise, it is necessary to conduct such a survey including an engineering analysis in order to identify and evaluate the risk. This is generally referred to as an underwriting analysis and inspection. It is often better to have this performed by someone outside of the entity itself as they are more aware and willing to make recommendations and report on exposures. Here again, the local agent can be an extremely vital part of this function.

His involvement can also serve to assist in stabilizing the market for the insured. His assurances to the underwriters of the exposures as well as the acknowledged fact of his existence as a part of the team programming the insurances can represent immediate savings. Frequently, insurers who feel that a particular risk is continually "shopped" will tend to quote higher (if they quote at all) for fear that there will not be a long-term relationship in which to recoup losses should the initial period result in a high loss experience.

It would be our suggestion that consideration be given to attempting to establish clear and open lines of communication for the benefit of all between the agents or the representatives and the representatives of the governmental units.

Premium Tax Expenditures:

In many areas of the country, the state premium tax is waived on behalf of the public unit. Historically, many states have been willing to grant the waiver of this to public bodies, and I feel the question should be reviewed with the insurance commissioner and his staff, understanding that this would obviously initially reflect a decrease in their budget.

One other concept that has gained some interest in some areas is the depositing of the premium tax on any public entity into a contingency fund for uninsured or in cases of unavailable insurance as stipulated by a statutory provision to be available for payment of these losses should they occur. This, again, would also need some more positive definition and review with the commissioner of insurance.

It should be noted that the commissioner of insurance is somewhat handicapped as he is designated as a "regulator" and our recommendation of consideration for a risk management officer in the state respects this position and places the risk manager as a separate function who would coordinate with the Insurance Division. It is very likely that the commissioner would be put into a middle-of-the-road situation if he were given that responsibility. This may also be somewhat true in our recommendation that he be consulted in regard to the premium tax. We feel that initially he must be considered in this question as it has a direct bearing upon his operations.

Employee Benefit Plans:

A review of the summary sheet prepared from the questionnaires immediately shows that in the area of employee benefits, particularly medical indemnity costs, there have been increases averaging more than 25 percent per year over the last 3 years. With the rising costs of health care, one cannot be surprised by these increases. The most frequent complaint again lies with the fact that the costs have continued to rise every year and the public entity has been unable to retard the increase.

Much has been said toward the organized approach to risk control in the areas of property and casualty insurance. However, these same procedures and methods apply equally well in the employee benefit sector. The basic funding of an employee benefit program calls for the payment of premiums which will cover the cost of claims paid plus the retention for the service provided by the insurance carrier. In general, these retention figures will represent between 6 and 15 percent of the premium dollar with the balance going toward claims payment. We would like to point out the importance of very careful, professional designing of the benefit plan. Many of these plans have grown out of pressure from the outside rather than actuarially and organized internal design by the public body.

The design of any employee benefit plan must meet the objectives desired by the employer and the employee. A carefully and clearly defined set of goals providing long-term objectives ultimately will result in better availability, as well as control of the cost of the plan.

Illustration of Organized Approach:

Clark County initiated in 1975 a strong professional approach to its employee benefit plan. Included in this were the comments from employees, as well as the county's goals and financial capabilities. The surprising development of this organized and ongoing approach resulted in the following circumstances which reflect the success of their program:

1. An attempt to bid the program in 1974 brought only three bidders who bid plans extremely difficult to compare and resulted in a rejection of all three; however, under the organized long-term designed program in 1975, a total of 26 bids representing 14 different insurance companies were received, resulting in a reduction of over \$250,000 on the renewal costs of the employee benefit program.
2. A large, cumbersome employee representative committee consisting of nonprofessional insurance persons was disbanded in front of central administration through Clark County's risk manager, Mr. James Banner. The reaction of the insurance companies themselves was reflected in the number willing and desiring to propose a program in 1975.
3. Very detailed and carefully designed specifications by the Clark County Risk Management Department which included a pre-bid conference with all interested parties at the time of the release of the specifications assured all bidders of a forthright opportunity and provided creditability to the actuarial data supplied in the bids. Here again, the pricing results and number of bids tendered confirmed the importance of organization.
4. An open commitment by the risk manager to attempt to retain the successful bidder for a long-term relationship (minimal of at least 3 years) was tendered during the pre-bid meeting. Although this could not be guaranteed, the commitment of the risk manager to strive for the relationship provided creditability and the resulting bids were extremely competitive and close in costing. It was stated by several of the unsuccessful bidders that they had put their best foot forward in the pricing due to this indication of a long-term relationship.

We use the above illustration to point out again the need of designing an employee benefit plan which has goals and objectives specifically set for review of anyone interested. The results of this could lead to a substantial retardation of the claims and premium growth in the employee benefit area.

3. SUMMARIZATION

It is not possible to answer fully all of the problems specifically indicated by the study. It is also not surprising that the various governmental units responding have elected different ways to approach these problems. There is, in short, really no lack of information or advice for the various options, even to reviewing successful models of different approaches.

This leads to the question of implementation of the rational and economic practices for governmental units which can and should be encouraged. As a matter of fact, it is our feeling they should be prescribed and even established by legislation. Again, we feel that sound and rational risk management methods need to be applied by all governmental units.

We have not found examples of total unavailability of insurance in the commercial insurance market, although we have noted extremely fast escalation of premiums, particularly in the past 2 years, and in most instances, unanticipated escalations. Even in the light of the size of these escalations, our research does not indicate that they are necessarily out of line with sound actuarial underwriting by the insurers.

The various schemes designed to replace commercial insurance coverage offer fascinating studying, but when reviewed from an actuarial point of view, do not always offer a better option. Our general reaction has been that in many instances these schemes are nearsighted and fail to take into account all of their responsibilities. Initially, they appear persuasive in nature, however, very few of them have done any extensive projections or calculations relative to a long term.

We would not want to state that there is no reason for concern, but we would like to make it clear that we feel Nevada sits in a much better position than most of our neighboring states. Under these circumstances, we still may find ourselves frequently swayed and attracted by the multitude of self-insurance, reciprocal, mutual, pooling, joint power agreements, state funded programs, and even captive insurance programs. The rationale of these is certainly understandable; however, one must make application to the individual case involved, and this is where we find it difficult to relate some of these directly to the situation here in Nevada.

Our other deep concern is that either individually or as a group, the public units do not jump into a commitment to a program without first thoroughly and professionally designing it with good, sound guidelines and objectives. The recognition of a problem and the establishment of this subcommittee is a step toward providing assistance to those who have expressed con-

cern. Obviously, many of them feel that their economic pain threshold has been reached, and any further escalation of premium costs would force them to search out an alternative to the commercial insurance market. We suggest an appropriate, immediate solution would be the formation of a risk management function within the state to provide guidance not only to these entities, but leadership in the development of a responsible and professional risk management program for the state itself.

We feel that the initial groundwork for an undertaking of this sort has been developed within the research provided by this subcommittee. The concept certainly appears to be worth a try, particularly in view of its rapid and ongoing success in other states. In short, the earlier the work is started, the better.

It is our desire, that in addition to this written report, we participate in all discussions of the various recommendations included within the report. With this in mind, we have attempted to define these in as brief a manner as possible. We also offer to make available any of our research or backup material as requested through the Legislative Counsel Bureau, if requested.

We wish to state that it has been a distinct pleasure working with the Legislative Counsel Bureau's staff, as well as all of the members of the subcommittee. We do hope that at any time, any questions concerning the materials in the report be presented to us. We also are very anxious and stand ready to assist in the implementation of any of the recommendations contained within the report.

APPENDIX A

JOINT POOLING OUTLINE

1. JOINT POOLING OUTLINE

The inception of a joint liability pooling arrangement would require a legal document clearly specifying the rights and responsibilities of the members. The document should contain necessary ingredients for creating a pooling organization and implementing its structure, operational proceedings and funding.

Besides defining the rights and responsibilities of the members involved, flexibility should be maintained so the organization can quickly adjust to the changing insurance, legal, social environment, and the varied needs of members. Important areas for inclusion in the joint pooling contract are:

- A. Governing board - membership, meetings and voting rights together with identification of officers and their responsibilities.
- B. Power - this section would be an authorization for the pooling authority to conduct financial transactions.
- C. Fiscal year - dates must be established for implementation of the pooling agreement, the policy term of insurance policies and the fiscal year to be used by the pooling authority.
- D. Funds - the agreement must specify the source of the funds and clearly define the assessment of each member's portion. Upon termination of the agreement, disposal and distribution of the assets must also be considered.
- E. Accounts and records - A budget specifically indicating who is

responsible for the maintenance of accounts, records and other monies must be established by the authority. Any proper bonds and regular audits should be set forth in this section.

F. Authority's functions and responsibilities - loss records and other reports to be made to the individual members should be detailed.

G. Members' responsibilities - the basic needs for coordination with the pooling authority and any other risk management responsibilities to be maintained by the members could be analyzed in this section.

H. Initial formation - when a pooling authority is formed, the activities and responsibilities should be precisely stated.

I. Miscellaneous - the entry of other members, termination or withdrawal of any member, and any other areas which would be pertinent to the joint pooling contracts should also be dealt with.

The members should be able to draft a contract which will permit the funding and pooling of losses and the purchase of excess insurance and services by the joint pooling authority after examining and considering the sample contracts and reviewing the above areas.

2. COST DISPERSION

An equitable rating plan must be developed for dispersion of costs to the members involved. Upon to a tolerable limit, each member's individual loss experience should be shown in this rating plan. This plan would reward members with above average loss records and penalize those with poor records. If a loss rating program is not utilized, members with well-managed loss prevention programs may feel they are contributing to the support of members that do not engage in adequate loss controls.

A deposit premium should be paid by each member. This amount could be determined on a payroll rate (or other rating basis) devised to produce a primary premium approximately equivalent to the premiums the members are paying their present insurers. This would be adjusted at the end of each year (and annually thereafter until all incurred claims are closed) creating a final premium for each year.

Some members may have frequent losses during a single fiscal year, which could greatly increase their final premium above the primary deposit and cause problems in their budget. Therefore, it is recommended that a stipulation be made to allow payment of part of the additional premium plus interest over a three to five year period. This would equalize the impact of one year's poor loss experience on the member.

3. PARTICIPATION

A. Minimum Size of Pool

A casual examination of the excess liability insurance marketplace reflects that the arrangement of excess insurance above a pooled or group self-insured retention of \$100,000 per occurrence may be possible. On this basis, we believe the group participating in this study generate the minimum amount of premiums (i.e. \$1 million) to make a pooling plan feasible without an initial capitalization or contribution to a catastrophe reserve fund.

With losses limited to \$100,000, the pool could rely on assessments to fund any unusual and unanticipated increase in frequency and/or severity of losses.

If participating members generate a going-in premium of \$1

million, an estimated allocation of these funds would look like this:

Administrative Costs	\$ 75,000
Excess Insurance (\$900,000 xs \$100,000 per occurrence)	400,000
Amount available to pay losses (including loss adjustment)	<u>525,000</u>
Total premium	\$1,000,000

Purchase of aggregate excess insurance to stop the pool's assumption of pooled losses to a fixed annual figure should be investigated due to the desirability of this "stop-loss" protection.

The municipal liability marketplace presently is highly volatile although it shows signs of improving. Even if excess insurance is available above the \$100,000 per occurrence pooled at a cost approximately that show above, there is no certainty it will remain available. Therefore, it may be necessary to plan for a pool retention level of \$500,000 per occurrence.

To ensure that the pool maintains an adequate minimum size during the initial three to five years of operation, all participating members should be required to make a noncancellable commitment to remain in the pool for at least three years or possibly five years. However, the pool must have authority to cancel or expel any individual member that is not cooperating with program concepts.

B. New Members

At the onset of the program, a certain time limit should be established within which members must make a commitment to join the pool.

The effective date of each member's coverage within the pool should also be within this time limit. No member should cancel its existing liability insurance until a sufficient number of members have made the commitment to move ahead with the program. After this commitment and effective date is established, additional members should not be permitted to enter the program during the first year of operation. There are several reasons for this requirement:

1. If aggregate excess insurance can be arranged, the continuing increase in the number of members and exposure level would have to be prorated into the aggregate limit each time a new member was added.
2. With or without the aggregate, there will be a need to reevaluate the loss fund within the pool to assure that it is sufficient to pay the probable losses of the members participating in the program.
3. It will encourage the governing bodies of the member to reach a decision one way or the other and will not permit them to place this decision in abeyance for three to six months to observe the operation of the pool.

Following this first year of operation, the pool should consider continuation of the requirement that entry into the program will be permitted only at a common anniversary date.

C. Withdrawal From Pool

As recommended previously, the participating members should make a three to five year noncancellable commitment to the program

to ensure the pool's stability during its initial years. Thereafter, any member could be allowed to withdraw, but only at common anniversary date and with proper notice of withdrawal (a 12-months' notice is recommended).

D. Cancellation

On all programs of this nature, there may be participants that do not follow agreed program standards. Lack of cooperation may take several forms, such as

- Failure to report claims
- Failure to discontinue certain unsafe practices
- Failure to pay premiums or assessments

The joint pooling agreement therefore should contain provisions defining the basis for cancellation and the procedures by which such cancellation may be effected.

4. ADMINISTRATION

A. Structure

Several alternatives exist for the administrative structure of the pooling authority. The governing body would probably be a Board of Directors with an official of each participating member serving as a director. Due to the large number of board members, a smaller Executive Committee, consisting of approximately five members, should be elected from the full board and be given the authority to make and implement major decisions. The day-to-day decisions and activities could be handled in several ways:

1. Delegate details to an insurance broker

2. Hire a full-time administrator to run the program as an employee of the pool.
3. Contract with a qualified insurance program administrator for complete services.

The specific services necessary to the successful completion of the initial phases include:

- legal, for organizational purposes,
- excess insurance placement,
- claim adjusting,
- computerized loss reporting system,
- loss control,
- general coordination of the project,
- risk management consulting services for member cities.

B. Risk Management in Individual Cities

The duties of a risk manager within a large governmental agency or corporation can be well defined and, when properly implemented, result in a full-time position. The specific duties of the risk management function within a small or medium-sized governmental agency are not easily identified and will vary from member to member.

The general responsibilities can be identified as follows:

- Identify each risk of accidental loss.
- Measure each risk which has been identified.
- Review the alternative methods of treating the identified and measured risks.
- Select the most appropriate treatment technique.

--Control and review the implementation of the treatment methods selected.

An employee of each member should be assigned the responsibility for risk management within each member and in addition to performing the above broad functions, should also be the liaison person between the member and the pool. It is intended that the administrative staff of the pool will include individuals with sufficient background and talent to assist each member's assigned risk manager with the implementation of that function within the member.

Information from losses is critical to development and refinement of an effective risk management program. Each member should maintain its own set of records, as a loss log, in all categories of loss: property and liability.

The review of certificates evidencing insurance required in legal contracts can be handled by the pool for the individual members if standardized clauses and insurance requirements are used.

Complete and accurate records are an important key to control of any risk management program. These records assume additional importance in a pooling arrangement, where the member's own funds are at stake.

C. Recordkeeping

1. Introduction

The foundation for any effective risk management program is a complete and accurate set of records for losses, insurance premiums, claims handling costs, administrative costs and other risk

management costs. In any arrangement involving several entities, additional records should be kept of the losses of each individual member and of any statistics bases used for rating. Any person making risk management decisions should be familiar with the content and location of all appropriate records.

2. Losses

Detailed loss records are one of the most important types of records to be kept. All insured losses must be reported promptly and accurately to the pool. This loss data will provide a central source for analyzing causes of loss in order to direct loss prevention activities in the most effective way. In addition, it will provide:

- a. Information for brokers and underwriters for future insurance quotations and
- b. Information for projections and estimates of future loss costs.

The information in a loss record should include:

- a. Date of the accident or occurrence.
- b. Employee, department and member involved.
- c. Claim number assigned by the pool.
- d. Brief description of the accident or occurrence.
- e. Amounts paid, reserved, and any specific expenses chargeable to the loss.
- f. Amounts recoverable from insurance and from subrogation or direct efforts against another party.

- g. A description of the present status of a particular claim.

3. Certificates of Insurance

Hold-harmless agreements and insurance requirements in various contractual relationships are important. The insurance requirements, however, are only as good as the insurance actually maintained. Consistent and effective recording and updating procedures should be established to ensure that a proper insurance is carried. This topic will be discussed in a subsequent paragraph.

4. Procedure Manual

A procedure manual should be developed and distributed to the members involved in the pool. This manual should accomplish several purposes:

- a. Provide an easy-to-use reference for member personnel on procedures to follow when losses occur.
- b. Assign responsibility for the various functions of the pool to specific individuals.
- c. Focus the attention of the members on the risks of loss created by their activities and the suggested ways for dealing with these risks.
- d. Establish an efficient vehicle for communications between the pool Insurance Company and the individual members.

5. Reports

Regular summary reports should be made of the activities

of the pool. These reports should include:

- a. A loss summary, including type of loss, number of losses, total amount paid and average amounts paid.
- b. Summary of insurance premiums for all coverages and limits.
- c. Description of large, or unusual losses.
- d. Status of all self-insurance funds.
- e. Summary of claims and administrative costs and discussion of any problems.
- f. Summary of progress toward goals and objectives enumerated in previous reports.
- g. Statement of goals, objective and a plan of action for the future.

An annual report should also include a description of the costs allocated to the individual cities and how the costs are developed.

D. Loss Control

Inspections are frequently used as a basis for a sound loss control program. These inspections serve to identify loss exposures and develop methods to reduce or eliminate these exposures. The pool should incorporate a regular inspection program such that each member is inspected annually by competent loss control specialists.

E. Claim Control

One of the most important areas for cost control in a pooling arrangement is the handling of claims by the individual members and

by the claim adjusting firm employed by the pool. Currently, there is no consistent method of handling claims among the members studies. Practices should be reviewed and standardized as much as possible.

The responsibilities for a claim adjustment firm are varied and depend in part upon the member's demand for specific services.

Some of the more important of these services are:

1. Coordination with the individual cities and training of member employees in efficient claim reporting techniques.
2. Timely handling of minor claims by mail or telephone. Procedures should be established so no costly field work is needed for these minor claims.
3. Expert investigation of claims, conscious control of claim costs, and efficient timely settlement in as many cases as possible.
4. Expert individual control and supervision of those claims where litigation is involved.
5. Computerized loss reports which are provided to the members and include department involved, the cause, a reasonable reserve established by the claim adjuster, and amounts paid on the claim. These reports should be made available quarterly and in a format that is readable by the average member employee.
6. Overall quality claim handling with concentration on long-range savings.

A proposal from a claim adjusting firm should also include a list of current and recent public entity clients. By checking such references with other members, a better evaluation of the quality of service can be made.

Evaluation of a claim adjusting firm will be easier, if the proposal includes information about the firm's personnel, the services to be provided, a client list, a sample computerized loss report, a proposed contract, and a description of specific costs involved. Emphasizing quality rather than cost is a must in this critical cost control area.

F. Contract Review

One of the responsibilities of the pool should be legal contract review. Leases and other legal agreements can have serious implications for any risk management program.

The two elements which directly affect the risk management program are:

1. Hold-harmless clauses or indemnity agreements, in which one party passes off a portion or all of his legal liability to another party.
2. Insurance provisions, where one party may require the other to carry certain insurance, or may state that he will carry it himself.

Hold-harmless agreements can be divided into three categories:

1. The limited form, which merely states each party's willingness to assume his own liability.

2. The intermediate form, where the indemnitor not only states his common-law liability, but his intent to assume any liability where both parties may be involved.

3. Broad form of agreement, where the indemnitor assumes all liability, even that of the sole negligence of the indemnitee.

The pool should establish recommended standardized wording of hold-harmless agreements to be included in member contracts. The members' attorneys will wish to review these clauses as the program is established.

Insurance requirements are an extremely important part of any contract. No transfer of risk can be completely effective unless the accepting party has financial means for accepting the transfer. The insurance provisions must be correlated with the pool's existing insurance program in order to avoid unnecessary risks.

All insurance coverages should provide for at least a sixty-day written notice to the member for cancellation, non-renewal or major changes.

By using standardized wording and a consistent program of contract review by the participants, the individual members will be better protected from unforeseen losses arising out of contracts.

G. Insurance Marketing

There are several methods that could be used for arranging

excess insurance above the retention level of the pool arrangement.

These could include:

- The preparation of specifications and wide-open bidding.
- The preparation of specifications and restricted bidding through two or three brokers with assigned markets.
- The selection of a single broker and development of broad specifications which will be utilized by this single broker in the marketplace to develop the best possible program.
- With the second arrangement, the spirit of competition is preserved which should serve the best interest of the pool.

In a group consisting of a number of participants with each participant managed by a "committee", i.e., Commission or Council, the time required to reach a concensus on a project of this nature could be as long as three months. As a result, insurance markets should not be requested to offer quotations until a determination is made that the program can be initiated within thirty days of receiving the insurer's quotation.

H. Nonpooled Exposures

Since the pool initially will cover only normal public entity liability exposures, the members will continue to identify and treat those risks which are not insured by the pool, such as:

1. Direct damage to property owned or controlled by the member.
2. Extra expenses and other consequential losses that may be incurred by the members due to a direct damage loss.
3. Employee or third-party crime loss exposures.
4. Liability risks not included in the pool (aircraft, buses, etc.).

Since a substantial portion of each member's insurance budget would be transferred to the new pooling authority, the local agents income from the member account would be drastically reduced and he might no longer give the member the attention and interest it deserves.

This problem has two possible solutions:

1. Payment of a fee rather than a commission to the broker. The fee would be directly based on the services the broker provided and in accord with Nevada regulations.
2. Using a combined buying arrangement. All members would purchase these other policies from the same broker. A combined marketing effort could be especially beneficial in regard to the property insurance and the hard-to-place liability risks not covered by the pooling authority.

In addition to some of the same basic procedures which can be used to identify liability risks, the risks of direct damage to

the member's property can be evaluated through the use of a regularly updated inventory of the member's insurable values. Frequently, the values of property are established and never updated. In addition, risks arising out of specialized equipment, such as data processing equipment, boilers and other machinery, are not always separately identified. Assistance with the identification of these exposures by the pool will improve each member's risk management program. Because these services are clearly outside the basis purpose of the pool and will probably be used in varying degrees by the participating members, separate fees should be charged for these services.

APPENDIX B

SCR 37 QUESTIONNAIRE DATA

SCR 37-----QUESTIONNAIRES

<u>CODE</u>	<u>PUBLIC ENTITY</u>	<u>NUMBER SENT</u>	<u>NUMBER & PERCENTAGE RETURN</u>	
			<u>6-15-78</u>	
			<u>#</u>	<u>%</u>
100	County	17	14	82
200	City	16	13	81
300	Water District	7	5	71
400	School District	17	15	88
500	Hospital District	13	8	61
600	Fire Protection Dist.	9	4	44
700	Miscellaneous and School Districts	32	15	46
800	State of Nevada	Not Surveyed		
	TOTAL	111	74	66.6%

SCR 37 QUESTIONNAIRE DATA

COUNTY-----RETURNED

101	Elko
102	Washoe
103	Lander
104	Clark
105	Pershing
106	Esmeralda
107	Nye
108	Mineral
109	Carson City
110	Humboldt
111	Lyon
112	Storey
113	Douglas
114	Churchill

COUNTY-----NOT RETURNED

1.	Eureka
2.	Lincoln
3.	White Pine

COMPUTER SERIES NUMBER

100

SCR 37 QUESTIONNAIRE DATA

CITIES-----RETURNED

201	Boulder City
202	Reno
203	Winnemucca
204	Yerington
205	Lovelock
206	Carlin
207	Henderson
208	Elko
209	Gabbs
210	Sparks
211	Las Vegas
212	North Las Vegas
213	Caliente

CITIES-----NOT RETURNED

1.	Ely
2.	Fallon
3.	Wells

COMPUTER SERIES NUMBER

200

SCR 37 QUESTIONNAIRE DATA

WATER DISTRICTS-----RETURNED

- 301 Pershing County Water Conservancy District
- 302 Carson-Truckee Water Conservancy District
- 303 Carson Water Subconservancy District
- 304 Beatty Water and Sanitation District
- 305 Gardnerville Town Water

COMPUTER SERIES NUMBER

300

SCR 37 QUESTIONNAIRE DATA

SCHOOL DISTRICTS-----RETURNED

- 401 Washoe County School District
- 402 Humboldt County School District
- 403 Nye County School District
- 404 Elko County School District
- 405 Esmeralda County School District
- 406 Lyon County School District
- 407 Storey County School District
- 408 Mineral County School District
- 409 Clark County School District
- 410 Lander County School District
- 411 Pershing County School District
- 412 Churchill County School District
- 413 Carson City County School District
- 414 White Pine County School District
- 415 Lincoln County School District

SCHOOL DISTRICTS-----NOT RETURNED

- 1. Douglas County School District
- 2. Eureka County School District

COMPUTER SERIES NUMBER

400

SCR 37 QUESTIONNAIRE DATA

HOSPITAL DISTRICTS----RETURNED

- 501 Churchill Public Hospital
- 502 Southern Nevada Memorial Hospital
- 503 Lyon Health Center
- 504 Mt. Grant General Hospital and S.N.F.
- 505 Pershing General Hospital
- 506 Washoe Medical Center
- 507 Elko General Hospital
- 508 Humboldt General Hospital

COMPUTER SERIES NUMBER

500

SCR 37 QUESTIONNAIRE DATA

FIRE PROTECTION DISTRICTS-----RETURNED

- 601 Truckee Meadows Fire Protection District
- 602 North Lake Tahoe Fire Protection District
- 603 Kingsbury Fire Protection District
- 604 Lake Tahoe Fire Protection District

COMPUTER SERIES NUMBER

600

SCR 37 QUESTIONNAIRE DATA

MISCELLANEOUS AND SPECIAL DISTRICTS----RETURNED

- 701 Humboldt County Fair and Recreation Board
- 702 Reno Sparks Convention Authority
- 703 Walker River Irrigation District
- 704 Truckee-Carson Irrigation District
- 705 Silver Peak Television District
- 706 Goldfield Television District
- 707 Carson Industrial General Improvement District
- 708 East Fork Swimming Pool District
- 709 Round Hill General Improvement District
- 710 Housing Authority of Reno
- 711 Pershing County Fair and Recreation Board
- 712 Housing Authority of the City of North Las Vegas
- 713 Carlin Television District
- 714 Housing Authority of the City of Las Vegas
- 715 Clark County Sanitation District #1

COMPUTER SERIES NUMBER

700

APPENDIX C

INSURANCE COMPANIES OFFERING EXCESS UMBRELLA INSURANCE TO LOCAL
ENTITIES AND THOSE ENTITIES INSURED BY EACH

1. AMERICAN REINSURANCE
401 Washoe County School District
409 Clark County School District
412 Churchill County School District
2. CNA / INSURANCE COMPANY
404 Elko County School District
702 Reno Sparks Convention Authority
3. COLUMBIA CASUALTY
601 Truckee Meadows Fire Protection District
4. EMPLOYER REINSURANCE
601 Truckee Meadows Fire Protection District
5. FARMER'S EXCHANGE
206 Carlin
6. FARMER'S INSURANCE
408 Mineral County School District
7. FIREMAN'S FUND
103 Lander County
207 Henderson
410 Lander County School District
709 Round Hill General Improvement District
714 Housing Authority of City of Las Vegas

8. HARTFORD
201 Boulder City
208 Elko
402 Humboldt County School District
405 Esmeralda County School District
9. INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA
212 City of North Las Vegas
401 Washoe County School District
404 Elko County School District
409 Clark County School District
10. INTERNATIONAL SURPLUS LINES
403 Nye County School District
11. LINCOLN INSURANCE COMPANY
204 Yerington
12. LLOYDS
104 Clark County
409 Clark County School District
502 Southern Nevada Memorial Hospital
13. MAINE BONDING
104 Clark County
211 Las Vegas
14. MANHATTAN FIRE AND MARINE
704 Truckee-Carson Irrigation District
15. MIDLAND
102 Washoe County
110 Humboldt County
401 Washoe County School District
409 Clark County School District
16. MID-CENTURY
604 Lake Tahoe Fire Protection District

17. STONEWALL

101 City of Reno
102 Washoe County

APPENDIX D

INSURANCE COMPANIES OFFERING GENERAL AND AUTOMOBILE LIABILITY INSURANCE
TO LOCAL ENTITIES WITH THE ENTITIES INSURED BY EACH COMPANY

1. AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA
409 Clark County School District
2. THE AMERICAN INSURANCE COMPANY
204 Yerington
712 Housing Authority of the City of North Las Vegas
714 Housing Authority of the City of Las Vegas
3. CAL-FARM INSURANCE COMPANY
402 Humboldt County School District
4. CARSON DOUGLAS INDEPENDENT INSURANCE AGENTS
413 Carson City School District
5. CONTINENTAL CASUALTY
402 Humboldt County School District
6. CONTINENTAL INSURANCE COMPANY
101 Elko County
7. DRAKE INSURANCE COMPANY
212 City of North Las Vegas
8. FARMERS
501 Churchill Public Hospital
502 Southern Nevada Memorial Hospital
504 Mt. Grant General Hospital
505 Pershing General Hospital
731 Carlin Television District
9. FARMER'S EXCHANGE
206 Carlin

10. FIREMAN'S / AMERICAN INSURANCE
408 Mineral County School District
11. FIREMAN'S FUND INSURANCE
103 Lander County
105 Pershing County
107 Nye County
108 Mineral County
109 Carson County
203 Winnemucca
205 Lovelock
207 Henderson
210 City of Sparks
304 Beatty Water and Sanitation District
305 Gardnerville Town Water
410 Lander County School District
411 Pershing County School District
602 North Lake Tahoe Fire Protection District
603 Kingsbury Fire Protection District
709 Housing Authority of Reno
12. GLACIER GENERAL ASSURANCE COMPANY
508 Humboldt General Hospital
13. GREAT AMERICAN
110 Humboldt County
404 Elko County School District
14. GUARANTEE INSURANCE
104 Clark County
111 Lyon County
15. HARTFORD / ALPINE INSURANCE
710 Housing Authority of Reno
16. HARTFORD INSURANCE COMPANY
102 Washoe County
201 Reno
208 Henderson
210 City of Sparks
211 Las Vegas

16. HARTFORD INSURANCE COMPANY (cont'd)
- 123 City of Caliente
 - 301 Pershing County Water Conservancy District
 - 302 Carson-Truckee Water Conservancy District
 - 401 Washoe County School District
 - 405 Esmeralda County School District
 - 406 Lyon County School District
 - 407 Storey County School District
 - 415 Lincoln County School District
 - 601 Truckee Meadows Fire Protection District
 - 702 Reno Sparks Convention Authority
 - 710 Housing Authority of Reno
 - 711 Pershing County Fair and Recreation Board
 - 715 Clark County Sanitation District #1
17. HOME INSURANCE COMPANY
- 209 Gabbs
18. MARYLAND CASUALTY
- 704 Truckee-Carson Irrigation District
19. MONARCH INSURANCE COMPANY
- 403 Nye County School District
20. NATIONAL INDEMNITY
- 502 Southern Nevada Memorial Hospital
21. NEW HAMPSHIRE INSURANCE
- 409 Clark County School District
22. PACIFIC INSURANCE COMPANY
- 503 Lyon Health Center
 - 703 Walker River Irrigation District
23. SOUTH CAROLINA INSURANCE
- 106 Esmeralda County

24. STATE FARM
504 Mt. Grant General Hospital and S.N.F.
25. STONEWALL INSURANCE
202 City of Reno
26. TRUCK EXCHANGE
412 Churchill County School District
503 Lyon Health Center
507 Elko General Hospital
604 Lake Tahoe Fire Protection District
27. UNITED STATES FIRE & GUARANTEE
113 Douglas County
28. VALLEY INSURANCE AND REALTY
708 East Fork Swimming Pool District

APPENDIX E

INSURANCE COMPANIES OFFERING GROUP INSURANCE TO LOCAL ENTITIES
AND THOSE ENTITIES INSURED BY EACH

1. AETNA
 - 109 Carson City
 - 211 Las Vegas
 - 406 Lyon County School District
 - 409 Clark County School District
2. AMERICAN HERITAGE
 - 714 Housing Authority of City of Las Vegas
3. BENEFIT TRUST LIFE
 - 410 Lander County School District
4. CAL-WESTERN STATES LIFE INSURANCE COMPANY
 - 208 Elko
 - 302 Carson-Truckee Water Conservancy District
5. CONTINENTAL ASSURANCE COMPANY
 - 104 Clark County
 - 502 Southern Nevada Memorial Hospital
 - 715 Clark County Sanitation District No. 1
6. CROWN FINANCIAL SERVICES
 - 709 Round Hill General Improvement District
7. CROWN LIFE INSURANCE COMPANY
 - 603 Kingsbury Fire Protection District
 - 604 Lake Tahoe Fire Protection District
8. DELTA
 - 401 Washoe County

9. HOME LIFE INSURANCE

110 Humboldt County
403 Nye County School District
413 Carson City School District
508 Humboldt General Hospital

10. METROPOLITAN LIFE INSURANCE COMPANY

108 Mineral County
408 Mineral County School District

11. NEVADA BLUE SHIELD / BLUE CROSS

101 Elko County
102 Washoe County
105 Pershing County
106 Esmeralda County
201 Boulder City
203 Winnemucca
204 Yerington
205 Lovelock
206 Carlin
207 Henderson
209 Gabbs
210 Sparks
213 Caliente
301 Pershing County Water Conservancy District
401 Washoe County School District
405 Esmeralda County School District
411 Pershing County School District
414 White Pine County School District
503 Lyon Health Center
505 Pershing General Hospital
507 Elko General Hospital
601 Truckee Meadows Fire Protection District
702 Reno Sparks Convention Authority

12. NEW YORK LIFE

415 Lincoln County School District

13. OCCIDENTAL LIFE OF CALIFORNIA

402 Humboldt County School District
704 Truckee-Carson Irrigation District

14. PRUDENTIAL
 - 112 Storey County
 - 202 Reno
 - 407 Storey County School District
 - 501 Churchill Public Hospital
 - 710 Housing Authority of Reno
15. SAFECO LIFE INSURANCE COMPANY
 - 108 Mineral County
16. SENTRY LIFE INSURANCE COMPANY
 - 602 North Lake Tahoe Fire Protection District
17. TRAVELERS
 - 111 Lyon County
18. UNIVERSE LIFE INSURANCE COMPANY
 - 506 Washoe Medical Center
19. WASHINGTON NATIONAL INSURANCE COMPANY
 - 212 North Las Vegas
20. WESTERN BENEFIT TRUST LIFE INSURANCE
 - 103 Lander County
21. WESTERN LIFE
 - 404 Elko County School District

APPENDIX F

PERCENTAGE ANNUAL PREMIUM INCREASES (DECREASES)

100 COUNTY	<u>GENERAL LIABILITY</u>			<u>AUTOMOBILE LIABILITY</u>			<u>EXCESS/UMBRELLA COVERAGE</u>		
	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Elko	96.2	59.2	19.7	c	c	c	b	b	b
Washoe	13.5	222.7	5.3	57.3	17.7	(11.1)	182.3	266.8	12.6
Lander	118.4	305.4	0	64.9	40.4	56.9	87.6	75.8	2000 ^a
Clark	6.7	118.8	30.2	c	c	c	41.4	241	43.3
Pershing	325.9	119	n/a	103	65.1	n/a	b	b	b
Esmeralda	(39.2)	149	4.1	11.5	39.6	11.5	b	b	b
Nye	116.5	83.1	21.8	7.1	24.5	10.9	b	b	b
Mineral	318.9	76.4	(15.1)	27.4	37.9	(16.4)	b	b	b
Carson City	89.7	35.2	45.6	17.4	8.2	57.3	b	0	0
Humboldt	146.6	47.7	n/a	110.1	40.8	n/a	257.5	110.5	n/a
Lyon	138.1	72.3	53.8	82.6	54.8	19	b	311.7 ^d	0
Douglas	76.8	121.6	14.9	6.8	34.8	(23)	e	e	e
Churchill	0	(24)	e	(8.7)	(7.2)	e	b	b	b

a. No coverage in prior year

e. Not available from survey information

b. No coverage

c. Included in general liability

d. Raised limit to 3mm from 1mm

PERCENTAGE ANNUAL PREMIUM INCREASES (DECREASES)

<u>200 CITY</u>	<u>GENERAL LIABILITY</u>			<u>AUTOMOBILE LIABILITY</u>			<u>EXCESS/UMBRELLA COVERAGE</u>		
	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Boulder City	12.9	65.7	22.7	94.8	72.9	31.1	33.3	5250 ^a	b
Reno	(63.8) ^h	10.2	135.7	27.4	16.9	3.7	c	68	47
Winnemucca	57.1	78	15	c	c	c	b	b	b
Yerington	370	85	14.6	24	50.6	1.9	33.3	9.09	0
Lovelock	23.8	66.6	e	43.6	31.5	e	b	b	b
Carlin	e	e	e	e	e	e	e	e	e
☉ Henderson	50.8	6.8	n/a	64.4	88.2	n/a	102.8	50.6	e
Elko	119.5	15	n/a	16.6	37.09	n/a	88.2	50.2	e
Gabbs	30.5	3.3	n/a	30.6	5.4	n/a	b	b	b
Las Vegas	27.9	60.2	73.3	27.9	40.4	73.3	257.7 ^d	100	0
North Las Vegas	(42.2) ^f	122.3	20.7	(84.3) ^g	28.5	54.6	36.3	450	0

- a. No coverage in prior year
- b. No coverage
- c. Included in general
- d. Increased limit to \$5,000,000
- e. Not available from survey information
- f. Increased deductible from \$500 to \$50,000
- g. Increased deductible from \$250 to \$50,000
- h. Initiated \$100,000 deductible

PERCENTAGE ANNUAL PREMIUM INCREASE

<u>400</u> <u>SCHOOL DISTRICT</u>	<u>GENERAL LIABILITY</u>			<u>AUTOMOBILE LIABILITY</u>			<u>EXCESS/UMBRELLA COVERAGE</u>		
	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Washoe County	(10.5)	16.2	(14) ^d	21.3	52.3	(23) ^d	325.4	0	75.3
Humboldt County	41.5	49.8	(.9)	28.1	8.5	(5.2)	337.5	0	0
Nye County	(21.1)	(21.1)	25.6	15.2	110.5	(2.3)	5.4	38.4	0
Elko County	24.4	80.6	12.1	42.5	39.9	10.4	3.9	156.6	147.4
Esmeralda County	(29.9)	29.4	172.5	(6.2)	123	(20.8)	0	11.1	(3.8)
Lyon County	3.7	(2)	(22.1)	35.1	17.9	(1.4)	b	0	3.9
⁴⁰ Storey County	185.2	(69.5)	377.3	141.3	(25.1)	29.7	b	b	b
Mineral County	63.5	(47.8)	97.4	83	112.7	(8.3)	79.8	26.6	27.9
Clark County	7.1	150.9	28.9	207.6 ^g	(45.8) ^g	398.8 ^g	170.3	0	1076.7
Lander County	98.8	20.2	25.4	c	c	c	44.6	28.7	0
Pershing County	16.8	27.6	(16.8)	20.8	41.9	1.8	b	b	b
Churchill County	6.2	11.3	12.7	15.4	9.6	10.7	43.4	164.2 ^f	5.6
Carson City	21.9	12.7	0	50.6	11.4	(38.3)	e	e	e
White Pine County	e	e	e	e	e	e	e	e	e
Lincoln County	68.8	0	(55.5)	22.5	56	(12.8)	b	0	0

b. No coverage

c. Included in general liability

d. Reduced limit from \$2,000,000 to \$1,000,000

e. Not available from survey information

f. Additional limit of 3.5 million

g. Includes school bus premiums

APPENDIX G

GENERAL LIABILITY PREMIUMS AND LIMITS

<u>COUNTY</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>CURRENT LIMITS</u>
Elko (a)	65,436	33,347	20,935	300/300/100M
Washoe	111,300	98,044	30,377	1,000,000
Lander	10,797	4,934	1,217	1MM/100M
Clark (a)	475,000	445,100	203,388	1,000,000
Pershing	19,908	4,674	2,134	300/25M
Esmeralda	1,829	3,013	1,210	500,000
Nye	37,211	17,184	9,382	500,000
Mineral	38,369	9,158	5,189	100/300M
Carson City	93,000	49,000	36,220	500,000
Humboldt	19,622	7,972	5,394	300,000
Lyon	31,209	13,105	7,605	500,000
Douglas	23,119	13,073	5,888	1,000,000
Churchill	31,131	31,131	41,284	1,000,000

(a) Includes auto liability

GENERAL LIABILITY PREMIUMS AND LIMITS

<u>CITY</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>CURRENT LIMITS</u>
Boulder City	25,445	22,532	13,591	N/A
Reno	176,000 (a)	287,001	260,436	10,000,000
Winnemucca	36,458	23,199	13,032	1,000,000
Yerington	14,017	2,982	1,609	500,000
Lovelock	3,865	3,120	1,872	300/50M
Elko	21,004	9,569	8,317	500,000
Henderson	44,480	29,485	27,602	1MM/300M
Gabbs	2,598	1,990	1,921	300/300/25M
Sparks	23,647	19,169	14,440	250/500M
Las Vegas	250,499	195,782	122,192	500/500M
North Las Vegas	48,800 (b)	84,551	38,025	500,000

(a) Includes auto liability and initiated a \$100,000 deductible

(b) Deductible went from \$500 to \$50,000

APPENDIX II
INSURANCE PREMIUMS 1977
COUNTIES

	ELKO	WASHOE	LANDER	CLARK	PERSHING	ESMERALDA
Primary Liability	a					
General	\$ 49,077.00	\$111,300.00	\$ 10,797.00	\$482,800.00	\$ 19,908.00	\$ 1,829.00
Automobile	\ 16,359.00	37,749.00	13,268.00	b	4,561.00	4,681.00
SUB-TOTALS	65,436.00	149,049.00	24,065.00	482,800.00	24,469.00	6,510.00
Excess/Umbrella	-0-	87,531.00	6,600.00	124,500.00	-0-	-0-
TOTALS	65,436.00	236,580.00	30,665.00	607,300.00	24,469.00	6,510.00
Number Employees	158	1,420	90	3,686	60	48
Liability and Umbrella Premiums Per Employee	414.00	166.00	340.00	164.00	407.00	135.00
Total Vehicles	65	341	40	863	34	15
Automobile Insurance Per Vehicle	251.00	110.00	331.00	b	134.00	312.00
Annual NIC Payroll	2,536,289.00	18,000,000.00	786,688.00	51,094,257.00	629,757.00	237,918.00
Liability Insurance as Percentage of Payroll	.0257	.0131	.0389	.0118	.0388	.027

a) Breakdown is estimated since only a total was given

b) Covered in General Liability

c) Not available from survey information

NOTE: Several Counties do not carry Excess/Umbrella insurance. This may distort the Percentage of Payroll figures.

INSURANCE PREMIUMS 1977

COUNTIES

	NYE	MINERAL	CARSON CITY	HUMBOLDT	LYON	STOREY
Primary Liability						
General	\$ 37,211.00	\$ 38,369.00	\$ 93,000.00	\$ 19,622.00	\$ 31,209.00	c
Automobile	8,100.00	12,897.00	20,200.00	8,843.00	21,389.00	c
SUB-TOTALS	45,311.00	51,266.00	113,200.00	28,465.00	52,598.00	c
Excess/Umbrella	-0-	-0-	-0-	9,600.00	-0-	c
TOTALS	45,311.00	51,266.00	113,200.00	38,065.00	52,598.00	c
Number Employees	250	120	355	90	111	45
Liability and Umbrella Premiums Per Employee	181.00	427.00	318.00	423.00	473.00	c
Total Vehicles	102	105	153	70	120	27
Automobile Insurance Per Vehicle	79.00	122.00	132.00	126.00	178.00	c
Annual NIC Payroll	1,220,851.00	1,674,626.00	3,100,000.00	698,704.00	1,061,190.00	6,000.00
Liability Insurance as Percentage of Payroll	.0371	.0305	.0365	.0544		c

- a) Breakdown is estimated since only a total was given
- b) Covered in General Liability
- c) Not available from survey information

NOTE: Several Counties do not carry Excess/Umbrella insurance. This may distort the Percentage of Payroll figures.

INSURANCE PREMIUMS 1977

COUNTIES

	DOUGLAS	CHURCHILL	TOTALS
Primary Liability			
General	\$ 23,119.00	\$ 31,131.00	\$ 949,372.00
Automobile	7,810.00	5,939.00	161,796.00
SUB-TOTALS	30,929.00	37,070.00	1,111,168.00
Excess/Umbrella	-0-	-0-	228,231.00
TOTALS	30,929.00	37,070.00	1,339,399.00

Number Employees	203	184
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Liability and Umbrella Premiums Per Employee	152.00	201.00
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Total Vehicles	73	88
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Automobile Insurance Per Vehicle	106.00	67.00
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Annual NIC Payroll	c	1,078,012.00
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Liability Insurance as Percentage of Payroll	c	.0343
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- a) Breakdown is estimated since only a total was given
b) Covered in General Liability
c) Not available from survey information

NOTE: Several Counties do not carry Excess/Umbrella insurance. This may distort the Percentage of Payroll figures.

INSURANCE PREMIUMS 1977

CITIES

APPENDIX I

	BOULDER CITY	RENO	WINNEMUCCA	YERINGTON	LOVELOCK	CARLIN
Primary Liability		a	a			a
General	\$ 25,445.00	\$103,840.00	\$ 27,343.00	\$ 14,017.00	\$ 3,865.00	\$ 8,134.00
Automobile	17,387.00	72,160.00	9,116.00	2,892.00	2,198.00	2,711.00
SUB-TOTALS	42,832.00	176,000.00	36,459.00	16,909.00	6,063.00	10,845.00
Excess/Umbrella	7,000.00	b	-0-	800.00	-0-	-0-
TOTALS	49,832.00	176,000.00	36,459.00	17,709.00	6,063.00	10,845.00
Number Employees	92	909	47	20	21	32
Liability and Umbrella Premiums Per Employee	541.00	193.00	775.00	885	288	338.00
Number Licensed Vehicles	48	290	38	22	19	47
Automobile Insurance Per Vehicle	362.00	248.00	239.00	131.00	115.00	57.00
Annual NIC Payroll	1,689,441.00	16,268,892.00	614,361.00	224,214.00	170,775.00	c
Liability Insurance as Percentage of Payroll	.0294	.0108	.0593	.0789	.0355	c

a) Breakdown is estimated since only a total was given

b) Covered in General Liability Policy

c) Not available from Survey Information

NOTE: Several Cities do not carry Excess/Umbrella Insurance. This may distort the Percentage of Payroll figures.

INSURANCE PREMIUMS 1977

CITIES

	HENDERSON	ELKO	GABBS	LAS VEGAS	NORTH LAS VEGAS	SPARKS	TOTALS
Primary Liability							
General	\$ 44,480.00	\$21,004.00	\$ 2,598.00	\$250,499.00	\$48,800.00	\$23,547.00	\$573,572.0
Automobile	20,882.00	9,412.00	2,411.00	61,260.00	12,200.00	27,178.00	239,807.0
SUB-TOTALS	65,362.00	30,416.00	5,009.00	311,759.00	61,000.00	50,725.00	813,379.0
Excess/Umbrella	14,000.00	9,412.00	-0-	89,440.00	45,000.00	-0-	165,652.0
TOTALS	79,362.00	39,828.00	5,009.00	401,199.00	106,000.00	50,725.00	979,031.0
Number Employees	240	113	8	1,381	530	265	
Liability and Umbrella Premiums Per Employee	330.00	352.00	626.00	290.00	200.00	191.00	
Number Licensed Vehicles	106	65	11	338	225	131	
Automobile Insurance Per Vehicle	197.00	144.00	219.00	181.00	54.00	207.00	
Annual NIC Payroll	844,206.00	1,147,139.00	c	16,445,777.00	7,000,000.00	4,378,000.00	
Liability Insurance as Percentage of Payroll	.0940	.0347	c	.0243	.0151	.0115	

- a) Breakdown is estimated since only a total was given
- b) Covered in General Liability Policy
- c) Not available from Survey Information

NOTE: Several Cities do not carry Excess/Umbrella Insurance. This may distort the Percentage of Payroll figures.

GROUP INSURANCE COMPARISON - APPENDIX J

MONTHLY PREMIUM

BENEFITS

ENTITY COUNTY	CARRIER	EMPLOYEE	EMPLOYEE & ONE DEPENDENT	EE & MORE THAN ONE DEPENDENT	AMOUNT PAID BY EMPLOYER	AMOUNT PAID BY EMPLOYEE	BASIC MEDICAL	MAJOR MEDICAL	DENTAL	VISION	AD&D	TERM LIFE
Elko	Prudential	\$ 31.27	\$ 57.16	\$ 73.61	EE \$ 31.27	Dep. Coverage	X	X	X	X	X	X
Washoe	Nevada Blue Shield	43.98	85.30	102.03	EE 43.98	Dep. Coverage	X	X	None	X	X	X
Lander	Western Benefit Trust	26.67	53.72	71.68	EE 26.67	Dep. Coverage	X	X	None	None	X	X
Clark	Continental Assurance	52.91	91.77	125.92	EE 52.91	75% Dep. Cov.	X	X	X	None	X	X
Pershing	Nevada Blue Shield	29.97	44.42	74.39	EE 29.97	Dep. Coverage	X	X	None	X	X	X
Esmeralda	Nevada Blue Shield	34.38	43.04	77.42	EE 34.38	Dep. Coverage	X	X	None	None	X	X
Nye	Aetna	32.85	44.22	44.22	EE 32.85	Dep. Coverage	X	X	None	None	X	X
72. Mineral	Metropolitan Life/ Safeco Life	33.51	64.40	93.75	25.00	1 Dep. 39.40 More than one Dep. 68.75 EE 8.51	X	X	None	None	X	X
Carson	Aetna	33.91	67.73	93.13	EE 33.91	Dep. Coverage	None	X	X	None	X	X
Humboldt	Home Life	26.88	52.18	68.89	EE 26.88	Dep. Coverage	X	X	None	None	X	X
Lyon	Travelers	32.97	50.48		ALL	None	X	X	None	None	X	X
Storey	Prudential	41.66	93.63	93.63	EE 41.66	Dep. Coverage	X	X	None	None	X	X
Douglas	Aetna						X	X	None	None	X	X
Churchill	Voluntary Employee & Dependents Assoc.	35.00	64.00	81.00	EE 35.00	Dep. Coverage	None	X	None	None	X	X

GROUP INSURANCE COMPARISON

CITIES	CARRIER	MONTHLY BENEFITS						BENEFITS					
		EMPLOYEE	EMPLOYEE & ONE DEPENDENT	EE & MORE THAN ONE DEPENDENT	AMOUNT PAID BY EMPLOYER	AMOUNT PAID BY EMPLOYEE	BASIC MEDICAL	MAJOR MEDICAL	DENTAL	VISION	AD&D	TERM LIFE	
Boulder City	Nevada Blue Shield Medical Indemnity	\$ 27.42	\$ 54.39	71.08	EE 27.42	Dep. Cov.	X	X	None	None	X	X	
Reno	Prudential	28.24	59.32	86.35	b	c	X	X	None	None	X	X	
Winnemucca	Nevada Blue Shield	27.42	54.39	71.08	EE 27.42	Dep. Cov.	X	X	None	None	X	X	
Yerington	Nevada Blue Shield	27.42	54.39	71.08	All	None	X	X	None	None	X	X	
Lovelock	Nevada Blue Shield	27.42	54.39	71.08	EE 27.42	Dep. Cov.	X	X	None	None	X	X	
Carlin	Nevada Blue Cross/Blue Shield	27.42	54.39	71.08	EE 27.42	Dep. Cov.	X	X	None	None	X	X	
73. Henderson	Nevada Blue Shield	38.19	77.92	99.25	EE 38.19	Dep. Cov.	X	X	None	X	X	X	
Elko	Cal-Western State Life	42.55	90.46	123.77	EE 42.55	Dep. Cov.	X	X	None	None	X	X	
Gabbs	Nevada Blue Shield	27.42	54.39	71.08	EE 27.42	Dep. Cov.	X	X	None	None	X	X	
Sparks	(1) Nevada Blue Shield/Delta Dental & (2) Operating Engineers Trust Fund	59.27 69.00	116.67 92.00	146.93 115.00	65% Gross Premium 100.00	35% Gross Premium Remainder	X X	X X	X X	X X	X X	X X	
Las Vegas	Aetna	43.86	74.94	91.93	EE 41.56	Dep. Cov.	X	X	X	X	X	X	
No. Las Vegas	Washington Nat'l	23.19	33.49	53.49	EE 23.19	Dep. Cov.	X	X	None	None	X	X	
Caliente	Nevada Blue Shield	27.42	54.39	71.08	EE 27.42	Dep. Cov.	X	X	None	None	X	X	

a. Employee & Children 87.79 Employee/Spouse/Children 125.92

c. 0, 25 or 40% depending on contract

b. 100, 75 or 60% depending on contract

GROUP INSURANCE COMPARISON

COUNTY SCHOOL DISTRICTS	CARRIER	MONTHLY PREMIUM						BENEFITS					
		EMPLOYEE	EMPLOYEE & ONE DEPENDENT	EE & MORE THAN ONE DEPENDENT	AMOUNT PAID BY EMPLOYER	AMOUNT PAID BY EMPLOYEE	BASIC MEDICAL	MAJOR MEDICAL	DENTAL	VISION	AD&D	TERM LIFE	
Washoe	Blue Shield/Delta	34.80	57.80	87.34	EE 34.80	Dep. Cov.	X	X	X	None	X	X	
Humboldt	Occidental Life	33.33	62.36	84.62	EE 33.33	Dep. Cov.	X	X	None	None	X	X	
Nye	Home Life	30.55					X	X	X	None	X	X	
Elko	Western Life	26.64	65.40	65.40	EE 26.64	Dep. Cov.	X	X	None	None	X	X	
Esmeralda	Nevada Blue Shield	32.63	78.34	78.34	EE 32.63	Dep. Cov.	X	X	None	X	X	X	
Lyon	Aetna	34.12	81.40	81.40	EE 34.12	Dep. Cov.	X	X	None	None	X	X	
Storey	Prudential	36.80	67.57	85.42	EE 36.80	Dep. Cov.	X	X	X	None	X	X	
Mineral	Metropolitan Life	28.00	57.80	82.18	EE 28.00	Dep. Cov.	X	X	None	None	X	X	
Clark	Aetna (Certified)	40.91	67.09	78.95	EE 40.91	Dep. Cov.	X	X	None	None	X	X	
	(Classified)	40.91	67.09	78.95	31.30	9.61 + Dep. Cov.	X	X	None	None	X	X	
	(Administrator)	47.11	78.97	97.05	45.55	1.56 + Dep. Cov.	X	X	X	X	X	X	
Lander	Western Benefit	33.81	70.09	97.30	EE 33.81	Dep. Cov.	X	X	X	None	X	X	
Pershing	Nevada Blue Shield	29.97	72.39	72.39	EE 29.97	Dep. Cov.	X	X	None	X (e)	X	X	
Churchill	Aetna	33.28	78.00	78.00	EE 33.28	Dep. Cov.	X	X	None	None	X	X	
Carson City	Home Life	30.74	61.47	84.84	EE 30.74	Dep. Cov.	X	X	None	None	X	X	
White Pine	Nevada Blue Shield	39.95	95.01	95.01	EE 39.95	Dep. Cov.	X	X	None	None	X	X	
Lincoln	New York Life	36.68	92.46	92.46	EE 36.68	Dep. Cov.	X	X	None	None	X	X	

d) Employee & Child \$21.07
 e) Limited to Eye Exam

74.

III. NEVADA'S SOVEREIGN IMMUNITY DOCTRINE

NRS 41.0305 to 41.039, inclusive, which governs the liability of the state, its agencies and political subdivisions as defendants in actions sounding in tort, has been a viable doctrine in Nevada. Its viability has been reaffirmed by the Nevada Supreme Court several times in the past few years with the most recent affirmation being in Hagblom v. State Director of Motor Vehicles, (93 Nev. 599, 571 P.20 1172 1977).

Prior to 1965, the state and its political subdivisions could not be sued for a wrongful act or omission resulting from a governmental function except where authorized by law. In 1965, the legislature partially waived the immunity of the state and its political subdivisions. Briefly, the waiver allows:

- A. Governmental entities may be sued for all of their wrongful acts except as follows:
 1. No actions may be brought for a wrongful act or omission by the state, subdivision, officer or employee arising out of the execution of a statute or regulation, whether or not the regulation or statute is valid, if he is exercising due care, and no court has declared the statute or regulation to be invalid (NRS 41.032).
 2. No action may be brought for a wrongful act or omission arising from discretionary functions of the state, its agencies and subdivisions (NRS 41.032).
 3. No action may be brought for a wrongful act or omission arising from failure to inspect a building, structure, highway, vehicle or public work or failure to discover a defect, whether or not an inspection was made (NRS 41.033).
 4. No action may be brought for wrongful acts or omissions of members and employees of the National Guard, when on training or active duty, whether within or without the state (NRS 41.0333).
 5. Sheriffs are not liable for the acts of their deputies, and police chiefs are not liable for the acts of their officers, except for actions on bonds or insurance policies provided on behalf of persons who might be aggrieved or wronged (NRS 41.0335).

- B. Actions against officers, employees, legislators and other government functionaries may not be brought unless the state or the political subdivision for which the person was employed or held office is also named in the action. Unless the person acted outside the scope of his duties, the state or other government will undertake his defense through its chief legal officer, or by obtaining the services of counsel (NRS 41.0337).
- C. The state or appropriate political subdivision which employs the person or within which he holds office is required to indemnify the employee for judgments against him unless it establishes that:
1. He failed to cooperate in good faith in his defense; or
 2. That his conduct was wanton or malicious, in which case, the state or other entity is entitled to contribution from the person (NRS 41.0337).
- D. Court awards for damages in actions sounding in tort are limited to \$35,000 to or for the benefit of any claimant (NRS 41.035). This limit provides a shield against excessive recovery in most cases, but may be ineffective in the following types of cases:
1. An incident which gives rise to a cause of action in which more than one claimant is damaged, and which results in a \$35,000 judgment in favor of each plaintiff.
 2. An incident which gives rise to a cause against the governmental entity and several of its employees or officers, and which results in \$35,000 judgments against the entity and one or more employees or others, and for which the governmental entity must indemnify the employees or other persons.
 3. A case which has connections outside the state, and the other state takes jurisdiction, and refuses to recognize the "tort claims" section of NRS. (Hall v. University of Nevada, now pending in the California courts, has resulted in an award of \$1.1 million.)
- E. Administrative settlement for damages by the board of examiners, or if a political subdivision, by its governing body, if not otherwise fixed by statute up to \$25,000, plus interest computed from date of judgment. The statute (NRS 41.038) permits the state and local governments to protect themselves and their officers and employees by purchasing insurance, setting up funds for self-insurance, or other means. While the Supreme Court intimated in State v. Silva (86 Nev. 911, 1970) that purchasing insurance in ex-

cess of the \$35,000 limitation might be misuse of public funds, the authority contained in this section to protect officers and employees, with the possibility of more than one defendant contributing to a single plaintiff, and the inherent and well-understood possibility of multiple plaintiffs in a single action, probably grants sufficient authority to a government to foresee the possibility of larger judgments, and therefore permit them to insure against catastrophes.

While Nevada's sovereign immunity doctrine is viable, testimony given by legal counsel from Washoe and Clark Counties indicates that the current tort claim act does present some problems. The problems cited were:

1. The need for statutory guidelines to ascertain when a public officer or employee was acting in the course and scope of his employment.
2. Political subdivisions could be held responsible for damages in the event that an officer or employee having been certified for the defense by its chief legal officer as acting within the scope of his employment was found by the court as being outside the scope of his employment.
3. The "exercising due care" provision creates a liability category referred to as "public officials' malpractice."
4. The requirement for the chief legal officer to defend an officer or employee of the political subdivision when the political subdivision has purchased a liability insurance policy where the carrier will tender the defense.
5. The increased cost experienced by political subdivisions in defending against spurious lawsuits.

The following is a discussion of those problems cited above on which the subcommittee has recommended legislation to correct the problem:

The need for statutory guidelines to ascertain when a public officer or employee was acting in the course and scope of his employment.

The testimony presented indicated the majority of tort actions against state and political subdivision officers or employees alleged that the person had acted outside the scope of his employment or was not exercising due care. The discussion in this section will pertain to an officer or employee acting outside the scope of his employment. In alleging the tort occurred while the public officer or employee was acting outside

the scope of his employment, a suit may be brought against him for damages in excess of the statutory limit of \$35,000. In addition, the award could include exemplary and punitive damages.

The following are examples given by the Washoe County District Attorney's office of legal allegations or theories cited in claims and suits as acting outside the scope of one's employment:

1. That a public officer or employee has engaged in an intentional tort, such as intentionally refusing to issue a certain health grade to a restaurant, thereby frustrating the sale of the establishment.
2. That a public officer or employee of the county participated in a conspiracy or scheme to deprive a person of a constitutional right, such as the right to effective assistance of counsel, which actions occurred beyond the scope of the duties and public employment of the public officer in question.
3. That a public officer or employee acted in violation of a statute or law, such as a federal civil rights statute, by failing to comply with the express terms of a court order authorizing a wiretap.

The following are problems encountered when the above or comparable allegations are made:

1. The public entity must devote considerable time and funds to refute the allegations or ascertain if true. The amount of time and funds devoted is dependent upon whether or not the entity has a liability insurance policy.
2. Public entities' legal divisions are small and trained more for criminal activities than civil ones.
3. Insurance carriers either refuse to tender the defense of the county or defend with a "reservation of right." Under a "reservation of right," if the public officer or employee is found outside the scope of his employment, the insurance company is not liable for the judgment rendered; however, the local government could be liable with the possibility that damages could be awarded in excess of the \$35,000 statutory limit per claim.
4. An increasing number of lawsuits and claims alleging "outside the scope of employment" are being filed because of the public attitude that government can afford to be sued.

It was indicated by the state and some political subdivisions that the majority of the above claims and suits are generally denied.

It was suggested by local government legal officers that an officer or employee of a subdivision should be presumed to be acting within the scope and course of his employment in the absence of any finding that the officer or employee was guilty of oppression, fraud or malice. This could be accomplished by adding a new section to NRS 41 to include a "rebuttable presumption." A presumption would place the burden of proving that the defendant acted outside his employment firmly in the camp of the plaintiff. Currently, it is incumbent upon the state or political subdivision to prove that the officer or employee acted within the scope and course of his employment.

A new section in NRS 41 creating a "rebuttable presumption" would certainly assist local governments in reducing the time and money spent in defending lawsuits by requiring the plaintiff to show the officer or employee acted outside the scope of employment. A "rebuttable presumption" would make less common the situation in which a chief legal officer has certified the defense of an officer or employee, begun to defend, and is presented with a judicial or jury determination that the officer or employee was not actually within the scope of his duties. Such a determination might place the state or local government in the position of an adversary to the officer or employee, as the interest of the government would then be to show the officer or employee should be liable and not the government.

Therefore, it is the subcommittee's recommendation to amend chapter 41 of NRS to include a new section providing that upon certification of an officer or employee for the defense a rebuttable presumption would immediately arise that the officer or employee had acted within the scope and course of his employment when the tort occurs.

Political subdivisions could be held responsible for damages in the event that an officer or employee who had been certified for the defense by its chief legal officer as acting within the scope of his employment, but was found by the court as being outside the scope of his employment.

NRS 41.0337 states "No tort action arising out of an act or omission within the scope of his public duties or employment may be brought against any officer or employee, or former officer or employee, of the state or of any political subdivision or against any state legislator or former state legislator unless the state or appropriate political subdivision is named a party defendant under NRS 41.031." Additionally, NRS 41.0337

requires that an officer or employee who is included as a defendant in the tort action filed be certified for the defense by the chief legal officer of his political subdivision when, in the opinion of the chief legal officer, the officer or employee was acting within the scope of his duties. If certified, the officer's or employee's defense will be provided by the chief legal officer of the political subdivision. In the event the officer or employee is not certified, the person being sued must provide for his own legal counsel.

Many times, the question to certify is not clear. When this happens, the general rule followed is for the chief legal officer to certify the officer or employee for the defense. It was in these particular cases that local government legal officers expressed concern. The concern expressed was that subsection 9 of 41.0337 might be interpreted to require a local government to contribute toward or pay a judgment where the officer or employee had been certified within the scope of his employment but was found by the court to be outside the scope and course of his employment without wantonness or maliciousness; and, the judgment entered would not be limited to \$35,000.

Subsection 9 of NRS 41.0337 states "The state or appropriate political subdivision shall indemnify the officer, employee or legislator or former officer, employee or legislator unless it establishes that he failed to cooperate in good faith in the defense of the action or that his conduct was wanton or malicious, in which event it is entitled to contribution from such person."

This subsection makes the state and the political subdivisions the insurers of their officers and employees against tort actions when the officer or employee is performing his duties within the scope of his employment without malice or wantonness and when the officer or employee cooperates in good faith in his defense. However, according to testimony presented to the subcommittee, subsection 9 of NRS 41.0337 could possibly be misinterpreted to include indemnifying tort actions outside the scope of one's employment without malice or wantonness because the officer or employee had been certified for the defense as being within the scope of his employment.

The subcommittee, therefore, based on testimony presented, recommends that subsection 9 of NRS 41.0337 be clarified so indemnification by the state or a political subdivision of tort actions against their officers or employees be clearly limited to acts within the scope of their employment without wantonness or malice.

The requirement for the chief legal officer to certify and defend present and former officers or employees of the political subdivision even though the political subdivision has a liability insurance policy where the insurance carrier tenders the defense without a reservation of rights.

Subsection 2 of NRS 41.0337 states:

"The attorney general or, in the case of a political subdivision, the political subdivision shall provide for the defense, including the defense of cross-claims and counter-claims, of any officer or employee or former officer or employee of the state or political subdivision or against any state legislator or former state legislator in any civil action brought against such person in his official or individual capacity or both, if the person, within 10 days after a complaint has been filed against him, submits a written request for such defense:

- a. In the case of an elected officer or an agency head who has no administrative superior, to the attorney general or chief legal officer or attorney of the political subdivision; or
- b. In the case of any other officer or employee, to both his agency administrator and the attorney general or the chief legal officer or attorney of the political subdivision, and the case is certified for such defense. An agency administrator who receives a written request pursuant to this section shall within 15 days after such receipt notify the attorney general or, in the case of an agency administrator of a political subdivision, the chief legal officer or the attorney of the political subdivision, whether it appears that the act or omission of the person was in good faith and in the scope of the person's public duties or employment, and whether he certifies the case for defense...."

The above statute mandates the political subdivision must provide for the defense of an officer or employee upon a written request from the officer or employee and upon certification of the case for the defense by the chief legal officer. This provision creates a problem for political subdivisions that carry liability insurance to protect themselves, their officers and employees against any tort actions filed in accordance with NRS 41.031 to 41.038. One of the major purposes for purchasing liability insurance is to provide for the defense of tort actions pursuant to NRS 41.031 to 41.038 against the subdivision, its officers and employees by the insurance carrier. Although the phrase "provide for the defense" probably covers the above situation, it can present a conflict between the insurance carrier and the political subdivision in certifying and arranging for the defense of the officer or employee.

The subcommittee believes this problem can be remedied, and therefore recommends that NRS 41.0337 be amended to allow for suspension if a political subdivision has a liability insurance policy protecting itself, its officers and employees when named in any tort action filed pursuant to NRS 41.031 to 41.038.

The increased cost experienced by political subdivisions in defending against spurious lawsuits.

The award of court costs and attorney fees to a public body as the prevailing party in a lawsuit is discretionary with the courts. The testimony received by the subcommittee indicated that it is not the general practice of the courts to award costs to the prevailing public body. This, together with other resources cited early in this report, has fostered the filing of spurious lawsuits that have been increasing in recent years. For example, since the waiver of sovereign immunity, the state has had 540 tort actions filed with the board of examiners as of December 1977. The monetary damage requested by these tort actions is \$297,585,283 and the amount paid \$564,378. A review of the 540 claims shows that the majority of claims which have been filed with the board of examiners were denied and the claimant taking no further action. Currently, the state is receiving an average of two tort claims a week.

The increased number of claims and suits against local governments, many of them frivolous and groundless, has resulted in additional expense to them through higher liability insurance premiums, legal and court costs. This added cost has, in turn, increased the tax burden to citizens of local government.

The subcommittee believes the filing of spurious lawsuits would be reduced if the courts were statutorily directed to award actual costs incurred by local governments when defending against spurious lawsuits. Prior to filing of a lawsuit, the plaintiff and his counsel would evaluate and review the proposed lawsuit in greater detail to ascertain the merits and probability of being able to prove real damages and not just harassment of government or an attempt to obtain money.

The subcommittee, however, expressed several concerns about the mandatory award of court costs to local government for spurious lawsuits. These concerns were:

1. The chilling effect on persons who sincerely believed there were damages but because of their financial status and the possibility of losing the suit, would elect not to file a suit, and
2. Persons should be afforded the same treatment by the court if a public body were to file a spurious lawsuit against them.

The subcommittee believes these two concerns are important, and therefore, has taken them into account in the following recommendations:

1. Chapter 18 of NRS be amended to require the court to award actual costs incurred by a public body when defending against spurious lawsuits. The requirement to pay court costs should be based on the court finding that:
 - a. The action is frivolous, unreasonable or groundless.
 - b. The plaintiff continued to litigate after his action clearly became frivolous, unreasonable or groundless.
 - c. The action was brought in bad faith.
2. Chapter 18 of NRS be amended to require the court to award actual costs incurred by a person when defending against a spurious lawsuit brought against him by a public body.

In addition to the problems previously discussed, the political subdivisions and the subcommittee found Nevada's tort liability act somewhat confusing as to the extent of protection from civil liability the act affords. Of special interest was the protection the act affords to elected officials, appointed officials and employees when performing both governmental-proprietary functions and discretionary functions. At the request of Senator Dodge, legislative counsel provided a legal opinion to the subcommittee on the extent of protection from civil liability the Nevada tort liability act provides to the state and political subdivisions. The legislative counsel's legal opinion, which is shown immediately following the recommendations at the beginning of the study, has been made a part of this study in order to provide clarification and guidance to political subdivisions.

PROPOSED LEGISLATION

SUMMARY--Creates risk management division in department of administration. (BDR 18-1)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to state departments; establishing a risk management division in the department of administration; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 232.213 is hereby amended to read as follows:

232.213 1. The department of administration is hereby created.
2. The department consists of a director and the following divisions:

- (a) Budget division.
- (b) Personnel division.
- (c) Risk management division.

Sec. 2. NRS 232.215 is hereby amended to read as follows:

232.215 The director:

- 1. Shall appoint a chief of the personnel division [.] and a chief of the risk management division.
- 2. Shall appoint a chief of the budget division, or may personally serve in this position if he has the qualifications required by NRS 353.175.
- 3. Is responsible for the administration, through the divisions of the department, of the provisions of chapter 284 of NRS, NRS 353.150 to 353.246, inclusive, sections 4 to 6, inclusive, of this

act, and all other provisions of law relating to the functions of the divisions of the department.

4. Has such other powers and duties as provided by law.

Sec. 3. Chapter 331 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 9, inclusive, of this act.

Sec. 4. The chief of the risk management division shall:

1. Act as state risk manager.

2. Administer the provisions of law relating to his division, subject to the administrative supervision of the director of the department of administration.

3. Not engage in any other gainful employment or occupation.

Sec. 5. The state risk manager shall:

1. Direct and supervise all administrative and technical activities of the risk management division.

2. Determine the nature and extent of requirements for insurance, other than group life, accident or health insurance, on risks and property of the state and any of its agencies, the premiums for which are payable in whole or in part from public money.

3. Negotiate for, procure, purchase and have placed or continued in effect all insurance coverages, other than employee group life, accident or health insurance, which may be reasonably obtainable, whether from insurers authorized to transact business in this state or under the surplus lines provisions of chapter 685A of NRS.

4. Administer coverages on behalf of the insured agency or the state, including the making and settlement of loss claims arising under those coverages.

5. Conduct periodic inspections or appraisals of premises, property and risks to determine conditions affecting insurability, risk and premium rate, and submit a written report of each inspection and appraisal, together with his recommendations, if any, to the administrator of the agency which is in direct charge of the premises, property or risk, and to the director of the department of administration.

6. Perform the services enumerated in subsections 2 to 5, inclusive, of this section for any political subdivision of the state at the request of its governing body.

7. Act as adviser to the committee on group insurance.

8. Perform such other duties as the director of the department of administration may assign.

Sec. 6. In determining the need for, form and amount of insurance coverages, the state risk manager shall consider:

1. Omission of insurance coverage on property and risks for which insurance and claim adjustment costs would be disproportionately high in relation to the amount of risk.

2. Economies possible through the use of reasonable deductibles.

3. Use of comprehensive coverages and blanket coverages insuring property of two or more state agencies.

4. Reliability and financial condition of insurers, and the services which they provide.

5. Means whereby risks may be improved through reduction in insurance losses and costs.

Sec. 7. 1. There is created in the state treasury an insurance

premium revolving fund for the use of the budget division of the department of administration.

2. Each state agency shall deposit in the insurance premium revolving fund an amount equal to its insurance premium, as determined by the budget division.

3. Expenditures from the insurance premium revolving fund shall be made by the budget division of the department of administration for premiums of state agencies as they fall due.

Sec. 8. 1. Insurance recovery funds may be created in the state treasury. Except as provided in subsection 4, all money received from insurance companies in payment of losses incurred upon buildings and other property belonging to the state shall be deposited in insurance recovery funds.

2. Money in insurance recovery funds may be expended by the board, commission or officer having control or management of the buildings or other property damaged or destroyed for the repair, replacement or reconstruction of the damaged or destroyed property, and the money shall be paid out on claims as other claims against the state are paid.

3. Any unexpended amount remaining in an insurance recovery fund 3 years after the creation of the fund reverts to the general fund.

4. This section does not apply to money received from insurance companies in payment of losses incurred upon buildings and other property controlled and administered by the department of highways. Such money shall be deposited in the state highway fund.

Sec. 9. NRS 41.031 is hereby amended to read as follows:

41.031 1. The State of Nevada hereby waives its immunity from

liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive, or the limitations of NRS 41.010. The State of Nevada further waives the immunity from liability and action of all political subdivisions of the state, and their liability shall be determined in the same manner, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive.

2. An action may be brought under this section, in a court of competent jurisdiction of this state, against the State of Nevada, any agency of the state, or any political subdivision of the state. In an action against the state or any agency of the state, the State of Nevada shall be named as defendant, and the summons and a copy of the complaint shall be served upon the secretary of state. The secretary of state shall deliver a copy of the complaint to the risk management division of the department of administration.

3. The State of Nevada does not waive its immunity from suit conferred by Amendment XI of the Constitution of the United States.

Sec. 10. NRS 41.036 is hereby amended to read as follows:

41.036 1. No action [shall] may be brought under NRS 41.031 against a county without complying with the requirements of NRS

244.245 to 244.255, inclusive, or against a city without complying with the requirements of NRS 268.020, or against an unincorporated town without complying with the provisions of NRS 269.085, or against the state or any agency or other political subdivision of the state without complying with the requirements of subsection 2 or 3 of this section.

2. Every claim against the state arising out of contract shall be presented in accordance with the provisions of NRS 353.085 or 353.090, and every claim for refund in accordance with the provisions of NRS 353.110 to 353.120, inclusive. Every other claim against the state or any of its agencies shall be presented to the ex officio clerk of the state board of examiners within 6 months from the time the cause of action accrues. He shall within 10 days deliver a copy of the claim to the risk management division of the department of administration, and refer [each such] the claim to the appropriate state agency, office or officer for investigation and report of findings to the board. No action may be brought unless the board refuses to approve or fails within 90 days to act upon the claim.

3. Every claim against any other political subdivision of the state shall be presented, within 6 months from the time the cause of action accrues, to the governing body of that political subdivision. No action may be brought unless the governing body refuses to approve or fails within 90 days to act upon the claim.

Sec. 11. NRS 287.043 is hereby amended to read as follows:

287.043 The committee on group insurance shall:

1. Act as an advisory body on matters relating to group life, accident or health insurance, or any combination thereof, for the benefit of all such state officers and employees.

2. Negotiate and contract with the governing body of any public agency enumerated in NRS 287.010 which is desirous of obtaining group insurance for its officers and employees by participation in the state group insurance program.

3. Purchase policies of life, accident or health insurance, or any combination thereof, from any insurance company qualified to do business in this state for the benefit of all eligible state officers and employees who elect to participate in the state's group insurance program.

4. Consult the state risk manager and obtain his advice in the performance of the duties set forth in this section.

5. Adopt such regulations and perform such other duties as may be necessary to carry out the provisions of NRS 287.041 to 287.-049, inclusive.

Sec. 12. NRS 679B.120 is hereby amended to read as follows:

679B.120 [1.] The commissioner shall:

[(a)] 1. Subject to the provisions of NRS 232.250, organize and manage the division, and direct and supervise all its activities;

[(b)] 2. Execute the duties imposed upon him by this code;

[(c)] 3. Enforce the provisions of this code;

[(d)] 4. Have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of this code;

[(e)] 5. Conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he may deem proper upon reasonable and probable cause to determine whether any person has violated any provision of this code or to secure information useful in the law-ful enforcement or administration of any such provision; and

[(f)] 6. Have such additional powers and duties as may be provided by other laws of this state.

[2. The commissioner is empowered, subject to applicable laws of this state, to direct all insurance transactions between the state and insurers.]

Sec. 13. NRS 353.270, 353.273 and 353.275 are hereby repealed.

SUMMARY--Changes certain procedures for defending actions against public officers and employees. (BDR 3-87)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to actions concerning persons; extending the provisions for the indemnification of public officers and employees; providing for their defense by insurance carriers; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 41.0337 is hereby amended to read as follows:

41.0337 [1.] No tort action arising out of an act or omission within the scope of his public duties or employment may be brought against any officer or employee, or former officer or employee, of the state or of any political subdivision or against any state legislator or former state legislator unless the state or appropriate political subdivision is named a party defendant under NRS 41.031.

[2. The attorney general or, in the case of a political subdivision, the political subdivision shall provide for the defense, including the defense of cross-claims and counterclaims, of any officer or employee or former officer or employee of the state or political subdivision or against any state legislator or former state legislator in any civil action brought against such person in his official or individual capacity or both, if the person, within 10 days after a complaint has been filed against him, submits a written request for such defense:

(a) In the case of an elected officer or an agency head who has no administrative superior, to the attorney general or chief legal officer or attorney of the political subdivision; or

(b) In the case of any other officer or employee, to both his agency administrator and the attorney general or the chief legal officer or attorney of the political subdivision,

flush and the case is certified for such defense. An agency administrator who receives a written request pursuant to this section shall within 15 days after such receipt notify the attorney general or, in the case of an agency administrator of a political subdivision, the chief legal officer or the attorney of the political subdivision, whether it appears that the act or omission of the person was in good faith and in the scope of the person's public duties or employment, and whether he certifies the case for defense. In cases where the written request for defense must be submitted directly to the attorney general or chief legal officer or the attorney of the political subdivision, that officer shall determine within 15 days after receipt of the request whether it appears that the act or omission was in good faith and in the scope of the person's public duties or employment, and whether he certifies the case for defense. If the case is certified for defense, the attorney general or the chief legal officer or attorney of the political subdivision shall within 10 days determine whether his defense of the action would create a conflict of interest between the state or political subdivision and the person.

Just The initial written request extends the time to answer, move or otherwise plead to the complaint to 45 days after the date of service.

3. The attorney general or the chief legal officer or attorney of the political subdivision shall notify the present or former officer, employee or legislator as promptly as possible of the decision with respect to the defense of his case so that the person may if necessary procure his own counsel and prepare his own defense. Until the decision is made the attorney general or the chief legal officer or attorney of the political subdivision shall appear in the action and move or plead on behalf of the person. Refusal of the state or political subdivision to defend is not admissible in evidence at trial or in any other proceeding.

4. The attorney general may employ special counsel whose compensation shall be fixed by the attorney general, subject to the approval of the state board of examiners, if he determines that it is impracticable, uneconomical or could constitute a conflict of interest for the legal service to be rendered by him or one of his deputies. Compensation for special counsel shall be paid out of the reserve for statutory contingency fund.

5. The chief legal officer or attorney of a political subdivision may employ special counsel whose compensation shall be fixed by the governing body of the political subdivision if he determines that it is impracticable or could constitute a conflict of interest for the legal services to be rendered by him. Compensation for special counsel shall be paid by the political subdivision.

6. If the attorney general or the chief legal officer or attorney of a political subdivision does not provide for the defense of a present or former officer or employee of the state, or political subdivision or of a legislator and it is judicially determined that the injuries arose out of an act or omission of that person during the performance of his duties and within the scope of his employment, and that his act or omission was not wanton or malicious:

(a) If the attorney general was responsible for providing the defense, the state is liable to him for reasonable expenses in prosecuting his own defense, including court costs and attorney's fees. These expenses shall be paid, upon approval by the state board of examiners, from the reserve for statutory contingency fund; or

(b) If the chief legal officer or attorney of a political subdivision was responsible for providing the defense, the political subdivision is liable to him for reasonable expenses in prosecuting his own defense, including court costs and attorney's fees.

7. In every action or proceeding against an officer or employee, or former officer or employee of the state or any political subdivision or against any legislator or former legislator that results in a final judgment or other disposition, the court or jury shall return a special verdict in the form of written findings which determine:

(a) Whether such officer, employee or legislator was acting within the scope of his public duties or employment; and

(b) Whether the alleged act or omission by the officer, employee or legislator was wanton or malicious.

8. The state or appropriate political subdivision may not require a waiver of the attorney-client privilege as a condition of a defense pursuant to this section.

9. The state or appropriate political subdivision shall indemnify the officer, employee or legislator or former officer, employee or legislator unless it establishes that he failed to cooperate in good faith in the defense of the action or that his conduct was wanton or malicious, in which event it is entitled to contribution from such person.]

Sec. 2. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 8, inclusive, of this act.

Sec. 3. 1. The attorney general or, in the case of a political subdivision, the political subdivision shall provide for the defense, including the defense of cross-claims and counterclaims, of any officer or employee or former officer or employee of the state or political subdivision or of any state legislator or former state legislator in any civil action brought against that person in his official or individual capacity or both, if that person, within 10 days after a complaint has been filed against him, submits a written request for such defense:

(a) In the case of an elected officer or an agency head who has no administrative superior, to the attorney general or chief legal officer or attorney of the political subdivision; or

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(b) In the case of any other officer or employee, to both his agency administrator and the attorney general or the chief legal officer or attorney of the political subdivision, and the case is certified for such defense.

2. An agency administrator who receives a written request under the provisions of this section shall within 15 days after receiving it notify the attorney general or, in the case of an agency administrator of a political subdivision, the chief legal officer or the attorney of the political subdivision, whether it appears that the act or omission of the person was in good faith and in the scope of the person's public duties or employment, and whether he certifies the case for defense.

3. In cases where the written request for defense must be submitted directly to the attorney general or chief legal officer or the attorney of the political subdivision, that officer shall determine within 15 days after receiving the request whether it appears that the act or omission was in good faith and in the scope of the person's public duties or employment, and whether he certifies the case for defense. If the case is certified for defense, the attorney general or the chief legal officer or attorney of the political subdivision shall within 10 days determine whether his defense of the action would create a conflict of interest between the state or political subdivision and the person requesting defense.

4. The initial written request extends the time to answer, move or otherwise plead to the complaint to 45 days after the date of service.

5. The state or appropriate political subdivision may not require a waiver of the attorney-client privilege as a condition of a defense pursuant to this section.

Sec. 4. The attorney general or the chief legal officer or attorney of the political subdivision shall notify the present or former officer, employee or legislator as promptly as possible of the decision with respect to the defense of his case so that he may if necessary procure his own counsel and prepare his own defense. Until the decision is made the attorney general or the chief legal officer or attorney of the political subdivision shall appear in the action and move or plead on behalf of the person requesting defense. Refusal of the state or political subdivision to defend is not admissible in evidence at trial or in any other proceeding.

Sec. 5. 1. The attorney general may employ special counsel whose compensation shall be fixed by the attorney general, subject to the approval of the state board of examiners, if he determines that it is impracticable, uneconomical or could constitute a conflict of interest for the legal service to be rendered by him or one of his deputies. Compensation for special counsel shall be paid out of the reserve for statutory contingency fund.

2. The chief legal officer or attorney of a political subdivision may employ special counsel whose compensation shall be fixed by the governing body of the political subdivision if he determines that it is impracticable or could constitute a conflict of interest for the legal services to be rendered by him. Compensation for special counsel shall be paid by the political subdivision.

3. The attorney general or the chief legal officer or attorney of the political subdivision may provide for a defense by requiring an insurer who is obligated by contract to defend against the action to do so.

Sec. 6. If the attorney general or the chief legal officer or attorney of a political subdivision does not provide for the defense of a present or former officer or employee of the state, or political subdivision or of a legislator and it is judicially determined that the injuries arose out of an act or omission of that person during the performance of his duties and within the scope of his employment, and that his act or omission was not wanton or malicious:

1. If the attorney general was responsible for providing the defense, the state is liable to him for reasonable expenses in prosecuting his own defense, including court costs and attorney's fees. These expenses shall be paid, upon approval by the state board of examiners, from the reserve for statutory contingency fund; or

2. If the chief legal officer or attorney of a political subdivision was responsible for providing the defense, the political subdivision is liable to him for reasonable expenses in prosecuting his own defense, including court costs and attorney's fees.

Sec. 7. 1. In every action or proceeding against an officer or employee, or former officer or employee of the state or any political subdivision or against any legislator or former legislator that results in a final judgment or other disposition, the court

or jury shall return a special verdict in the form of written findings which determine:

(a) Whether the officer, employee or legislator was acting within the scope of his public duties or employment; and

(b) Whether the alleged act or omission by the officer, employee or legislator was wanton or malicious.

2. The state or appropriate political subdivision shall indemnify the officer, employee or legislator or former officer, employee or legislator unless it establishes that he failed to cooperate in good faith in the defense of the action or that his conduct was not within the scope of his public duties or employment, in which event it is entitled to contribution from him.

Sec. 8. In an action in which:

1. A public officer or employee is a defendant in his capacity as officer or employee; and

2. The officer or employee has been certified for defense by the attorney general or the chief legal officer or attorney of the political subdivision of which he is an officer or by which he is employed,

Just the officer or employee is presumed to have been acting within the scope of his duties or employment.

Sec. 9. NRS 353.264 is hereby amended to read as follows:

353.264 1. The reserve for statutory contingency fund is hereby created as a trust fund.

2. The reserve for statutory contingency fund shall be administered by the state board of examiners, and the [moneys] money in the fund shall be expended only for:

(a) The payment of claims which are obligations of the state under NRS [41.0337,] 41.037, 176.485, 179.310, 212.040, 212.050, 212.070, 214.040, 282.290, 282.315, 293.253, 293.405, 353.120, 353.262 , [and] 412.154 [;] and sections 5 and 6 of this act; and

(b) The payment of claims which are obligations of the state under NRS 7.125, 176.223, 177.345, 179.225, 213.153 and subsection 4 of NRS 361.055, but such claims shall be approved for the respective purposes listed in this paragraph only when the money otherwise appropriated for such purposes has been exhausted.

SUMMARY--Allows costs in cases involving public bodies. (BDR 2-88)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial
Insurance: No.

AN ACT relating to court costs; providing for the allowance of costs to the prevailing party in suits involving the state or a political subdivision; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 18.020 is hereby amended to read as follows:

18.020 Costs shall be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property.
2. In an action to recover the possession of personal property, where the value of the property amounts to \$300 or over; the value shall be determined by the jury, court or master by whom the action is tried.
3. In an action for the recovery of money or damages, where the plaintiff recovers \$300 or over.
4. In a special proceeding.
5. In an action which involves the title or possession of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a [justice] justice's court.

6. In an action sounding in tort in which the state or any political subdivision is a plaintiff or defendant, upon a finding by the court that:

(a) The action is frivolous, unreasonable or groundless;

(b) The plaintiff continued to litigate after the action clearly had become frivolous, unreasonable or groundless; or

(c) The action was brought in bad faith.