# MINUTES OF THE MEETING
# OF THE
# LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION
## (*Nevada Revised Statutes* 218.5375)
## March 10, 2000
## Las Vegas, Nevada

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The third meeting of the Legislative Committee on Workers' Compensation (*Nevada Revised Statutes* [NRS] 218.5375) for the 1999-2000 interim was held on Friday, March 10, 2000, at 8 a.m., in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and videoconferenced to the Legislative Building, Room 3138, 401 South Carson Street, Carson City, Nevada. Pages 2 and 3 contain the "Meeting Notice and Agenda."

**COMMITTEE MEMBERS PRESENT IN LAS VEGAS:**

Assemblyman David R. Parks, Chairman
Senator Margaret A. Carlton, Vice Chairwoman
Senator Ann O'Connell
Assemblyman Lynn C. Hettrick
Assemblywoman Gene Wines Segerblom

**COMMITTEE MEMBERS ABSENT:**

Senator Dean A. Rhoads
Senator Randolph J. Townsend
Assemblyman David E. Goldwater

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Vance A. Hughey, Principal Research Analyst
Crystal M. McGee, Senior Research Analyst
Sue S. Matuska, Senior Deputy Legislative Counsel
Susan Furlong Reil, Senior Research Secretary

## MEETING NOTICE AND AGENDA

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| Name of Organization: | Legislative Committee on Workers' Compensation (*Nevada Revised Statutes* [NRS] 218.5375) |
| Date and Time of Meeting: | Friday, March 10, 2000<br>8 a.m. |
| Place of Meeting: | Grant Sawyer State Office Building<br>Room 4401 |

555 East Washington Avenue
Las Vegas, Nevada

Note: Some members of the committee may be attending the meeting and other persons may observe the meeting and provide testimony, through a simultaneous videoconference conducted at the following location:

Legislative Building
Room 3138
401 South Carson Street
Carson City, Nevada

*If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative Web site is http://www.leg.state.nv.us. For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."*

## A G E N D A

I. Opening Remarks and Introductions
Assemblyman David R. Parks, Chairman

II. Report Regarding the Legislative History and Administration of Subsequent Injury Funds
Sue S. Matuska, Senior Deputy Legislative Counsel, Legislative Counsel Bureau
Crystal M. McGee, Senior Research Analyst, Legislative Counsel Bureau

III. Report on Recommendations Concerning Occupational Safety and Health Inspections
A. Recommendations Concerning Procedures for Occupational Safety and Health Inspections and Resulting Fines and Penalties
B. Recommendations Concerning the Communication of Certain Information Regarding Safety and Health Inspections to the Nevada Legislature and the Federal Occupational Safety and Health Administration
Senator Maurice E. Washington, Washoe County District No. 2

IV. Report on Proposals Concerning Industrial Insurance
A. Proposal to Prohibit an Injured Worker from Receiving Temporary Total Disability Benefits if He is Receiving Retirement Benefits or is Receiving a Salary During a Temporary Period When Not Working
B. Proposal to Restrict a Claimant Seeking Workers' Compensation to Objective Medical Evidence Only When Establishing That an Industrial Injury has Occurred and to Prohibit Compensation for Injuries Which Occur When an Employee is at Lunch or When Otherwise Not Engaged in Job-Related Activities
C. Proposal to Require a Claimant Seeking Compensation for a Newly-Developed Medical Condition to Prove that the Condition is the Result of a Prior Industrial Injury
D. Proposal to Prohibit a Person Who is Receiving Retirement Benefits from Receiving Vocational Rehabilitation Benefits
E. Proposal to Specify That Employees Who Have Contracted a Contagious Disease are Not Eligible for Accident Benefits Under the Industrial Insurance Act Unless They Were Providing Medical Services as Part of Their Job Duties
F. Proposal to Prohibit Employees Discharged for a Cause Unrelated to the Industrial Injury from Receiving Temporary Total Disability Benefits
L. Steven Demaree, Assistant General Counsel, Clark County School

District

*V. Report and Recommendation Regarding the Blood Test Required to Screen for Contagious Disease to be Provided by the Employer of a Police Officer or Fireman as Required by NRS 616C.052
Roger M. Belcourt, M.D., Medical Director, Saint Mary's Comp First

VI. Public Comment

VII. Adjournment

*Denotes items on which the committee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Susan Furlong Reil at (775) 684-6825 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue.

## OPENING REMARKS AND INTRODUCTIONS

Chairman Parks called the meeting to order at 8:21 a.m. He announced the removal of Agenda Item IV, "Report on Proposals Concerning Industrial Insurance," from the Committee's agenda.

At the direction of the Chairman, the Committee's secretary called roll; all members were present except Senator Rhoads, Senator Townsend, and Assemblyman Goldwater. Chairman Parks indicated that Legislative Counsel Bureau (LCB) staff assisting the Committee at the meeting were Crystal M. McGee, Senior Research Analyst, Research Division; and Sue S. Matuska, Senior Deputy Legislative Counsel, Legal Division. Vance A. Hughey, Principal Research Analyst, Research Division, LCB, was present in Carson City.

## REPORT REGARDING THE LEGISLATIVE HISTORY AND ADMINISTRATION OF SUBSEQUENT INJURY FUNDS

***Sue S. Matuska***

Sue S. Matuska, Senior Deputy Legislative Counsel, Legal Division, LCB, Carson City, provided the Committee with a letter regarding the legislative history on the statutes that govern subsequent injury funds in Nevada (Exhibit A), and covered the following points:

- The first subsequent injury fund was created in 1973 with the enactment of Assembly Bill 27 (Chapter 468, *Statutes of Nevada 1973*, at page 693), which "establishes subsequent accident account of the State Insurance Fund of the Nevada Industrial Commission and provides for charges thereto," for the purpose of encouraging employers to hire workers who had previously suffered a permanent physical impairment. Because Nevada had a state monopoly on the provision of industrial insurance at that time, a subsequent injury account was created within the state insurance fund. In order for an employer to obtain credit against the subsequent injury account, the following conditions had to be met:

  1. A subsequent injury had to be substantially greater by reason of the combined effects of the preexisting impairment and the subsequent industrial injury;

  2. The preexisting impairment had to support a rating of 12 percent or more of the whole person according to

certain American Medical Association guidelines;

3. An employer was required to demonstrate that it had knowledge of the employee's preexisting injury at the time of hiring or that the employee was retained in employment after the employer learned of the preexisting condition; and

4. Certain procedural requirements with respect to notification had to be followed.

- In 1979, the Legislature enacted legislation authorizing self-insurance in Nevada effective January 1, 1980, under Assembly Bill 84 (Chapter 533, *Statutes of Nevada 1979*, at page 1035), which "permits self-insurance of workmen's compensation risks; modifies administrative procedures." Because self-insured employers would not obtain workers' compensation benefits from the state insurance fund, and not, therefore, from the subsequent injury account, the Legislature also included a provision in the new law requiring Nevada's Commissioner of Insurance to establish a subsequent injury fund for self-insured employers that was separate from the state insurance fund. Further, the Legislature directed the Commissioner of Insurance to assess self-insured employers a fee to support the fund. The 1979 legislation also created an additional standard for obtaining benefits from the subsequent injury funds, enabling an employer to qualify for coverage of a subsequent injury claim if the employer could demonstrate that an employee failed to report or denied impairment on a written application for employment.

- Senate Bill 548 of the 1981 Session (Chapter 642, *Statutes of Nevada 1981*, at page 1449), which "reorganizes [the] system of labor and industrial insurance," made substantial revisions to Nevada's industrial insurance system, including the creation of the State Industrial Insurance System (SIIS). The measure also eliminated the subsequent injury account within the state's industrial insurance fund and removed the provision that had required the Commissioner of Insurance to maintain a subsequent injury fund for self-insured employers. In place of these mechanisms, the Legislature established one subsequent injury fund to be administered by Nevada's Division of Industrial Insurance Regulation and directed that both self-insured employers and SIIS pay assessments to fund this program. Finally, the bill provided that $100,000 from the state insurance fund, along with those funds that had been paid into the self-insured employers' special revenue account, be transferred to this new subsequent injury fund.

- A minor statutory change passed in 1985 with the enactment of Assembly Bill 25 (Chapter 102, *Statutes of Nevada 1985*, at page 372), which "removes provisions which unconstitutionally delegate legislative authority," specified which version of the *American Medical Association Guides to the Evaluation of Permanent Impairment* must be used in determining permanent impairment ratings.

- Two bills passed in 1987 that amended the statutes governing subsequent injury funds.

1. Assembly Bill 488 (Chapter 201, *Statutes of Nevada 1987*, at page 452), which "revises provisions relating to claims to be paid from subsequent injury fund," changed the standard for receiving subsequent injury fund benefits in those instances where an employee had failed to report his or her physical impairment to the employer. The bill created a three-part test for determining eligibility for the subsequent injury fund:

   (a) The employee knowingly or willfully made a false representation as to his or her physical impairment;

   (b) That false representation was relied upon by the employer; and

   (c) A causal connection could be established between the false representation and the subsequent injury.

2. Another measure, Senate Bill 555 (Chapter 415, *Statutes of Nevada 1987*, at page 944), which "requires payment from subsequent injury fund of claim for additional compensation under industrial insurance," modified the statutory provisions with respect to fund payments to reflect that the full amount of compensation due must be charged to the fund. The prior language had required that compensation be fairly allocated between the insurer and the fund.

- Several measures were passed during the 1991 Legislative Session (Assembly Bill 391 [Chapter 191, *Statutes of Nevada 1991*, at page 362], which "revises definition of permanent physical impairment for purpose of charging

compensation to subsequent injury fund"; Assembly Bill 422 [Chapter 228, *Statutes of Nevada 1991*, at page 454, which "makes various technical amendments to Nevada Revised Statutes"; Senate Bill 7 [Chapter 723, *Statutes of Nevada 1991*, at page 2388], which "makes various changes relating to industrial insurance and other rights of employees"; and Senate Bill 264 [Chapter 122, *Statutes of Nevada 1991*, at page 206], which "clarifies status of certain funds and accounts administered by state agencies"). Most notably, for a permanent physical impairment, the required permanent impairment level was reduced from 12 percent to 6 percent. (See Assembly Bill 391 [Chapter 191, *Statutes of Nevada 1991*, at page 362].) The purpose of this reduction was to further encourage employers to hire workers with physical impairments and to provide additional coverage for those employers. Further, the statute was amended to specify that the subsequent injury fund was a "trust fund." (See Senate Bill 246 [Chapter 122, *Statutes of Nevada 1991*, at page 206], which "creates board of occupational therapy and provides for licensing of occupational therapists and occupational therapy assistants.")

- Senate Bill 316 of the 1993 Session (Chapter 265, *Statutes of Nevada 1993*, at page 657), made "various changes to provisions governing industrial insurance," encompassing major revisions to the industrial insurance system as follows:

  1. The SIIS was removed from the subsequent injury fund and instead allowed to account for subsequent injuries within its own accounting system.

  2. Existing statutes were amended (a) to limit subsequent injury fund assessments to self-insured employers; and (b) effective July 1, 1995, to require that both self-insured employers and associations of self-insured public or private employers, which were first authorized in S.B. 316, would be assessed for the subsequent injury fund.

  3. Also included in S.B. 316 was a transitory provision which provided that any payments that were being disbursed from the subsequent injury fund for claims filed by employers insured by SIIS had to terminate on the effective date of the section, June 18, 1993. Further, the director of Nevada's Department of Industrial Relations was instructed to conduct an audit and return to SIIS any excess monies in the subsequent injury fund in an amount equal to the portion of assessments paid into the fund by the system. In a memorandum from the former Administrator of the Department of Industrial Relations, the Legislature was advised that approximately $9 million had been returned to SIIS pursuant to this provision.

  In summary, in 1993, Nevada again had one subsequent injury account maintained by SIIS and another for self-insured employers. Effective July 1, 1995, associations of self-insured public or private employers were to be added to the fund for self-insured employers.

- The Legislature created two separate subsequent injury funds during the 1995 Session in Senate Bill 458 (Chapter 587, *Statutes of Nevada 1995*, at page 2122, which "makes various changes to provisions relating to industrial insurance," as amended by Senate Bill 359 of the 1997 Legislative Session, Chapter 203, *Statutes of Nevada 1997*, at page 508), one for self-insured employers and another for associations of self-insured public or private employers. In addition, the Legislature established boards to administer the subsequent injury funds for self-insured employers and for associations of self-insured public or private employers. The Administrator of the Division of Industrial Relations (DIR), Nevada's Department of Business and Industry, evaluates all of the subsequent injury fund boards' decisions, and any complaint regarding those decisions may be appealed directly to district court.

  Senate Bill 458 of the 1995 Session (Chapter 587, *Statutes of Nevada 1995*, at page 2122, as amended by Senate Bill 359 of the 1997 Legislative Session, Chapter 203, *Statutes of Nevada 1997*, at page 508) created a subsequent injury fund for private insurers effective July 1, 1999, when private carriers entered Nevada's marketplace for industrial insurance. The Legislature also directed the Administrator of DIR to administer the private insurers' subsequent injury fund and to assess the private carriers a fee to provide money for the fund. Complaints regarding decisions of the Administrator of DIR with respect to the private carriers' subsequent injury fund may be appealed to an appeals officer.

- Two minor changes were enacted in 1997 with regard to the laws governing subsequent injury funds. Senate Bill 164 (Chapter 66, *Statutes of Nevada 1997*, at page 118) redesignated the funds from "trust funds" to "special revenue funds." Assembly Bill 609 (Chapter 410, *Statutes of Nevada 1997*, at page 1423), which "makes various changes to provisions governing industrial insurance," specified that SIIS was not required to adopt regulations to

administer its subsequent injury fund accounting.

- In 1999, Senate Bill 37 (Chapter 388, *Statutes of Nevada 1999*, at page 1756), which "makes various changes regarding industrial insurance," authorized SIIS to transfer all its assets and liabilities to a newly established domestic mutual insurance company. At that time, all references to the system were removed from statute, and the section that had allowed SIIS to administer its own subsequent injury account was repealed.

***Crystal M. McGee***

Crystal M. McGee, Senior Research Analyst, Research Division, LCB, Carson City, discussed current administration and policy issues concerning subsequent injury funds. She provided the Committee with a printed copy of her presentation, "Subsequent Injury Funds (SIFs)" (Exhibit B) together with a number of supporting documents. Please see also Exhibits C, D, E, and F. Ms. McGee covered the following points:

- Legislation has been introduced in the past to either eliminate or phase out subsequent injury funds. During the 1997-1999 interim, the Legislative Committee on Workers' Compensation adopted a recommendation to phase out subsequent injury funds, which became Senate Bill 42 of the 1999 Session, proposing to revise "provisions governing payment of workers' compensation for subsequent injuries from subsequent injury funds." This measure did not pass.

  The Legislative Committee on Industrial Insurance (Senate Bill 7, Chapter 723, *Statutes of Nevada 1991*) adopted a recommendation to eliminate the subsequent injury funds. This recommendation, introduced during the 1993 Session as Assembly Bill 268, also failed to pass.

- There are two basic purposes for subsequent injury funds: (1) encourage employers to hire and retain workers with physical impairments; and (2) provide economic relief to employers who hire workers with physical impairments when such workers are subsequently injured.

- Prior to the creation of subsequent injury funds, when an injury occurred to a previously handicapped worker in the course and scope of employment, resulting in either an increased impairment or a permanent total disability, the employer was required to pay for the combined resulting disability.

- With the exception of the State of Wyoming, which as no statutory provisions regarding subsequent injury funds, every other state in the nation has, at one time, enacted some form of subsequent injury legislation.

- Nevada currently has three subsequent injury funds for: (1) associations of self-insured public or private employers; (2) private carriers; and (3) self-insured employers. The workers' compensation assessment for all three funds is administered through DIR.

- The subsequent injury fund for self-insured employers is administered by a five-member board. The members of the board are appointed by the Governor. Patricia Walquist currently chairs this board.

- All employers who have contributed to the subsequent injury fund for self-insured employers via payment of a workers' compensation assessment are listed in the Subsequent Injury Analysis (Exhibit C). A review of this analysis reveals that during Fiscal Years (FY) 1996 through 1998, only 30 employers—or less than 10 percent of the subsequent injury fund's contributors—accessed the fund for reimbursement.

- The subsequent injury fund for associations of self-insured public or private employers is also administered by a board of five members. Board members are appointed by the Governor. Lowell Chicester chairs the board at this time. There is currently one vacancy on the board.

- Nevada has 14 associations of self-insured public or private employers that provide industrial insurance coverage to approximately 1,000 employers. As of February 25, 2000, no claims have been approved under the subsequent injury fund for associations of self-insured public and private employers; however, three claims have been submitted for consideration. The board has withheld action on these claims pending the Governor's appointment of a fifth board member.

- The Administrator of DIR administers the subsequent injury fund for private carriers. As of the end of February 2000, no claims have been filed against this fund. Since private carriers have participated in Nevada's workers' compensation market for only eight months, it may be too early determine the extent to which this group will utilize the fund.

- There are basic criteria that all employers—whether a member of an association, insured by a private carrier, or self-insured—must meet in order to qualify for a reimbursement under a subsequent injury fund. Please see copies of the statutes dealing with subsequent injury funds (Exhibit D). Specifically, an employer must meet each of the following conditions in order to qualify for reimbursement from a subsequent injury fund:

  1. Compensation due the injured employee for the subsequent injury must be substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than from the subsequent injury alone. For example, a diabetic employee falls and twists his ankle at work, resulting in a mild sprain, but the employee's disability is substantially increased due to the preexisting condition, diabetes. Therefore, the combined effects of the diabetes and the sprain are substantially greater than the impact of the sprain alone.

  2. The injured employee must have a preexisting physical impairment of 6 percent or more prior to the date of the injury.

  3. An employer must establish by written records that he had knowledge of the preexisting impairment at the time of hire or that the employee was retained in employment after the employer acquired such knowledge.

  4. The employer must notify the appropriate board or administrator of the subsequent injury fund of a possible claim against the fund within 100 weeks of the date of the subsequent injury.

- Instances where an employee has made a false representation about his or her disability are also addressed in statute in order to ensure that employers are covered by the fund.

- By 1999, eight states—Alabama, Florida, Kansas, Kentucky, Maine, Minnesota, New Mexico, and South Dakota—had eliminated or phased out their subsequent injury funds. With the exception of Wyoming, which has no statutory provisions concerning subsequent injury funds, all other states in the nation have at least one subsequent injury fund. Nevada is the only state with more than one subsequent injury fund.

- In recent years, several national organizations have supported the elimination of subsequent injury funds, including the American Insurance Association (AIA); the Insurance Institute of America; the National Council of Self-Insurers; and Unemployment & Workers' Compensation (UWC).

- While certain states have eliminated their funds, others have retained their funds. For example, South Carolina reviewed its subsequent injury fund to determine whether it met its original intent and decided to retain the fund, which continues to operate today.

- The AIA recommends that states abolish their subsequent injury funds for four basic reasons:

  1. The funds deviate from the principle that an employer's costs should be internalized rather than spread over a number of employers.

  2. Subsequent injury funds have not met their objective of promoting the hiring of disabled workers.

  3. Many funds have accumulated large unfunded deficits.

  4. The funds create administrative costs, disputes, and promote attorney involvement.

- It is the position of the AIA that the Americans with Disabilities Act of 1990 (ADA) provides a more direct and certain remedy for promoting the employment of disabled workers. Please see Exhibit E.

- The ADA makes it unlawful for employers to discriminate in their employment practices against a qualified individual with a disability. Effective July 1994, the ADA applies to employers with 15 or more employees.

Please see Exhibit F for information regarding Title I of the ADA, which discusses employer regulations.

- While subsequent injury funds provide a financial incentive for employers to hire handicapped individuals, the ADA mandates employers not to discriminate in their employment practices.

- Many supporters of eliminating subsequent injury funds assert that with the enactment of the ADA, employers are no longer able to discriminate against disabled workers. Hence, there is no longer a need to provide employers with a financial incentive to hire disabled workers. Since Nevada's statute requires that an employer must establish written records that it had knowledge of an employee's preexisting impairment at the time of hire or at the time the employee was retained when the employer learned of the preexisting condition, employers may have some concern regarding their ability to meet the requirement of establishing these written records while at the same time complying with ADA. For example, employers must document the employee's preexisting condition in order to qualify for subsequent injury fund benefits, but the ADA specifically prohibits employers from inquiring about a job applicant's medical condition or medical history in its preemployment examinations.

- While an employer may not ask an applicant whether he or she has a disability and may not inquire as to the nature or severity of a disability, it may make preemployment inquiries as to the ability of an applicant to perform certain job functions, e.g., an individual who applies for a construction position can be asked if he or she is able to climb scaffolding.

- Employers may use a post-employment health questionnaire in order to determine if an employee has any preexisting condition that might later result in an injury that qualifies for reimbursement from the subsequent injury fund. The employer must keep the information obtained in such a post-employment questionnaire confidential.

- After the passage of the ADA, the International Association of Industrial Insurance Accident Boards and Commissions (IAIABC) established a working group to study the impact of the ADA on subsequent injury funds. This working group was unable to reach a conclusion, and a final report was never published.

- The State of South Carolina reviewed and ultimately decided to retain its subsequent injury fund. Doug Crossman, Director of South Carolina's second injury fund and chairman of the IAIABC working group on subsequent injury funds, recommends that other states reviewing their funds consider the following:

  1. The cost of subsequent injury funds should be spread across all employers.

  2. The accounts of employers who qualify for reimbursement from subsequent injury funds should be adjusted accordingly.

  3. If a subsequent injury fund is not fulfilling its purpose, the fund should be eliminated or, in the alternative, necessary corrections should be made to the fund to ensure that it operates as originally intended.

- If the Committee chooses to continue its study of subsequent injury funds, possible recommendations it may make are to phase out the funds, make administrative changes to the funds, or retain the funds as they currently operate. The Committee should consider the following in its deliberations:

  1. Utilization of Subsequent Injury Funds—During FYs 1996 through 1998, less than 10 percent of contributors to the subsequent injury fund for self-insured employers accessed the fund. The Committee may find it useful to review the experience of other states to determine whether this level of participation is typical of that seen in other funds across the country.

     In addition, only three claims have been submitted to the subsequent injury fund for associations of self-insured public or private employers. It is difficult to determine whether the number of claims submitted is a true indication that the fund is being poorly utilized. One possible explanation for the low number of claims is that the issue of joint and several liability among association members may discourage employers from filing claims against the fund.

     Because private carriers have been operating in the workers' compensation market for only eight months, it is

too early to determine the extent to which they will access subsequent injury fund benefits.

2. Administration of Subsequent Injury Funds—At the Committee's January 14, 2000, meeting, the DIR expressed a desire to simplify the administration of Nevada's subsequent injury funds. Consolidation of the three existing funds into a single fund is one option that could accomplish that goal.

3. Accessing the Funds—The extent to which employers are aware of the existence of the subsequent injury funds and their operation is uncertain, and there is concern that many of them lack the knowledge necessary to access the funds. Testimony during the Committee's January 14, 2000, meeting revealed that most employers with hiring authority have no knowledge of subsequent injury funds.

   With regard to self-insured employers, those companies using an experienced and aggressive third-party administrator (TPA) may be more likely to file a claim against a subsequent injury fund than a self-insured employer who is administrating its own claims and may have limited knowledge of the funds.

4. Removal of a Charge From an Employer's Account—The statute is silent concerning the removal of a charge from the account of an employer insured by a private carrier. According to DIR, once an employer is approved for reimbursement from the private carrier subsequent injury fund, the DIR issues a check to the insurer. However, there is no mechanism currently in place to ensure that the employer's account with the private carrier is properly adjusted. It is the position of the DIR that ensuring that the employer's account is properly adjusted is not within its purview under the existing statute.

   The expired SIIS subsequent injury statute specifically addressed the removal of a charge from the employer's account when qualifying for reimbursement from the subsequent injury fund.

Concluding her presentation, Ms. McGee offered to research any issues that might assist the Committee in its review of the subsequent injury fund mechanism.

Assemblyman Hettrick complimented Ms. Matuska and Ms. McGee for their presentations and expressed his support for employing disabled workers. Referencing Ms. McGee's statement that employers with aggressive TPAs are more likely to access subsequent injury funds, he pointed out that three companies whose combined assessments totaled approximately $586,000 received almost two-thirds of the $6.9 million in benefits paid from the fund. Please see Exhibit C. Further, he noted that while 10 percent of the participating companies may have accessed this fund, a much smaller percentage—probably only one-tenth of 1 percent—received two-thirds of the money. Mr. Hettrick complimented the efforts of the three companies that are aggressively accessing the self-insured employers' subsequent injury fund, but opined that when three companies receive two-thirds of the total payouts, it is clear that the subsequent injury fund mechanism is not functioning as originally intended.

Continuing, Assemblyman Hettrick pointed out that in light of the ADA rules which prohibit an employer from asking a prospective employee questions of a medical nature, it is often impossible for an employer to know in advance that an employee might later qualify for a subsequent injury reimbursable injury. He also questioned how many employers are aware that they should conduct a post-employment health survey to determine whether a new employee might later qualify for a subsequent injury reimbursable injury. For these reasons, Assemblyman Hettrick is of the opinion that subsequent injury funds must either be eliminated or substantially improved to provide fair access to all employers.

Ms. McGee reported that Cindy Jones, Chief Administrative Officer, Administrative Services Unit, DIR, Carson City, tried to determine commonalities among the 30 employers that have accessed the self-insured employers' subsequent injury fund and found that 17 of the 30 companies were represented by 2 TPAs—12 by CDS of Nevada (CDS) and 5 by Marvel Business Systems.

Vance A. Hughey, Principal Research Analyst, Research Division, LCB, Carson City, directed the Committee's attention to the fourth item on page 21 of Ms. McGee's presentation, which states, "The statute is silent concerning the removal of a charge from an employer's account for employers insured by private carriers." Please see Exhibit B. Mr. Hughey reported that Cliff King, Supervisor, Property and Casualty Section, Division of Insurance, Nevada's Department of Business and Industry, Carson City, has indicated that the National Council on Compensation Insurance, Inc.'s (NCCI) manual contains some provisions regarding this topic. Therefore, this issue

may not require the Committee's attention.

Responding to a question from Senator Carlton regarding the manner in which subsequent injury fund assessments are determined, Ms. Matuska indicated that it is her understanding that the DIR considers an employer's anticipated draws against the fund and its expenditures for the previous two years. With this information, the DIR is able to create an average and multiply that against the budgeted amounts. Ms. Matuska suggested that the Committee request that DIR address this question for a more thorough explanation of the assessment process.

Senator Carlton also questioned whether the subsequent injury fund assessments would be eliminated if the Committee recommended that the funds be abolished. Ms. Matuska stated that it is her understanding that the assessments cover several costs, e.g., the workers' compensation fund, the uninsured employers fund, and the subsequent injury fund. She is of the opinion that if the subsequent injury funds were eliminated by the Legislature, the assessment would be decreased by the amount that had been levied for that particular fund. She also pointed out that in terms of drafting a bill draft request (BDR), even if the Committee were to recommend elimination of the funds, it is likely that provisions for a phase-out of the program would be required in order to meet the needs of those claims that have ongoing costs. Ms. Matuska again suggested that the Committee may want to request the DIR to comment on this issue.

Continuing, Senator Carlton indicated that in her view, providing all Nevada employers, regardless of size, with equal opportunity to access the subsequent injury funds is of paramount importance. She agreed with Assemblyman Hettrick that the subsequent injury funds cease to accomplish their purpose when only a small number of employers utilize them, particularly when reimbursements to these employers exceed their contributions. Further, she suggested that the Committee might need to explore the possibility of requiring proportionate use of the funds by participating employers.

Assemblyman Hettrick agreed with Senator Carlton's comments. Referencing Exhibit C, he pointed out that the cost of accessing a subsequent injury fund is often greater than the actual assessment paid by an employer. For example, Aetna Life and Casualty paid an assessment of $11 in 1996 and $11 in 1998. Were Aetna to seek reimbursement from the subsequent injury fund, the cost of processing such a claim would easily exceed its assessments. He also expressed concern that when assessment adjustments are made, they do not adequately compensate for an employer's claims. He noted that one company paid $184,000 in assessments and in turn received $1.6 million from the subsequent injury fund. The following year, the assessment for this same company decreased to $37,000 while it received $245,000 from the fund. The company's assessment increased to $46,000 the next year, and it received $100,000 in subsequent injury fund benefits. The following year, the company's assessment increased to $100,000 and it received $340,000 from the fund. Further, he opined that it is not possible to develop a formula that is equitable to all employers.

Senator O'Connell requested that Ms. McGee research the history of South Carolina's subsequent injury fund and its decision to retain that fund. Specifically, she requested that Ms. McGee: (1) determine if subsequent injury fund education programs have been implemented for employers; and (2) review both the state's assessment procedure and the mechanisms established to provide employers with access to the fund. In addition, Assemblyman Hettrick asked that Ms. McGee: (1) determine what percentage of South Carolina's employers access its subsequent injury fund; (2) review any employer education programs currently in place in South Carolina; and (3) evaluate whether a link exists between employer education and fund utilization.

***John F. Wiles***

John F. Wiles, Division Counsel, DIR, Henderson, Nevada, expressed the DIR's support for a study of Nevada's subsequent injury funds. He reported that Roger Bremner, Administrator, DIR, Carson City, is of the opinion that all options presented to the Committee should be explored, including: (1) the potential elimination of the funds; or (2) revision of the provisions governing the funds to reduce administrative expenses associated with the funds and ensure a more uniform application among employers.

Senator O'Connell questioned whether subsequent injury funds are mentioned as part of DIR's regular safety training for employers. Responding, Mr. Wiles indicated that it is his understanding that the subsequent injury fund mechanism is not a topic that is discussed during the DIR's safety training.

Chairman Parks requested that any parties with proposals concerning subsequent injury funds contact Ms. McGee to ensure that the recommendations will be addressed during the Committee's work session.

## REPORT ON RECOMMENDATIONS CONCERNING OCCUPATIONAL SAFETY AND HEALTH INSPECTIONS

### *Maurice E. Washington*

Maurice E. Washington, Nevada State Senator, Washoe Senatorial District No. 2, Sparks, Nevada, offered a number of recommendations regarding occupational safety and health. Please see Exhibit G. Senator Washington prefaced his remarks by stating that all technical questions on this topic should be directed to Crystal M. McGee, Senior Research Analyst, Research Division, LCB, Carson City, who provided staff support during the process of developing his recommendations. The recommendations contained in Exhibit G appear below in italics and precede the testimony and Committee discussion.

1. *Adopt a resolution encouraging the Occupational Safety and Health Administration (OSHA) of the United States Department of Labor to consider the cost to employers of complying with certain safety and health standards.*

Senator Washington reported that according to an estimate provided by Michael Lynch, Government Affairs Director, Builders Association of Northern Nevada, Reno, Nevada, the price of a new home in 1998 increased about $700 due to costs associated with adhering to fall protection standards. Mr. Lynch further estimated that in 1998, contractors in Clark County, Nevada, and Washoe County, Nevada, spent approximately $30 million and $2.8 million, respectively, to comply to fall protection standards.

Senator Carlton asked Senator Washington if he could provide the Committee with a detailed list of the costs associated with each safety requirement that must be met in the construction of a residential dwelling. Senator Washington explained that the meetings he facilitated focused primarily on fall protection safety equipment. Ms. McGee agreed that the information presented by Mr. Lynch at the informational meetings was specific to fall protection, and she offered to contact him to obtain a more detailed list of the costs associated with safety compliance.

Senator O'Connell asked if employers with exceptional safety programs realize a reduction in their industrial insurance rates. She also questioned whether the employers who testified at the meetings facilitated by Senator Washington considered the cost of a worker's injury as compared to the cost of preventative measures such as providing safety equipment and establishing an effective safety program. Senator Washington agreed that preventative health and safety measures do reduce an employer's "up front" costs. He pointed out, however, that testimony at the informational meetings revealed that many employees refuse to wear the safety equipment because, in their view, it is cumbersome and would either hinder their work performance or expose them to additional risk of injury.

Chairman Parks questioned whether Mr. Lynch's estimate that Clark County contractors spent $30 million to comply with fall protection standards in 1998 includes commercial and retrofit construction projects. He pointed out that approximately 22,000 new homes were built in the Las Vegas area, and if fall protection standards added $700 to the cost of each of these new homes, compliance with these standards would have totaled approximately $15.4 million for Clark County. Senator Washington expressed regret that Mr. Lynch, who provided the figures cited, was not available to respond to Assemblyman Parks' question; however, he assumes that Mr. Lynch's estimate does include commercial and retrofit construction projects.

Senator Washington requested that Trisha Bullentini of Martin Iron Works be allowed to respond more fully to Senator O'Connell's inquiries regarding the cost and effectiveness of safety measures.

### *Trisha Bullentini*

Trisha Bullentini, Martin Iron Works, Inc., Reno, explained that Martin Iron Works fabricates and erects steel structures. She related six incidents where a worker's safety was impacted by his decision whether to utilize safety equipment:

1. Roy, an employee of Martin Iron Works, was wearing his fall protection equipment, consisting of a full body harness and a lanyard. As the lanyard was only six feet in length, he found it necessary to disconnect himself before climbing down the ladder. Because the fall protection equipment is heavy, he did not have full range of movement and consequently fell from the ladder. He sustained bruises to his body.

2. Sam, another employee of Martin Iron Works, also disconnected his lanyard in order to climb down a ladder. He fell and sustained injuries to his right arm and elbow.

3. Vincent, who worked for another company, connected his lanyard (or "tied off") to a cable that circled the entire building. Unbeknownst to him, the cable was loose. Believing he was secured to the cable, he looked over the edge of the building and fell, sustaining serious injury.

4. Another Martin Iron Works employee, Ray, was secured to a man basket. When the man basket was lowered to the ground, Ray attempted to exit, forgetting that he was still tied to the basket. He fell back and hit his head on the rail of the basket, sustaining head injuries.

5. A connector is a worker who connects pieces of steel. The OSHA requires that when a crane is lowering a load of steel, the connector must wear fall protection equipment and be secured to the steel. In this instance, a load of steel was lowered more quickly than it should have been, and the connector, Richard, was able to move to safety only because he was not secured to the steel. Had Richard been secured to the steel, he would have been crushed by the weight of the steel beam that was dropped.

6. In 1982, OSHA regulations did not require that connectors be secured to the steel. As in the previous case, the crane operator again lowered a load of steel more quickly that he should have. The connector was knocked into the hole and shattered his hip. Had this worker been secured to the steel, he would have likely sustained fatal injuries.

Ms. Bullentini expressed a desire to have employees appear before the Committee and relate their personal work experiences. Concluding her remarks, she stated that she is unaware of a single instance where fall protection equipment has saved the life of an employee. Ms. Bullentini pointed out that the costs per employee for fall protection equipment range from $80 to $100 for harnesses; $40 to $50 for basic lanyards; and $500 to $5,000 for retractable lanyards. It is the position of Martin Iron Works that significant funds are expended on safety equipment that causes injuries rather than saving lives.

Responding to a question from Senator O'Connell, Ms. Bullentini stated that even though Martin Iron Works complies fully with OSHA standards, its workers' compensation premiums have not been reduced. The fall protection equipment has caused industrial injuries, raising the company's experience modification factor.

2. *Enact legislation to provide that the Nevada Operations Manual of the Occupational Safety and Health Enforcement Section (OSHES), Division of Industrial Relations (DIR), Nevada's Department of Business and Industry, must be adopted as a regulation.*

Senator Washington indicated that many contractors first learned of the existence of the *Nevada Operations Manual* and its use by safety and health inspectors when they attended the informational meetings regarding fall protection standards. He explained that requiring that the *Nevada Operations Manual* be adopted as a regulation would accomplish two goals: (1) it would impose a duty upon DIR to provide interested parties with an opportunity to comment publicly on the proposed regulations; and (2) it would make the manual publicly available as part of the *Nevada Administrative Code* (NAC).

3. *Enact legislation to require OSHES to seek guidance from a panel of industry experts regarding fall protection standards and inspection of residential construction sites.*

Senator Washington reported that some contractors who testified at the informational meetings on fall protection standards were of the opinion that inspectors do not possess the working knowledge and practical experience needed to inspect various aspects of a residential construction work site, e.g., an inspector who is inspecting a roof should have roofing experience.

*4. Enact legislation that would prohibit DIR from imposing a penalty for a safety violation if the employer can prove that the employee in question was properly trained in safety matters and was provided with the required safety equipment, but refused to use the safety equipment.*

In support of Recommendation 4, Senator Washington indicated that testimony at the informational meetings that he facilitated revealed instances where contractors provided employees with the appropriate safety equipment and training, yet were fined when these workers refused to comply with OSHA standards. It is the position of some contractors that so long as an employer provides the proper equipment and training to the employee, the employer should not be held responsible for the actions of "rogue" employees.

Chairman Parks asked if documented evidence exists of employees' refusal to wear safety equipment. He also inquired whether improper use of equipment has been an issue. Responding, Senator Washington reported that testimony at the informational meetings indicated that employers are sometimes fined because of an employee's improper use of safety equipment. Continuing, he indicated that it is his understanding that some contractors and the Nevada Chapter of the Associated General Contractors may have documentation of "rogue" employees refusing to utilize the safety equipment that has been provided to them by their employers.

*5. Enact legislation to provide a schedule of base fines for various safety and health violations that is dependent on the category of the violation (similar to the schedule provided for determining penalties for hazardous material violations under NRS 459.3874 [attached]). In addition, include a matrix of multipliers, determined by the size of the employer (based on the number of employees). The fine will be determined by multiplying the base fine by the multiplier. The OSHES inspector may reduce the fine based on the good faith of the employer and the employer's history of previous violations, but cannot increase the fine.*

Senator Carlton commented that it is her understanding that the Nevada state plan will be approved shortly by OSHA. She questioned whether changing the penalty process at this juncture would impact Nevada's ability to obtain approval of the state plan from OSHA. Senator Washington explained that the purpose of Recommendation 5 is to refine the penalty process so that it is consistent and fair to all parties. He opined that the employer, employee, and inspector should each be able to determine the potential penalty for any given violation. Testimony at the informational meetings on fall protection standards revealed that in some instances, the penalties assessed by inspectors did not, in the opinion of the contractors, accurately reflect the seriousness of the violation. In his view, providing a schedule of base fines for various safety and health violations in statute would ensure that penalties are consistent and fairly applied to all parties. Ms. McGee added that based on her conversations with John F. Wiles, Division Counsel, DIR, it is her understanding that if the Legislature were to enact such legislation, Nevada would be required to obtain approval with respect to the resulting changes in the state's safety and health plan from OSHA.

***John F. Wiles***

Mr. Wiles provided clarification on some of the issues before the Committee, covering the following points:

- Nevada has a health and safety plan in effect; however, it has not yet received final approval from OSHA.
- The Occupational Safety and Health Act of 1970 (OSH Act) provides the minimum safety and health standards which must be enforced throughout the country unless a state is able to demonstrate that the standards it develops, with federal approval, are at least as effective as the federal standards. Federal occupational safety and health standards are currently enforced in Nevada.
- Nevada's penalty structure is modeled after that of OSHA and considers the same factors.
- The OSHA must approve virtually all changes to Nevada's safety and health plan.

Assemblyman Hettrick invited Mr. Wiles to comment on the training of occupational safety enforcement officials and the types of inspections they conduct. Mr. Wiles prefaced his response by stating that this issue is currently being litigated in a lawsuit challenging many aspects of Nevada's state safety and health plan. It is the position of DIR that the training programs it has instituted provide OSHES inspectors with the qualifications necessary to meet the requirements set forth in statute. He noted that if his understanding of Senator Washington's recommendation is

correct, inspectors would be required to possess a working knowledge of the field they are inspecting, e.g., in order to enforce roofing-related standards, the inspector first would need to demonstrate work experience in the application of roofing materials. In the view of DIR, this interpretation of the statute is incorrect in that the agency is responsible for enforcing standards.

Referencing Recommendation 1, and assuming there is validity to allegations that some safety equipment causes accidents, Senator O'Connell questioned how the DIR is able to evaluate the cost to employers of complying with certain safety and health standards when industrial insurance premiums are based on an employer's experience. Mr. Wiles opined that these issues have already been addressed. The OSHA has a comprehensive process for developing safety and health standards; it studies accident trends in the industry, designs appropriate and feasible corrective measures, and evaluates the cost of complying with those standards on a particular industry. At the state level, Assemblyman David E. Goldwater introduced Assembly Bill 486 (Chapter 443, *Statutes of Nevada 1999*), which "requires certain governmental entities to consider impact of regulations on small businesses and rules on businesses." In his view, carrying out the intent of A.B. 486 will be a difficult process requiring a great deal of input from regulated industries.

Assemblywoman Segerblom questioned the anticipated approval date for Nevada's safety and health plan. Mr. Wiles explained that it has taken a number of years to finalize Nevada's current safety and health plan, and it is now pending final approval. It is anticipated that the United States Assistant Secretary of Labor will be in Nevada on April 17, 2000, to make a presentation that will finalize the process, giving Nevada a fully approved state plan under the OSH Act.

Assemblyman Hettrick invited Mr. Wiles to comment on Recommendation 2 regarding adoption of the *Nevada Operations Manual* as a regulation. Mr. Wiles explained that the *Nevada Operations Manual* is patterned after OSHA's manual and is similar in content to a policies and procedures manual. The manual sets forth the manner in which penalties are calculated and contains other provisions that may be appropriate to review as possible regulations; however, the manual itself is not enforced. The *Nevada Operations Manual* is used as a "guidebook" by the DIR, and all state safety and health plans have such a manual. The United States Secretary of Labor has not adopted the federal manual as regulation; in addition, no other state in the country has adopted its manual as regulation. It is the position of DIR that adoption of the *Nevada Operations Manual* as regulation would cause the state's plan to be inconsistent with that of OSHA and other states.

Mr. Hettrick pointed out that while there may be penalty guidelines for inspectors to use, it is his sense from the testimony that enough latitude exists that fines for the same safety violation can vary significantly from one contractor to another. He pointed out that the proponents of Recommendation 2 are seeking firm, stable penalty guidelines so that they know in advance the consequences of failure to comply with specific safety standards, and he agreed that Committee should address this issue.

***Maurice E. Washington***

Senator Washington reiterated that the purpose of Recommendation 5 is to refine the penalty process so that the employer, employee, and inspector can each determine the potential penalty for any given violation. He noted that the proposals have been crafted with a view toward enhancing workplace safety by instituting changes that will increase compliance with safety regulations while ensuring that the associated cost factors remain at a level that enables the consumer to purchase the final product or service.

Referencing Senator Carlton's question regarding the state safety and health plan, Senator Washington opined that establishing a set schedule of base fines and a matrix of multipliers in statute would not adversely impact the state's safety and health plan. In support of his position, he reported that a majority of states have already adopted procedures similar to those set forth in Recommendation 5.

6. *Enact legislation to require DIR to provide annual occupational safety and health statistics by industry to the Nevada Legislature.*

Senator Washington indicated that the intent of Recommendation 6 is to ensure that the Legislature is provided with the appropriate occupational safety and health statistics to enable it to make well-informed decisions concerning employee safety. He noted that it is the view of some members of the construction trade that compliance with safety

and health regulations is more rigorously scrutinized in the construction field than in other industries.

***Danny Thompson***

Danny Thompson, Nevada AFL-CIO, Las Vegas, appeared before the Committee in his capacity as Chairman of the Advisory Council to the Division of Industrial Relations (NRS 232.570), and spoke in opposition to Senator Washington's recommendations regarding occupational safety and health. Mr. Thompson reported that more than 20 years ago, there was a general consensus in Nevada that all parties would be best served if safety and health regulations were overseen at a state rather than a federal level. For this reason, Nevada applied for a state plan.

Mr. Thompson emphasized that all meetings that include discussion or consideration of safety and health regulations are posted as required by law, and public comment is taken at the conclusion of each such meeting. He cautioned that in the past, the federal government has had occasion to withdraw its approval of state safety and health plans and in their place enforce the federal OSH Act regulations.

With respect to the issue of "rogue" employees, Mr. Thompson pointed out that the current statute clearly provides that if an employee refuses to comply with safety and health regulations and then suffers a work-related injury, his or her workers' compensation benefit will be reduced by 25 percent and the employer fined not less than $300 nor more than $2,000.

***Jack Jeffrey***

Jack Jeffrey, Southern Nevada Building and Construction Trades Council, Las Vegas, also spoke in opposition to the recommendations of Senator Washington regarding occupational safety and health. Mr. Jeffrey agreed with the remarks of Mr. Thompson and shared his views as follows:

- In years past, OSHA inspectors were responsible for large geographical areas. As a result, federal inspectors were seldom seen in Nevada unless a serious injury or fatality occurred.

- Because of the federal inspectors' lack of presence and poor performance in this respect, Nevada's labor organizations were in strong support of the creation of a state safety and health plan. The national AFL-CIO office disagreed with the position taken by the state labor organizations, opining that the federal government's regulation was more consistent than that of the states. There was also a sense among Nevada employers that state inspectors would better understand the issues employers faced and be more responsive to their needs.

- The construction trade experiences a higher rate of work-related injuries and deaths than any other industry in the nation.

- Approximately 26,000 construction workers are affiliated with the Southern Nevada Building and Construction Trades Council.

- Historically, workers have had difficulty adjusting to changes resulting from new safety and health regulations.

- When the Southern Nevada Building and Construction Trades Council works with a contractor to develop rules for a project, there is little discussion of safety requirements because both parties agree that worker safety is a priority.

- Clark County does not experience problems with "rogue" employees because workers know that if they do not comply with safety and health regulations, their employment will be terminated. Neither the Southern Nevada Building and Construction Trades Council nor the unions will protect "rogue" employees.

- Nevada has operated under the state safety and health plan for about 20 years, and the Southern Nevada Building and Construction Trades Council opposes any changes that would impact the continued operation of that plan.

- Although employee safety can require the use of cumbersome equipment and is often expensive, the end result is well worth the effort.

***Linda Rogers***

Linda Rogers, a member of the Occupational Safety and Health Review Board (NRS 618.565) and Vice Chairman, Advisory Council to the Division of Industrial Relations (NRS 232.570), appeared on behalf of the Occupational Safety and Health Review Board. Ms. Rogers discussed the procedures currently in place to address worker safety and health issues in Nevada and the recommendations of Senator Washington, making the following remarks:

- The Advisory Committee on Construction Safety and Health (ACOSH), Occupational Safety & Health Administration, United States Department of Labor, conducts hearings throughout the country on health and safety issues and adopts all construction-related regulations. Danny W. Evans, Chief Administrative Officer, OSHES, DIR, Henderson, is Nevada's representative for ACOSH.

- The last ACOSH meeting was held in Las Vegas and addressed fall protection standards for single-family residence construction projects. At this meeting, ACOSH members heard testimony regarding a reusable fall protection safety line system used in Canada which costs $28.85 per home.

- When employers fail to assign a competent person to establish their fall protection plans or to provide their employees with instruction on the proper use of safety equipment, work-related injuries occur. The DIR's Safety Consultation and Training Section (SCATS) instructs companies on the proper use of safety equipment, and a significant reduction in industrial injuries is seen once employers provide proper safety equipment and training to their employees.

- Because falls are the most common work-related injuries experienced on construction sites, priority is given to enforcement of fall protection standards. Fines are assessed if an employer does not have a fall protection plan and is not providing safety training to its employees. However, if an employer demonstrates that it has made an effort to establish a fall protection plan, purchased safety equipment for its workers, and provided employees with proper safety training, then inspectors may substantially reduce an employer's fine. This flexibility with regard to fine assessment enables enforcement officials to reward employers who are making a good faith effort to comply with safety standards and penalize those who are not.

- Safety enforcement officials utilize the *Nevada Operations Manual* solely as a guide, and citations are issued for violation of the federal regulations, 29 C.F.R. 1910 and 29 C.F.R. 1926. Because OSHA has not adopted its manual as regulation, requiring the DIR to do so with the *Nevada Operations Manual* would jeopardize the state safety and health plan.

- With respect to Recommendation 3, the OSHES is currently able to seek guidance from industry experts through ACOSH, whose members include safety experts and representatives from the construction and insurance industries.

- A person need not be a construction expert in order to specialize in workplace safety. Contractors and construction workers tend to view a construction project based on their work experience rather than from a safety perspective, and changing their perception can be difficult.

- If an employee is properly trained in safety matters and provided with the required safety equipment but refuses to use these tools, and his employer is cited for a safety violation citation as a result of his refusal to comply with safety standards, then current statute allows the employer to present an affirmative defense. In this event, the employer must prove that it provided proper training and safety equipment to the worker and demonstrate that it has established a progressive disciplinary procedure for employees who fail to comply with safety standards, e.g., the employee receives a written reprimand for the first offense, a fine for the second offense.

- Members of Nevada's Occupational Safety and Health Review Board receive a newsletter, *Employment Safety and Health Guide*, published by Commerce Clearing House of Chicago, Illinois. This publication provides a summary of the activities of various safety and health review boards, including the Occupational Safety and Health Review Commission (OSHRC), which is the federal OSH Act review board. To enact legislation to provide a schedule of base fines for various safety and health violations as proposed in Recommendation 5 would be difficult.

- The NCCI can provide a comparison of the workers' compensation expenses of a company with an effective safety program versus a company with an ineffective program and estimate the resulting premium differential between the two employers.

- She receives occupational safety and health statistics from OSHA and offered to make this information available to the Committee's staff; however, this data is not state-specific. The DIR maintains a variety of information regarding injuries and may be able to provide data specifically for Nevada.

- The American Bar Association sponsors two conferences annually regarding occupational safety and health issues, and the next conference is set for March 21 to 24, 2000.

- The State of California rewrites OSHA regulations, and its safety and health standards are generally more stringent than those of OSHA.

- Whenever OSHA revises safety and health regulations, it seeks input from the impacted industry. For instance, following an incident in Laughlin, Nevada, crane companies and operators participated in rewriting crane safety regulations, and OSHA is now using these new regulations throughout the nation.

Concluding her remarks, Ms. Rogers stated that while the enforcement process for workers' safety and health regulations may at times appear ambiguous, it is designed to provide consistency based on a company's experience and safety record.

***Peter D. Kruger***

Peter D. Kruger, Roofing Contractors Association of Nevada (RCAN), Reno, spoke in support of Senator Washington's recommendations. He explained that there are two levels of roofing contractors, commercial and residential, and indicated that his comments are directed toward residential roofing construction. Mr. Kruger shared his views as follows:

- There is little consistency in the enforcement of occupational safety and health standards in the residential roofing construction industry in Nevada.

- Until Senator Washington facilitated the informational meeting on occupational safety and health standards, residential roofing contractors were unaware of the existence of the *Nevada Operations Manual* used by OSHES. Now that the manual is available to the roofing contractors, they are better able to understand the procedures and expectations of OSHES.

- Residential roofing contractors want to train their employees in matters related to safety and health standards, but in order to do so, they need to know clearly what those standards are and how they are enforced. The testimony of OSHES representatives at the informational meeting facilitated by Senator Washington revealed that regulators do not inspect small residential roofing projects with only one or two roofers working on the site. However, inspectors visit the larger residential construction projects and issue citations for safety violations, possibly because more penalty revenue can be generated at such sites.

- It is the position of RCAN that safety enforcement should be consistent, regardless of the size of the project.

- To his knowledge, all inspections are completed from the ground, and he is unaware of any OSHES inspector accessing a roof while conducting an inspection.

- The RCAN has offered to provide inspectors with training so that they can view a roof instead of conducting their inspections from the ground and thus better understand the issues contractors face in complying with certain safety regulations. For instance, a worker on a tile roof may not be able to move without first disconnecting the lanyard because the lanyard is dragging across the roof surface and interfering with the application of the roofing materials. In this instance, an inspector may not be able to fully appreciate the work environment without actually viewing the roof.

- With respect to Recommendation 6, RCAN members would like an opportunity to review local data on

occupational safety trends and compare the performance of the residential roofing industry to that of other construction specialties.

Senator O'Connell asked Mr. Kruger to explain how Recommendation 1 might be practically applied. Mr. Kruger explained that supporters of this recommendation are simply seeking a statement from the Nevada Legislature encouraging OSHA to address the issue of compliance costs relative to certain safety and health standards.

***Dan Hansen***

Dan Hansen, Scott Roofing Company, Sparks, testified in support of the recommendations proposed by Senator Washington. Mr. Hansen offered the following statements and opinions in support of his position:

- His father was responsible for the safety program of Southern Pacific Railroad in Sparks, and he shared his views regarding the importance of safety with his family. Employee safety is of paramount importance to Scott Roofing Company.

- Any resolution from the Nevada Legislature encouraging OSHA to address the issue of compliance costs relative to certain safety and health standards also should be directed to DIR and OSHES.

- Michael Lynch, Government Affairs Director, Builders Association of Northern Nevada, who participated in the information meeting facilitated by Senator Washington on occupational safety and health issues, can demonstrate that there has been no statistical decrease in accidents since OSH Act regulations were implemented in 1970; however, there has been a significant increase in employers' costs. The OSH Act does not increase safety and is not cost-effective.

- Requiring that the *Nevada Operations Manual* be adopted as regulation would ensure that the decisions of inspectors are consistent and fair to all parties.

- According to Mr. Lynch, full compliance with fall protection standards is not possible because the requirements do not take into account the actual work sites and are unrealistic.

- With respect to Recommendation 4, he urged the Committee to seek the testimony of workers to determine the validity of concerns that some safety equipment does not prevent injuries but rather poses a safety hazard to employees.

- Inspectors need to have access to knowledgeable and experienced industry experts to better understand the work environment and conduct constructive and effective inspections. One inspector advised him that her qualifications for inspecting all construction sites—from framing to heavy steel construction to roofing—consisted of assisting her previous husband in constructing their home.

- Inspectors should be provided with specific procedures for conducting inspections and given less discretion in assessing penalties for safety violations so that employers will know precisely what is expected of them, how safety regulations will be interpreted and the manner in which they will be enforced, and the consequences of failure to comply with established safety standards.

***Joel F. Hansen***

Joel F. Hansen, attorney at law, Las Vegas, appeared on behalf of RCAN. He informed the Committee that he also represents several contractors who have experienced difficulties with OSHES, and spoke in support of Senator Washington's recommendations.

Mr. Hansen reported that Jim Lamb, an occupational safety and health consultant, has information which demonstrates that OSHA's safety and health program does not decrease occupational accidents. He offered to supply the Committee with a report prepared by Mr. Lamb. Mr. Lamb's report further concludes that fall protection requirements actually increase a worker's risk of injury. Mr. Hansen pointed out that insurers base their rates in large part on an employer's accident record, not its history of compliance with OSHA standards. Hence, if a company adheres to safety regulations that cause an increase in the incidence of industrial accidents, the employer's

premiums will likely rise. He opined that if an insurer considered the results of Mr. Lamb's report in setting its premiums, it would not include compliance with safety standards as a mitigating risk factor in determining rates.

Senator O'Connell indicated that her recollection of testimony given on this topic in years past is that an employer's rates are substantially reduced if it provides safety equipment and training to its employees. Assuming that some safety devices cause industrial accidents, she questioned how insurers balance an employer's safety efforts with an increase in accidents. Responding, Mr. Hansen stated that this information is not yet available. Senator O'Connell also questioned whether data is available from the State of California indicating how it has addressed this issue. Mr. Hansen stated that he did not have information on California that would provide an answer to Senator O'Connell's question. He advised the Committee that the report by Mr. Lamb is based on a nationwide study. Continuing, he indicated that he would contact Mr. Lamb and determine whether this type of data is available for the State of California. If information is available for California, he will ensure that a copy of the material is forwarded to Senator O'Connell.

Continuing his remarks, Mr. Hansen urged the Committee to require that the *Nevada Operations Manual* be adopted as regulation so that the guidelines set forth in the manual will be subject to public hearings and contractors will know what rules that must be followed by OSHES inspectors. In support of his position, Mr. Hansen made the following remarks:

- He first learned of the existence of the *Nevada Operations Manual* while taking the deposition of an OSHES representative in a lawsuit. The deponent testified that the manual is available to the public; however, the DIR made no effort to advise contractors of its existence and use.

- In order for contractors to properly follow OSHES' safety regulations, they need to know the guidelines being utilized by inspectors.

- Americans have the right to know the laws by which they are governed and the laws with which the government itself must comply.

- The OSHES inspectors do not consistently follow the guidelines set forth in the *Nevada Operations Manual*. For example, one guideline requires that subcontractors must attend opening conferences, and in a case that he was litigating, this had not been done. When he asked the Occupational Safety and Health Review Board why this guideline had not been adhered to by authorities, he was told that the guidelines are not binding.

- In his view, this practice violates the Nevada Administrative Procedures Act, NRS 233B.038, "'Regulation' defined. [Effective January 1, 2000.]," which defines a regulation as "An agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency."

Mr. Hansen also urged the Committee to direct the DIR to comply with the statute which requires that inspectors must have practical experience in the field they inspect. He pointed out that the LCB's interpretation of the statute is that a person must have engaged in work in a particular field in order to qualify for the position of inspector. According to Mr. Hansen, David L. Going, District Manager, OSHES, DIR, Carson City, has indicated to him that the DIR does not adhere to the law because it is unable to recruit people who meet the qualifications set forth in statute.

Referencing Ms. Rogers' testimony that employers who are cited for the actions of a "rogue" employee may assert an affirmative defense, Mr. Hansen related a matter in which an employer was represented by attorney Jim Spoo of Sparks and utilized this defense. In this instance, the review board chose not to consider the employer's affirmative defense in making its decision. Mr. Hansen noted that the U.S. Ninth Circuit Court of Appeals has held that the burden of proof in such cases is not on the employer; rather, OSHA must prove that the employer knew of the violation. In response to the request of Senator O'Connell, Mr. Hansen indicated that he would provide the Committee members with a copy of the referenced U.S. Ninth Circuit Court of Appeals decision.

Continuing, Mr. Hansen suggested that the Committee keep in mind that safety regulations were adopted to benefit workers. He opined that if the workers for whom fall protection standards were established refuse to comply with the applicable regulations, perhaps these provisions should be reevaluated and the "rogue" employee defense

strengthened.

With respect to the assessment of fines, Mr. Hansen reported that the current structure allows fines from $5,000 to $75,000. In his view, inspectors currently have too much discretionary power in assessing fines. Mr. Hansen advocated the Legislature defining in statute the parameters for determining penalties for safety violations so that all parties understand the consequences for each infraction.

Concluding his presentation, Mr. Hansen provided the Committee with copies of a pleading he filed in a lawsuit that more thoroughly addresses some of the issues raised in Senator Washington's recommendations. Please see Exhibit H.

Senator Carlton questioned whether any information is available on the number of accidents that have been avoided through use of safety equipment. She pointed out that an employee might not report those instances where safety equipment actually saved him from harm and opined that the Committee needs to consider this possibility along with any reports of safety equipment causing more accidents than it prevents. Responding, Mr. Hansen explained that if safety equipment is being used but there is no decrease in accidents, then it may be assumed that the equipment has not helped to prevent injuries. In evaluating the effectiveness of safety equipment, the statistics he has cited compare the number of occupational accidents that occurred before and after the safety apparatus was required.

Continuing, Senator Carlton questioned whether the statistics cited by Mr. Hansen take into account the growth in construction projects being undertaken in Nevada or if they are based solely on the number of industrial accidents. Mr. Hansen stated that the statistics he referred to considered the increased number of construction projects and indicated that he would provide a copy of the statistics to Ms. McGee, the Committee's lead staff liaison.

***Tom Stoneburner***

Tom Stoneburner, Director, Alliance for Workers' Rights, Reno, shared his views on the recommendations of Senator Washington, covering the following points:

- The Alliance for Workers' Rights supports the formation of a panel of experts as proposed in Recommendation 3; however, he cautioned the Committee against establishing a group of employers that might tend to dictate safety standards to OSHES.

- In its efforts to address the problems created by "rogue" employees who refuse to comply with safety regulations, he cautioned the Committee not to absolve employers of their responsibility to provide a safe working environment for employees.

- With respect to Recommendation 1, he suggested that the Committee be careful not to adopt a resolution that would in any way reduce an employer's responsibility for providing a safe working environment. Instead, he urged the Committee to take the position that safety should never be compromised because of cost.

***Lynn Grandlund***

Lynn Grandlund, Employers of Nevada, Las Vegas, spoke with regard to issues related to "rogue" employees. Ms. Grandlund reported that NRS 616D.280, "Injury to employee caused by absence of safety device," referenced in Recommendation 4 provides that if an employee's injury results from the absence of a required safeguard or protection that the worker himself removes, his compensation must be reduced by 25 percent. She noted that Employers of Nevada usually prevails at the administrative hearing level when asserting the "rogue" employee defense.

Continuing, Ms. Grandlund reported that some employers have adopted safety plans more stringent than that of OSHA. If an employer's safety standards exceed those adopted by OSHA, and a worker is injured because he failed to comply with one of these more stringent safety requirements, the employee's compensation will not be reduced because the safety standard at issue is not set forth in federal regulation and is not required pursuant to state law. Ms. Grandlund suggested that the Committee add a section to NRS 616D.280 to address the issues raised by employers' written safety policies that are more stringent than OSHA standards.

***Arthur L. Busby Jr.***

Arthur L. Busby Jr., a private citizen and Risk Manager, Binion's Horseshoe Hotel and Casino, Las Vegas, spoke in opposition to Senator Washington's recommendations. Mr. Busby reported that his employer recently completed a two-month renewal process for its automobile, crime, liability, property and casualty, insurance, and excess workers' compensation insurance coverage. He indicated that because of the safety policies, procedures, and programs that Binion's Horseshoe Club has implemented, it was able to reduce its overall premiums from over $800,000 to under $400,000.

Mr. Busby stated that many casinos are allies of OSHA. Further, he indicated that in his personal view, the construction trade's relations with OSHA are difficult because the industry is new to Nevada.

***Linda Rogers***

Ms. Rogers, previously identified on page 22 of these minutes, offered the following additional testimony:

- Nevada's Occupational Safety and Health Review Board is comprised entirely of laypersons. Membership on the board consists of two representatives for management, two representatives for labor interests, and one representative for the public. The board's composition is designed to ensure that employers and injured workers alike receive a balanced review of the facts in each case.

- In her experience, people are aware of the existence of the *Nevada Operations Manual*. She noted that several attorneys have referenced the manual as part of their defense strategies.

- In making an affirmative defense with respect to "rogue" employees, an employer may not simply allege that an employee refused to comply with safety standards. The employer in such a case must prove that it has provided its employees with appropriate safety equipment and training.

- Stringent guidelines are used in assessing fines. Penalties are based on the number of employees exposed to danger; the number of past violations; the seriousness of the violations; and the size of the company.

- With respect to the effectiveness of safety equipment, studies have been conducted that attest to the efficacy of safety equipment. In addition, a report issued several years ago by the DIR concluded that the implementation and enforcement of safety standards in Nevada has led to a substantial decrease in the incidence of industrial injuries. The data on which the report was based covered a five-year period and took into consideration the increase in the number of Nevada's employees. The DIR will attempt to provide the Committee with supporting documentation at a later date.

- The primary goal of OSHA is to promote safety awareness. She related that the general manager of a company had commented to her, following the death of a young man in an industrial accident at his company, that the incident was the "cost of doing business," and expressed concern that some of Senator Washington's recommendations might result in a return of this type of mindset among some employers.

- The guidelines found in the *Nevada Operations Manual* differentiate scheduled inspections from those inspections conducted as a result of a complaint. Case law dictates that the general contractor has ultimate control of a construction site. As such, the general contractor has sole discretion to deny or permit access to the site. It would be fruitless for an inspector to approach a subcontractor for permission to enter a construction site.

- The ACOSH is comprised of experts from a variety of specialties, and it conducts public hearings throughout the country on health and safety issues and makes recommendations to OSHA on proposed changes to safety regulations.

- Instruction on the proper use of safety equipment and pertinent regulations is provided by SCATS. The SCATS advertises on both radio and television and is easily accessible to Nevada employers.

Senator O'Connell requested that staff provide the Committee members with a copy of the section of the Nevada Administrative Procedures Act cited by attorney Joel F. Hansen, NRS 233B.038.

Assemblyman Hettrick questioned whether Ms. Rogers was aware of the LCB opinion referenced in Joel F. Hansen's testimony with respect to the qualifications of safety inspectors. Responding, Ms. Rogers quoted from the subject letter as follows:

> The Division of Industrial Relations of the Department of Business and Industry may employ such qualified employees as in the opinion of the administrator are necessary to enforce the provisions of this chapter [Chapter 618 of NRS]. Any safety and health representative employed by the division must have practical experience in the field of construction, trade, craft, technical skill, profession or industry in which his services are required. The administrator and other employees of the division must not be financially interested in any business interfering with or inconsistent with their duties except as otherwise provided in NRS 284.143.

Ms. Rogers stated that an inspector is required to possess practical, not expert, experience; be knowledgeable of the job requirements; and understand safety regulations. Continuing, Ms. Rogers quoted further from the LCB letter as follows:

> In conclusion, it is the opinion of this office that the plain meaning and the legislative history of subsection 2 of NRS 618.255 dictates that the requirement in the subsection that health and safety representatives have practical experience means that each safety and health representative must have actually engaged in the field of construction or trade, craft, technical skill, profession or industry that he is inspecting. However, it is also the opinion of this office that subsection 2 [of NRS 618.255] does not require that each safety and health representative have been licensed or certified or have engaged in that particular field, trade, craft, technical skill, profession or industry as his occupation. The determination of how much practical experience and of what level of expertise is required in that particular field, trade, craft, technical skill, profession or industry for a safety and health representative is a determination within the authority of the division.

Assemblyman Hettrick indicated that he understands the construction industry's concerns with respect to a number of the issues raised in Senator Washington's recommendations. He questioned whether it would be possible for the interested parties to work together to resolve the contractors' concerns while maintaining the integrity of the occupational health and safety enforcement process. For example, would it be possible for the DIR to identify the rules by which it will operate the occupational safety enforcement program—without adopting these rules as regulation—so that contractors will know what is expected of them in terms of employee safety and the penalty that will be levied against them if they fail to comply with safety standards. Responding, Ms. Rogers stated that because Nevada's Occupational Safety and Health Review Board is comprised of laypersons, there is significant room for compromise on these issues. She explained that there are many different types of inspections, and each is handled in a slightly different fashion. Because the provisions of the manual must be general enough to address a variety of workplace situations, it is not possible to take one specific guideline and apply it to every circumstance. Assemblyman Hettrick agreed that there must be a certain amount of flexibility in the process. He pointed out, however, that as currently structured, there is so much flexibility built into the safety and health enforcement process that contractors are uncertain which guidelines inspectors will follow and what penalties will be assessed for infractions of safety rules. Continuing, he asked if Joel Hansen's statement that the *Nevada Operations Manual* was developed without external input is true.

Ms. Rogers asserted that the flexibility of the health and safety enforcement process is intended to enable the occupational safety and health program to address all situations. She stated that over time, the DIR has found the current structure of the program to work most efficiently. Continuing, Ms. Rogers acknowledged there is room for improvement in the occupational safety and health enforcement process but cautioned against embracing the "extreme" proposals recommended by Senator Washington. Further, Ms. Rogers opined that Senator Washington's recommendations, if adopted by the Committee, have the potential to create significant problems for Nevada insofar as its state safety and health plan and also could ultimately result in federal intervention. She related an instance where the federal government withdrew approval of a state's plan after proving that it was not as effective as the federal plan. Concluding her response, Ms. Rogers opined that while it is sometimes difficult to navigate the occupational health and safety enforcement system, the DIR makes a good faith effort to provide public access to needed information.

***John F. Wiles***

Responding to Assemblyman Hettrick's inquiry, Mr. Wiles reported that the *Nevada Operations Manual* was adopted without public hearing. He noted that the *Nevada Operations Manual* is patterned after the federal manual, which also was adopted without public input; approved by OSHA; and adopted by the DIR.

***Maurice E. Washington***

Senator Washington thanked the Committee for its time and consideration. He stated that the informational meetings that he facilitated on occupational health and safety issues were open to the public. Further, he noted that while Ms. Rogers had an opportunity to attend, he did not see her at these meetings.

Continuing, Senator Washington explained that the proposed recommendations are intended to create stability so that the occupational safety and health process and procedures are fair and applied consistently to all parties. He indicated that many recommendations were initially discussed before being narrowed down to 6, and it is the general consensus of the parties who participated in this process that these final recommendations represent sound, practical policy that will ensure the safety of employees while enhancing the cost benefit to employers.

In conclusion, Senator Washington opined that he is not an extremist and the recommendations he has proposed are not "extreme," as characterized by Ms. Rogers. In his view, legislators need to ensure that they represent all constituencies and attempt to establish fair, practical policies. Senator Washington noted that copies of his recommendations have been provided to Nevada Governor Kenny C. Guinn and to the chairmen of both the Senate's Committee on Commerce and Labor and the Assembly's Committee on Commerce and Labor.

Chairman Parks requested that the Committee's Research and Legal staff review the occupational health and safety process established by the State of California and provide the Committee with additional background information on this topic. He indicated that the Committee would revisit Senator Washington's recommendations at a future meeting or work session.

## REPORT AND RECOMMENDATION REGARDING THE BLOOD TEST REQUIRED TO SCREEN FOR CONTAGIOUS DISEASE TO BE PROVIDED BY THE EMPLOYER OF A POLICE OFFICER OR FIREMAN AS REQUIRED BY NRS 616C.052

***Leslie Bell***

Leslie Bell, Director, CDS of Nevada (CDS), Reno, stated that CDS is a third-party administrator for workers' compensation insurance and a managed care organization, and her responsibilities include oversight of workers' compensation claims administration. She reported that CDS represents ten public entities, eight of which include either fire or police agencies.

Ms. Bell introduced Roger M. Belcourt, M.D., the medical director for CDS, and announced that Dr. Belcourt would be discussing the language of a statute that may need some correction.

***Roger M. Belcourt, M.D.***

Roger M. Belcourt, M.D., Medical Director, CDS, Reno, provided the Committee with a memorandum dated February 28, 2000, regarding NRS 616C.052, "Report of exposure of police officer or fireman to contagious disease; employer of police officer or fireman required to provide test to screen for contagious disease," as amended by Senate Bill 132 (Chapter 479, *Statutes of Nevada 1999*), which "revises provisions governing benefits for industrial insurance for certain police officers and firemen." Please see Exhibit I. Dr. Belcourt discussed some technical inconsistencies that exist in statute, covering the following points:

- Section 2 of NRS 616C.052 requires that an employer of a police officer or fireman must provide a test to screen for contagious disease and states in part:

2. If the employment of a police officer or a salaried or volunteer fireman is terminated, voluntarily or involuntarily, the employer of the police officer or fireman shall, at the time of termination and at 6 and 12 months after the date of termination, provide to the police officer or fireman a blood test to screen for contagious diseases, including, without limitation, hepatitis A, hepatitis B, hepatitis C, tuberculosis and human immunodeficiency virus.

He noted that there is no blood test to detect the presence of tuberculosis (TB) and suggested that the statute be changed to require a skin test for this disease. Further, he suggested that the Legislature adopt the standard currently used for TB testing, that is, to require a baseline skin test and then another test three months later to determine whether there has been an interval conversion.

- Parts of the statute pertaining to medicine that may require a health practitioner to order blood tests or prescribe toxic medications include the language "physician or chiropractor." He indicated that most chiropractors with whom he is acquainted prefer not be involved in these types of treatment situations, and he suggested that the Legislature either remove the word "chiropractor" from the appropriate sections of the statutes or, in the alternative, authorize chiropractors to prescribe controlled substances in the State of Nevada.

Chairman Parks asked Dr. Belcourt to comment further on the standard three-month interval between initial skin testing for TB and the second test. Dr. Belcourt explained that a significant percent of patients will convert to active TB within three months, hence the three-month time frame between tests.

Senator O'Connell asked what would cause a person to test positive for TB if he had never contracted the disease. Responding, Dr. Belcourt explained that TB is a two-fold disease. On initial exposure, a person either forms antibodies to the bacillus that causes TB, and the disease becomes inactive; or he develops active infection. Drug therapy is recommended for workers who have been exposed to the disease to minimize the risk of turning positive at some point in the future. Once exposed, a person will always have a positive skin test for TB. Since skin tests are no longer a reliable means of detecting active infection in persons who have previously been exposed to TB, other tests such as chest X-rays and interval symptom questionnaires can be used to determine whether a person has converted to active TB.

Ms. Bell offered the services of Dr. Belcourt to the Committee in matters that may require medical oversight.

**SENATOR O'CONNELL MOVED THAT THE COMMITTEE PROPOSE DRAFT LEGISLATION TO AMEND NRS 616C.052 TO PROVIDE THAT A SKIN TEST, NOT A BLOOD TEST, BE USED TO SCREEN FOR TUBERCULOSIS, AND PROHIBIT CHIROPRACTORS FROM ADMINISTERING THE BLOOD TESTS OR SKIN TEST SPECIFIED. THE MOTION WAS SECONDED BY SENATOR CARLTON AND CARRIED UNANIMOUSLY.**

## PUBLIC COMMENT

There were no additional comments from the public.

## ADJOURNMENT

The Committee rescheduled its next meeting to Friday, April 14, 2000.

There being no further business to come before the Committee, Chairman Parks adjourned the meeting at 11:30 a.m.

Exhibit J is the "Attendance Record" for this meeting.

Respectfully submitted

Susan Furlong Reil
Senior Research Secretary

Crystal M. McGee
Senior Research Analyst

APPROVED BY:

_____
David R. Parks, Chairman

Date: _____

## LIST OF EXHIBITS

Exhibit A is a letter dated March 10, 2000, from Sue S. Matuska, Senior Deputy Legislative Counsel, and Kim Marsh Guinasso, Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau, Carson City, Nevada, to Assemblyman David R. Parks, regarding the legislative history on the statutes that have governed subsequent injury funds in Nevada, provided by Ms. Matuska.

Exhibit B is a document dated March 10, 2000, titled "Subsequent Injury Funds (SIFs)," provided by Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit C is a document titled "Subsequent Injury Analysis, FY 96-98" prepared by the Administrative Services Unit, Division of Industrial Relations, Nevada's Department of Business and Industry, provided by Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit D is a copy of *Nevada Revised Statutes* (NRS) 616B.545 through NRS 616B.560; NRS 616B.563 through NRS 616B.581; and NRS 616B.584 through NRS 616B.590, provided by Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit E is a document dated April 1997, titled "Second Injury Funds Should be Abolished" prepared by the American Insurance Association and provided by Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit F is a copy of a brochure titled "The Americans with Disabilities Act, Your Personal Guide to the Law," provided by Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit G is a document titled "Occupational Safety and Health, Recommendations to the 71st Session of the Nevada Legislature," provided by Maurice E. Washington, Nevada State Senator, Washoe District 2, Sparks, Nevada.

Exhibit H is a document titled "Motion for Reconsideration and Opposition to Motion to Strike" filed in the Second Judicial District Court of the State of Nevada, in and for Washoe County, in the case *Daniel Hansen, dba Scott Roofing, v. Division of Industrial Relations, et al.*, Case No. CV98-04525, provided by Joel F. Hansen, attorney, Las Vegas, Nevada.

Exhibit I is a memorandum dated February 28, 2000, from Roger M. Belcourt, M.D. to the Legislative Committee on Workers' Compensation regarding NRS 616C.052 as amended by Senate Bill 132 (Chapter 479, *Statutes of Nevada 1999*), provided by Dr. Belcourt.

Exhibit J is the “Attendance Record” for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the library at (702) 684-6827.