

**MINUTES OF THE MEETING  
OF THE  
LEGISLATIVE COMMISSION=S SUBCOMMITTEE CONCERNING THE STATUTORY  
LIMITATION ON DAMAGES THAT MAY BE AWARDED  
TO A PERSON IN A TORT ACTION AGAINST THE STATE OF NEVADA,  
ITS POLITICAL SUBDIVISIONS OR CERTAIN OTHER PERSONS  
(Assembly Concurrent Resolution No. 46, File No. 140, *Statutes of Nevada 1999*)  
October 20, 1999  
Carson City, Nevada**

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The first meeting of the Legislative Commission=s Subcommittee Concerning the Statutory Limitation on Damages that may be Awarded to a Person in a Tort Action Against the State of Nevada, Its Political Subdivisions or Certain Other Persons (Assembly Concurrent Resolution No. 46, File No. 140, *Statutes of Nevada 1999*) for the 1999-2000 interim was held on Wednesday, October 20, 1999, at 9:30 a.m., at the Legislative Building, 401 South Carson Street, Room 1214, Carson City, Nevada. The meeting was video conferenced to the Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada. Pages 2 and 3 contain the AMeeting Notice and Agenda@ for this meeting.

**SUBCOMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Senator Maurice E. Washington, Vice Chairman  
Senator Mike McGinness  
Senator Michael A. Schneider  
Assemblyman John C. Carpenter  
Assemblyman Jerry D. Claborn  
Assemblywoman Genie Ohrenschall

**SUBCOMMITTEE MEMBERS EXCUSED:**

Senator Dean A. Rhoads

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Scott Young, Principal Research Analyst  
Risa B. Lang, Principal Deputy Legislative Counsel  
R. Rene Yeckley, Deputy Legislative Counsel  
Roxanne Duer, Senior Research Secretary

**MEETING NOTICE AND AGENDA**

Name of Organization: Legislative Commission=s Subcommittee to Study the Statutory Limitation on Damages that may be Awarded to a Person in a Tort Action Against the State of Nevada, its Political Subdivisions or Certain Other Persons (A.C.R. 46)

Date and Time of Meeting: Wednesday, October 20, 1999  
9:30 a.m.

Place of Meeting: Legislative Building  
Room 1214  
401 South Carson Street  
Carson City, 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 video conference conducted at the following location:

Grant Sawyer State Office Building  
Room 4412  
555 East Washington Avenue  
Las Vegas, Nevada

### **AGENDA**

#### I. Opening Remarks and Introductions

Assemblyman Bernie Anderson, Chairman

#### \*II. Background Briefing

Risa B. Lang, Principal Deputy Legislative Counsel, Legislative Counsel Bureau  
Scott Young, Principal Research Analyst, Legislative Counsel Bureau

#### \*III. Presentation Regarding Statutory Limitation on Tort Suits Against Public Entities From a Plaintiff=s Perspective

J. R. Crockett, Jr., Representative of the Nevada Trial Lawyers Association

#### \*IV. Presentation on Issues and Concerns Regarding Tort Lawsuits Against the State of Nevada and its Agencies

P. Mark Ghan, Solicitor General, Attorney General=s Office

#### \*V. Presentation on the Impact of Tort Lawsuits Against Counties

Madelyn Shipman, Representative of the Nevada Association of Counties

#### \*VI. Presentation on Tort Lawsuits From the Perspective of Nevada Cities

Shauna Hughes, Representative of the Nevada League of Cities

#### VII. Public Testimony

#### VIII. 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 Roxanne Duer, at 687-6825, 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, Room 1214, 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: Grant Sawyer State Office Building, 555 East Washington Avenue; and Clark County Office, 500 South Grand Central Parkway.

## **OPENING REMARKS AND INTRODUCTIONS**

Chairman Anderson called the meeting to order and roll was called. Chairman Anderson welcomed the subcommittee members to the first meeting of the Legislative Commission's Subcommittee to Study the Statutory Limitation on Damages that may be Awarded to a Person in a Tort Action Against the State of Nevada, its Political Subdivisions or Certain Other Persons (A.C.R. 46) and stated that it was his pleasure to introduce Senator Maurice Washington as the vice chair of the subcommittee. He then acknowledged the remainder of the subcommittee members and staff. Chairman Anderson also recognized the advisory committee members and stated that the committee's directive is to assist the interim subcommittee by identifying, analyzing, and focusing its attention on public policy considerations surrounding the issue of governmental tort immunity that require legislative attention. With this in mind, the advisory committee can provide the subcommittee with explicit, agreed-upon solutions to identified problems that can be presented to the 71<sup>st</sup> Legislature for review and action.

Chairman Anderson further explained that the Assembly Concurrent Resolution No. 46 (A.C.R. 46) interim study is the outcome of discussions held during the 1999 Legislative Session on Assembly Bill 119, which proposed to remove the limitation on damages that may be awarded to a person in a tort action against the State of Nevada or its employees. After hearing testimony on the measure, the Assembly Committee on Judiciary decided that further research was required and an interim study was recommended.

Chairman Anderson noted that:

- \$ One of the tasks of the subcommittee is to evaluate the statutory limitation on present or former officers or employees of the state, any political subdivision, an immune contractor, or a state legislator arising out of an act or omission within the scope of his public duties or employment.
- \$ The study must also include, without limitation, an analysis of whether it is appropriate to change the current statutory limitation and the potential fiscal impact of such a change.
- \$ Assembly Concurrent Resolution No. 46 requires the appointment of an advisory committee comprised of one representative each from the Office of the Attorney General and the Nevada Association of School Boards, two representatives each from the Nevada League of Cities, the Nevada Association of Counties, and the Nevada Trial Lawyers Association.
- \$ A final report of the subcommittee's findings with recommendations will be submitted to the 2001 Legislature.

## **BACKGROUND BRIEFING**

*Risa B. Lang*

Ms. Lang, Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau, commented that the subcommittee members were provided with a letter to Chairman Anderson from Ms. Lang which describes sovereign immunity as it effects the Federal Government, the State of Nevada, and public officials (please refer to Exhibit A).

Referencing a handout titled A Overview of Sovereign Immunity@ (please refer to Exhibit B), Ms. Lang explained that sovereign immunity, often referred to as governmental immunity, is a judicial doctrine which provides that a person may not sue the government without its consent. This ancient doctrine is derived from English common law

and originated from the feudal system and the principle that Ait was necessarily a contradiction of the sovereignty of any lord and especially the king to allow him to be sued as of right in his own courts.@ This doctrine has been carried forward in a modified form in American jurisprudence. Ms. Lang stated that the two rationales given for the need for immunity of government are: (1) that the judiciary reviews the actions of governmental actors of other branches of government that may threaten the separation of powers; and (2) the concern of protecting the public treasury from potentially devastating judgments. Although sovereign immunity still exists, there is now a trend toward restricting its application to allow the government to be sued in circumstances where persons who are injured by governmental entities or employees can be compensated for their injuries.

Continuing, Ms. Lang spoke to the evolution of sovereign immunity at the federal and state levels. During the early 1800s, the United States Supreme Court upheld sovereign immunity for the Federal Government, which meant that the Federal Government could not be sued without its consent. Later, the United State Congress enacted legislation to allow a substantial class of persons to sue the Federal Government. The first such piece of legislation was the Tucker Act of 1887 which authorized persons to bring contract actions against the Federal Government. In 1946, Congress enacted the Federal Tort Claims Act authorizing a person to bring certain tort actions against the Federal Government and certain federal employees. Despite the Federal Tort Claims Act, there are some limitations on liability of the Federal Government. This act authorizes only lawsuits for torts that involve negligence and certain intentional torts such as assault and battery where there is an intent to harm. A person may not sue the Federal Government under strict liability where no fault is involved.

Nevada has also adopted a similar type of partial waiver of sovereign immunity. Nevada=s immunity is based on both federal and state law. The Eleventh Amendment of the *United States Constitution* provides immunity from federal lawsuits against the state by citizens of Nevada or citizens of another state. Immunity provided by the Eleventh Amendment can be waived by the state; however, the State of Nevada has specifically retained its Eleventh Amendment immunity pursuant to subsection 1 of *Nevada Revised Statutes* (NRS) 41.031. Thus, Nevada is shielded from lawsuits by private citizens in federal courts. The United States and other states may, however, sue the State of Nevada in federal court; the Eleventh Amendment only provides immunity for actions in federal court, it does not provide immunity against lawsuits in state courts.

Ms. Lang outlined the following *Nevada Revised Statutes* enacted by the Nevada Legislature:

- \$ *Nevada Revised Statutes* 41.0305 to 41.039 inclusive, governs the liability of, and actions against, the State of Nevada, its agencies, and political subdivisions in state court;
- \$ Subsection 1 of NRS 41.032 provides immunity from liability for an act or omission in the execution of a statute or regulation that has not been declared invalid if due care is exercised;
- \$ Subsection 2 of NRS 41.032 also provides immunity from liability for the performance of, or failure to perform, a discretionary duty, even if discretion is abused; and
- \$ Nevada Revised Statutes 41.0349 provides that the State of Nevada or its political subdivisions will, under certain circumstances, indemnify a present or former employee, immune contractor, or official who is sued for an act or omission relating to his public duty or employment.

Additionally, NRS 41.035 limits the liability of government to \$50,000 for each action. It also provides that a claimant may not be awarded punitive damages against the State of Nevada or its political subdivisions. When that statute was originally enacted in 1965, the limit was \$25,000 for each claim. In 1977 the limit was increased to \$35,000, and in 1979 raised to the current limit of \$50,000.

Commenting further, Ms. Lang reviewed four Nevada Supreme Court cases to illustrate the application of sovereign immunity in the State of Nevada:

- \$ State v. Webster: This case involved personal injuries sustained by the plaintiff and the wrongful death of her husband as the result of an automobile accident. The issue was whether the plaintiff was entitled to receive \$25,000 for each separate tort, or was limited to a total of \$25,000 for both the personal injury claim and the

wrongful death claim. The court determined a person may be awarded up to the limit of \$25,000 for each tort (limit for damages in 1972 was \$25,000).

\$ County of Clark, ex rel. Univ. Med. Ctr. v. Upchurch: This case involved the birth of a daughter who was born with cerebral palsy. The plaintiffs alleged that the child's condition was caused by the medical mismanagement of six governmental actors. In addressing the issue of whether a plaintiff may recover from multiple governmental actors for a single cause of action, the Court reviewed the legislative history of NRS 41.035 and the case law interpreting this statute. The Court held that ANRS 41.035 allows one statutory limitation for each cause of action, regardless of the number of actors. @ Thus, a person is limited to a maximum of \$50,000 for the claim.

\$ Nevada v. Hall: An action was brought against the State of Nevada by a California resident for injuries caused in an automobile accident involving a Nevada state vehicle operated in California by an employee of the state while on official business. The United States Supreme Court rejected Nevada's sovereign immunity claim and found that the California state court could impose full liability upon the State of Nevada. Sovereign immunity applies only within the State of Nevada, unless the out of state forum consents to its application.

\$ State Department of Human Resources v. Jimenez: The Nevada Supreme Court addressed the issue of whether the State of Nevada was liable for nine separate acts of sexual assault committed by a state employee upon a minor placed in a state program that was administered by the state employee. Under the facts of case, sexual assault was considered foreseeable and within the course and scope of employment of the government employee. Each of the nine assaults constituted a separate tort and the plaintiff was awarded \$50,000 for each assault. However, three months after the Court issued its decision, upon a motion of the parties, the Court withdrew the opinion and dismissed the pending proceedings for a rehearing. A case that has been withdrawn does not provide a precedent for future decisions, but may provide an unofficial indication of how the court would rule given a similar factual situation.

In closing, Ms. Lang reviewed the liability of public officials. She indicated that, in general, the provisions of sovereign immunity set forth in statute govern the liability of public officials in the State of Nevada. However, if sovereign immunity does not protect a public official from liability, sometimes official immunity will provide immunity for the official. At common law, qualified immunity was available for a public official if he was performing a discretionary act and did not act with malice, bad faith, or improper purpose. Absolute immunity was provided for other public officials who perform certain legislative, judicial, or quasi-judicial functions. This immunity applied even if the person acted in bad faith or with malice. Some aspects of common law immunity have been codified in NRS 41.032.

A copy of *Nevada Revised Statutes* 41.0305 through 41.039 was provided to the subcommittee (please refer to Exhibit C).

*Scott Young*

Mr. Young, Principal Research Analyst, Research Division, Legislative Counsel Bureau, referenced a handout consisting of ten tables (refer to Exhibit D) and discussed:

- \$ The status of sovereign immunity with respect to torts in the 50 states and whether each state has retained or waived its immunity;
- \$ The comparison of state governmental tort liability provisions;
- \$ The local government comparison of tort liability provisions;
- \$ The number of claims against the State of Nevada made, pending, and paid from 1994 through 1998; and
- \$ The total amounts claimed and paid for torts by the state for Fiscal Years 1994 through 1999.

He indicated that the information compiled in these charts may be helpful when the subcommittee contemplates possible changes regarding the monetary limit for tort damages awarded to a person against the State of Nevada, its political subdivisions or certain other persons.

Mr. Young then focused his discussion on the 1998 summary of claims for the Nevada Public Agency Insurance Pool (please refer to Exhibit E). He explained that according to NRS 41.0385, AClaims made against state agencies and local governments for tortious conduct: Annual filing of summary of claims with secretary of state or clerk of local government; summaries of claims are public records,@ local governments must report claims made and paid on an annual basis. Since local entities do not have a central reporting agency, it often is difficult and burdensome to compile the information. Future data consisting of information from previous years should provide the subcommittee with information similar to the data compiled on the State of Nevada claims for 1994B1998.

Commenting further, Mr. Young referred to excerpts from statutes of the states of Colorado and Georgia (please refer to Exhibit F). He indicated that these policy statements were adopted in connection with their sovereign immunity statutes and establish important policy considerations. Both states indicate that in certain situations, sovereign immunity Aworks an inequity@ for an injured party and creates a significant financial burden on public entities from tort claims. Georgia also notes that whereas private industry may be able to pick and choose the activities it engages in and, therefore, better manage its risks, government may be more limited in its ability to avoid risk, citing that fact as a reason for treating government tort cases somewhat differently than private cases.

Chairman Anderson asked if state and local entities have liability insurance policies that cover a portion of the actual costs.

Mr. Young indicated that many of the entities at the state and local level do carry some form of liability insurance. A number of states carry liability insurance since state liability limits are not applicable in federal actions.

Chairman Anderson asked staff to provide the subcommittee with information relevant to the costs associated with purchasing liability insurance for the State of Nevada and its entities. Of concern to Chairman Anderson is that larger political entities are able to pay a lesser premium when they enroll in an insurance pool, while the smaller local governments may not realize a cost benefit from insurance pooling.

Senator Washington voiced his concern about funding mandates and presented the following scenario. If a local government was not able to comply with federal safety requirements due to a lack of funding which, in turn, created an incident that resulted in bodily injury, could the Federal Government name the local entity in a claim and then progress to the county and state levels and include them as responsible parties. In other words, who would be liable for negligence because the program was not funded.

Ms. Lang was of the opinion that it would depend on the facts of the case and who had a responsibility to act. If the local government was required to comply with federal requirements and could not do so due to lack of funding, then there certainly would be some liability. Whether some type of indemnification could be sought from a higher level would be another factual question.

Responding to Assemblywoman Ohrenschall=s question about naming John Does in such a case, Ms. Lang said that procedure is utilized in any type of case where it is uncertain who will be named. John Does will be specified and additional persons added at a later date.

In response to Senator Washington=s inquiry regarding the \$50,000 liability limit established in 1997 and the original legislative intent, Mr. Young noted that in the original legislation a determination was made that there be some ability to bring actions against the state; however, the legislature requested a limit be set. Over time, the limit was possibly increased due to inflationary considerations and, perhaps, to maintain parity with surrounding states. Mr. Young stated he will research the issue and provide the members with the findings.

## PRESENTATION REGARDING STATUTORY LIMITATION ON TORT SUITS AGAINST PUBLIC ENTITIES FROM A PLAINTIFF=S PERSPECTIVE

*J.R. Crockett, Jr.*

Mr. Crockett, an advisory committee member representing the Nevada Trial Lawyers Association, stated that he has devoted the past 25 years of his practice to exclusively representing victims of wrongful deaths, serious injury, and medical malpractice. Mr. Crockett summarized several wrongful death cases, which, in his opinion, were attributable to negligence. He also explained the inequities associated with the \$50,000 tort limit (please refer to Exhibit G) and indicated that:

- \$ Tort limitations do not take into account the expenses incurred for litigation and attorney=s fees; these fees erode the \$50,000 cap and diminish the total amount awarded;
- \$ Quite often a case will go to trial since a government entity considers that the worst case scenario in a court decision could be payment of the original \$50,000 limit;
- \$ Compensation for negligence is not commensurate with the injury;
- \$ The major problem with a set limit is that it Ainsulates@ government entities from accepting responsibility for their actions; and
- \$ Damages far exceed the governmental tort cap.

## PRESENTATION ON ISSUES AND CONCERNS REGARDING TORT LAWSUITS AGAINST THE STATE OF NEVADA AND ITS AGENCIES

*P. Mark Ghan*

Mr. Ghan, Solicitor General, Office of the Attorney General, serving as an advisory committee member, responded to previous testimony.

1. With regard to the cost of attorney=s fees and the assertion that these expenses Aeat into the ultimate recovery@ where the cap is involved, he noted that Nevada Rules of Civil Procedure 68 and *Nevada Revised Statutes* 17.115 provide for offers of judgement. For example, an offer of judgement could be made in the amount of \$49,000 to the defendant who would have ten days in which to allow judgement to be entered against it. In the event the defendant does not allow judgement to be entered and the matter proceeds to trial and the judgement is for more than \$49,000, then attorney=s fees and costs will be borne by the defendant for refusal to settle the matter from the time of the offer.
2. The State of Nevada is self-funded and insured for tort claims. Premiums are based on a per capita premium for every state employee, including employees of the university and community college system. Each agency is assessed a premium which is determined by the estimated need and divided among the total number of employees.

Continuing, Mr. Ghan referred to the term Astacking@ which equates to multiple claims and its monetary effect on the state. As illustrated in the Jimenez case, there were nine different claims and an additional claim for negligent supervision. In a typical negligence case you may have negligence, you might have negligent supervision, negligent hiring, and an infliction of emotional distress claim. The ability to stack claims could result in an award much greater than the \$50,000 limit.

Mr. Ghan then read and commented on tort lawsuits against the State of Nevada and its agencies in the event the cap is eliminated or modified (please refer to Exhibit H). His presentation focused on the following issues:

- \$ The Office of the Attorney General processes tort claims and, if litigation results, defends tort actions brought against the State, its officers, and employees.
- \$ In Fiscal Year (FY) 1998, the state paid over \$3.5 million to individuals asserting state law tort claims and various federal claims; the state has budgeted \$3,733,000 to pay for such claims in FY 2000-2001.
- \$ Public agencies are often viewed as impersonal Adeep pockets@ and are primary targets in the area of tort litigation. Although over one-half of all tort claims against the state are legally or factually without merit, the Attorney General must defend each claim at a substantial cost to Nevada taxpayers.
- \$ It is anticipated that the elimination or modification of Nevada=s tort cap will result in a greater number of questionable claims.
- \$ The current \$50,000 cap is not an accurate reflection of Nevada=s limit on liability. Unlike other states, Nevada imposes no limit on the number of causes of action for which a claimant can recover. A single plaintiff can recover up to \$50,000 for each and every separate legal claim arising out of a single event.
- \$ Approximately 30 other states have established aggregate tort liability limits that apply per injured person and per occurrence; nearly 18 states have adopted unlimited liability.
- \$ The fiscal note submitted by the Attorney General associated with Assembly Bill 119 provided a preliminary estimate which indicated that removal of the tort claims cap would cost the state approximately \$2 million per year in additional administrative, insurance, and claims costs.

Responding to questions posed by Assemblyman Carpenter, Mr Ghan explained that:

3. Although the State of Nevada is self-insured, if the cap were removed it would be necessary to purchase insurance to cover a catastrophic claim. If the cap were raised, some lesser amount of insurance would be necessary.
4. Federal claims are usually civil rights claims. An example of a claim would be inmates= civil rights, pursuant to 42 USC Section 1983. These claims are largely due to an inmate=s confinement or if he is deprived of due process in some fashion. A Section 1983 claim has no cap for compensatory damages, punitive damages, attorney=s fees and costs, et cetera. Another category is the Title VII claim such as discrimination on the basis of race, sex, gender, national origin. This classification has a maximum compensatory damages cap of \$300,000 which does not include attorney=s fees, back pay, or front pay.

## **PRESENTATION ON THE IMPACT OF TORT LAWSUITS AGAINST THE COUNTIES**

*Madelyn Shipman*

Ms. Shipman, an advisory committee member representing the Nevada Association of Counties, outlined the assessed value and the value of a one cent ad valorem levy for FY 1999-2000 (please refer to Exhibit I). She noted that most of the rural counties purchase liability insurance and, therefore, are a part of the Nevada insurance pool. The insurance premium that the rural counties pay is based on a \$150,000 self-insured retention. This means, in effect, that they are financially exposed up to \$150,000.

Ms. Shipman stated that comparing the assessed value of Clark and Washoe Counties with the rural counties is not feasible. During the past ten years there has been no increase in assessed valuation for Esmeralda or Mineral Counties. Additionally, there are six rural counties that are so heavily dependent upon the mining industry they are in a constant mode of fluctuation. Ms. Shipman indicated that the BHP Mine in White Pine County will close its business next year, which could decrease the county=s assessed value by 38 percent. This would equate to a



\$70 million loss.

Referring to Exhibit I, Ms. Shipman referenced two tables. The first table reflects Washoe County's closed lawsuits for the period of July 1, 1994, through June 30, 1999. She noted that during this period, the county had 85 cases (33 of which were filed in federal court). The number of lawsuits actually paid was 19, for a total cost of \$476,750. The second table, which depicts the same time period, provides an analysis of closed general and automobile liability claims. The actual number of claims paid was 117, which cost the county \$369,403.

Using Washoe County as a benchmark, Ms. Shipman noted that over the past five years:

- \$ Forty percent of the cases in Washoe County were federal court cases, which are not subject to the state limit;
- \$ There were only two cases where the \$50,000 limit would have impacted the county had they not settled; and
- \$ Washoe County paid approximately \$1 million for claims and litigation, an average of \$200,000 per year. The cost to defend a claim far exceeds the \$50,000 in many cases.

In closing, Ms. Shipman commented that it is a terrible ordeal when an employee of an entity is named in a lawsuit. Not only is it an upsetting experience, but often his credit status is affected. There are instances where the king is not perfect and errors can occur. The responsibility, therefore, lies in the hands of the employer to represent and pay judgement on behalf of its employees.

Chairman Anderson asked Ms. Shipman if she could compile data that reflects similar information for school districts, water districts, and other county bodies that are under the jurisdiction of the counties.

## **PRESENTATION ON TORT LAWSUITS FROM THE PERSPECTIVE OF NEVADA CITIES**

*Shauna Hughes*

Ms. Hughes, a member of the advisory committee, representing the Nevada League of Cities, provided the subcommittee with a handout titled "Limiting our Limits: A City Attorney's View on Capping Municipal Liability" (please refer to Exhibit J). She indicated that:

- \$ Typically, cities in Nevada do not provide medical care, thus medical malpractice is not the type of claim a city would handle on a routine basis;
- \$ Cities are charged with the responsibility of providing public services to their citizens, i.e., police service, fire service, paramedic aid, building and maintaining streets, recreational opportunities, et cetera. Modifying or eliminating the tort cap could result in cutting or eliminating some public services;
- \$ There are limited options for cities to increase taxes to compensate for an adjusted cap;
- \$ The City of Henderson, for example, carries a million dollar self-insurance retention. Retaining this amount of taxpayers' money ties up a fund that cannot be used for any purpose other than the payment of tort claims and associated expenses; and
- \$ A city's bond rating is influenced by how litigation is conducted; a good bond rating results in financial benefits to communities as bonds are sold.

In conclusion, Ms. Hughes focused her comments on civil rights claims and the fact that it is virtually impossible to predict the number of claims that may be filed against a city. It is imperative, therefore, that budgets reflect the city=s projected number of claims for any given fiscal year.

Ms. Hughes then noted that Bill Hoffman, an advisory committee member who represents the Nevada Association of School Boards, was present in Las Vegas.

At the conclusion of Ms. Hughes= testimony, Chairman Anderson appointed two advisory committee members as co-chairs. He indicated that Bill Isaeff, representative of the Nevada League of Cities, and Bill Bradley who represents the Trial Lawyers Association, would serve in that capacity. The co-chairs were asked to formulate their time so that the advisory committee could meet and confer prior to the December 10,1999, meeting in Las Vegas. The Chairman asked that a report be presented at the meeting which identifies those areas that need legislative attention and possible solutions. Prior to the third meeting, the advisory committee was directed to meet and prepare another report that would include consensus recommendations for solving problems identified by the committee. This schedule should allow the subcommittee to consider and select recommendations that will be submitted to the 71<sup>st</sup> Legislature.

Chairman Anderson explained that any recommended legislation proposed by the subcommittee must be approved by a majority of the members of the Senate and a majority of the members of the Assembly. All members of the subcommittee were asked to attend the final meeting at the designated meeting location.

## **PUBLIC TESTIMONY**

*William Henry*

Mr. Henry, Senior Litigation Counsel, City of Las Vegas, discussed what the impact on the City of Las Vegas would be if the current tort cap of \$50,000 was increased or modified. He noted that:

\$ The City of Las Vegas is self-insured with an insurance retention fund of \$5 million. Catastrophic judgement insurance is also carried for judgments in excess of \$1 million.

\$ The City=s self-insurance premium is predicated on the tort limit of \$50,000. If the tort cap is raised to \$100,000, the City of Las Vegas would have to immediately double its retention to \$10 million.

\$ The only area where there is some budgetary allowance is the funding allocated for parks, park programs, and neighborhood response teams. If an additional \$5 million is needed, funding for one of these programs could be decreased or eliminated.

\$ Raising the tort limit will increase the number of lawsuits that are brought without any merit. The influx of lawsuits would necessitate hiring additional attorneys to cope with the increased case load.

Concluding public testimony, Chairman Anderson polled the subcommittee and advisory committee members to determine future meeting dates. The third and fourth meeting dates selected are: Wednesday, February 16, 2000, in Las Vegas, and Wednesday, April 19, 2000, in Carson City.

Exhibit K is the Attendance Record@ for this meeting.

There being no further business, the meeting adjourned at 1 p.m.

Respectfully submitted,

Roxanne Duer  
Senior Research Secretary

Scott Young  
Principal Research Analyst

Approved By:

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Assemblyman Bernie Anderson, Chairman

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Date

### **LIST OF EXHIBITS**

Exhibit A is correspondence to Assemblyman Bernie Anderson, prepared by Risa B. Lang, Principal Deputy Legislative Counsel, Legislative Counsel Bureau (LCB), dated October 18, 1999.

Exhibit B is an outline prepared by Risa B. Lang, Principal Deputy Legislative Counsel, LCB, titled AOverview of Sovereign Immunity.@

Exhibit C is a copy of *Nevada Revised Statutes* 41.0305 through 41.039, submitted by Risa B. Lang, Principal Deputy Legislative Counsel, LCB

Exhibit D is a compilation of tables prepared by Scott Young, Principal Research Analyst, Research Division, LCB, for the Assembly Concurrent Resolution 46 Interim Study Committee and includes the following tables:

- \$ AStatutory Limitations on Tort Damages Against Governmental Entities.@
- \$ AComparison of State Governmental Tort Liability Provisions.@
- \$ AComparison of Local Governmental Tort Liability Provisions.@
- \$ ASummary of Claims Filed in 1994.@
- \$ ASummary of Claims Filed in 1995.@
- \$ ASummary of Claims Filed in 1996.@
- \$ ASummary of Claims Filed in 1997.@
- \$ ASummary of Claims Filed in 1998.@
- \$ ATotal Amounts Claimed and Total Amounts Paid for Torts by State 1994B1998.@

\$ ATotal Amounts Claimed and Paid for Torts by State for Fiscal Year Base 1994B1999.@

Exhibit E is a fact sheet submitted by Scott Young, Principal Research Analyst, Research Division, LCB, titled ASummary of Claims for 1998 for Nevada Public Agency Insurance Pool, Entire Membership Totals.@

Exhibit F is a copy of policy statements titled AColorado Revised Statutes, Georgia Code,@ prepared by Scott Young, Principal Research Analyst, Research Division, LCB.

Exhibit G is a copy of a pleading titled ASummary of Baby Dillon v. UMC,@ submitted by J.R. Crockett, Jr., Representative of the Nevada Trial Lawyers Association.

Exhibit H is correspondence submitted by P. Mark Ghan, Solicitor General, Office of the Attorney General, to the Legislative Commission=s Subcommittee to Study the Statutory Limitation on Damages that may be Awarded to a Person in a Tort Action Against the State of Nevada, its Political Subdivisions or Certain Other Persons (A.C.R. 46), titled AAssembly Concurrent Resolution 46,@ dated October 20, 1999.

Exhibit I includes three tables (titled ACounties Assessed Value and the Value of a One Cent Ad Valorem Levy for F/Y 1999-2000@; AWashoe County Analysis of Closed General & Automobile Claims for the Period From: 07/01/94B06/30/99@; and AWashoe County Analysis of Closed Lawsuits for the Period From: 07/01/94B06/30/99@), prepared by Madelyn Shipman, representing the Nevada Association of Counties.

Exhibit J is a document prepared by Shauna Hughes, representative of the Nevada League of Cities, titled ALimiting Our Limits: A City Attorney=s View on Capping Municipal Liability.@

Exhibit K is the AAttendance Record@ for this meeting.

Copies of the materials distributed during the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the library at (775) 684-6827.