

SB37 - 1999

Introduced on Jan 26, 1999

By Commerce and Labor,

Fiscal Note

Effect On Local Government: *No*

Effect on the State or on Industrial Insurance: *No*

Makes various changes regarding industrial insurance. (BDR 53-382)

Current Status: In Senate at Governor

Chapter 388 Sections 27, subsection 1 of section 127, and sections 128, 129 and 140 effective May 29, 1999. Subsection 1 of section 132 effective June 1, 1999. Sections 2, 3, 12.5, 86.1, 86.2, 86.4, 86.6 to 86.9, inclusive, 96.5, 116, 122, 126.3, 127.5, 130 and 135 effective July 1, 1999. Sections 20.5, 35, 89, 117 and 139.4 effective at 12:01 a.m., July 1, 1999. Sections 20, 24, 25, 26 and 96 effective on the date of the governor's proclamation. Sections 29 and 126.5 effective on the date of the governor's proclamation if the proclamation is issued before October 1, 1999. Section 29.5 effective at 12:01 a.m., October 1, 1999, if the governor's proclamation is issued on October 1, 1999, or on the date of the governor's proclamation if the proclamation is issued after October 1, 1999. Sections 49.5, 52.5, 53.5, 57.2, 57.4, 62.1 to 62.5, inclusive, 68.2 to 68.8, inclusive, 80.5, and 139.2 effective January 1, 2000. Sections 1, 4 to 12, inclusive, 13 to 19, inclusive, 21, 22, 23, 28, 30 to 34, inclusive, 36 to 49, inclusive, 50, 51, 52, 53, 54 to 57, inclusive, 58 to 62, inclusive, 64 to 68, inclusive, 69 to 80, inclusive, 81 to 86, inclusive, 87, 88, 90 to 95, inclusive, 97 to 115, inclusive, 118 to 121, inclusive, 123 to 126, inclusive, subsection 2 of section 127, 131, subsection 2 of section 132, 133, 134, 136 to 139, inclusive, and 141 effective January 1, 2000, if the assets of the state industrial insurance system are transferred to a domestic mutual insurance company. Section 63 effective at 12:01 a.m. on January 1, 2000, if the assets of the state industrial insurance system are transferred to a domestic mutual insurance company. Sections 20, 96, 116 and 122 expire by limitation on January 1, 2000, if the assets of the state industrial insurance system are transferred to a domestic mutual insurance company. Section 8 expires by limitation on June 30, 2003. Section 100 expires by limitation on May 1, 2013.

Hearings

Senate Commerce and Labor	Feb-15-1999	No Action
Senate Commerce and Labor	Apr-05-1999	No Action
Senate Commerce and Labor	Apr-07-1999	No Action
Senate Finance	Apr-12-1999	Mentioned No Jurisdiction
Senate Commerce and Labor	Apr-13-1999	No Action
Senate Commerce and Labor	Apr-14-1999	No Action
Senate Commerce and Labor	Apr-21-1999	No Action
Senate Commerce and Labor	Apr-22-1999	No Action
Senate Commerce and Labor	Apr-23-1999	Amend, but without recommendation
Assembly Commerce and Labor	May-10-1999	No Action
Assembly Commerce and Labor	May-12-1999	No Action
Assembly Commerce and Labor	May-21-1999	Amend, and do pass as amended
Senate Commerce and Labor	May-28-1999	Concur

26-Jan-99 Prefiled. Referred to Committee on Commerce and Labor. To printer.

28-Jan-99 From printer.

01-Feb-99 Read first time.To committee.

08-Apr-99 Waiver granted effective: April 7, 1999.

28-Apr-99	From committee: Amend, but without recommendation.
✓ 29-Apr-99	Read second time. Amended. (Amend. No. 730). To printer.
● 30-Apr-99	From printer. To engrossment. Engrossed. First reprint. ✓ Read third time. Passed, as amended. Title approved, as amended. (Yeas: 12, Nays: 6, Not Voting: 3). To Assembly.
03-May-99	<u>In Assembly.</u> Read first time. Referred to <u>Committee on Commerce and Labor.</u> To committee.
13-May-99	Waiver granted effective: May 13, 1999.
✓✓ 26-May-99	From committee: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. (Amend. No. 1156). To printer. From printer. To re-engrossment. Re-engrossed. Second reprint. ✓ Declared an emergency measure under the Constitution. Read third time. Passed, as amended. Title approved, as amended. (Yeas: 36, Nays: 4, Excused: 2). To Senate.
27-May-99	<u>In Senate.</u>
28-May-99	Assembly Amendment No. 1156 concurred in. To enrollment.
29-May-99	Enrolled and delivered to Governor. Approved by the Governor. <u>Chapter 388.</u>



BILL SUMMARY
70th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

SENATE BILL 37
(Enrolled)

Privatization of the State Industrial Insurance System

Senate Bill 37 authorizes the manager of the State Industrial Insurance System (SIIS) to take the steps necessary to establish a domestic mutual insurance company to transact industrial insurance and other lines of property and casualty insurance in the State of Nevada.

The bill provides that the Governor must proclaim the following events have occurred before the manager of SIIS can transfer the assets of the system to the successor organization:

- A sufficient amount of reinsurance has been purchased by SIIS to operate in a financially responsible manner;
- The manager has taken the steps necessary to establish a domestic mutual insurance company;
- A favorable ruling has been received by SIIS from the Internal Revenue Service that establishing the domestic mutual insurance company is not considered a taxable event; and
- The Commissioner of Insurance has determined the domestic mutual insurance company qualifies to transact industrial insurance in Nevada.

If the Governor issues such a proclamation, the manager may transfer to the chief executive officer of the established domestic mutual insurance company the premiums and other money paid to SIIS, including all records, real property, and securities acquired with money in the State Insurance Fund.

The measure requires the Governor to appoint an advisory committee to adopt the initial bylaws of the established domestic mutual insurance company. The advisory committee must be

composed of members representing small, medium, and large employers insured by SIIS, whose places of employment are located in various regions of the state.

The bill requires that the chief executive officer of any successor organization to SIIS must continue to hold in trust any money paid to SIIS for the purpose of providing compensation for industrial accidents, occupational diseases, and related administrative expenses. If the successor organization stops providing industrial insurance in the State of Nevada, all money held in trust for the purpose of providing compensation for industrial injuries must be delivered to the Commissioner of Insurance and deposited in the State Insurance Fund. Further, the bill prohibits any successor organization of SIIS from using the money held in trust for the purpose of providing compensation for industrial accidents from being used to transact other property or casualty insurance.

The bill exempts all officers and employees of SIIS from the provisions of Chapter 284 of *Nevada Revised Statutes*, State Personnel System," effective on the date the Governor's proclamation is issued. In addition, the bill provides that a classified employee who is employed by SIIS on July 1, 1999, retains his rights to reemployment with another agency of the State of Nevada, including the right to be placed on an appropriate reemployment list maintained by the Department of Personnel for at least 24 months.

If the manager of SIIS lays off an employee, the manager must give the employee 60 days' written notice, and provide the Department of Personnel with the information necessary to ensure the employee receives his rights to reemployment. Further, the bill provides that the established domestic mutual insurance company must buy out the pensions of certain employees nearing retirement.

The bill provides that the chief executive officer of the established domestic mutual insurance company must enter into an agreement with the Department of Employment, Training and Rehabilitation to provide services and training to certain employees who are laid off before January 1, 2002. The established domestic mutual insurance company must pay the fees required for such training, up to \$2 million. Further, the bill provides that the Commissioner of Insurance must approve any retrospective rating agreement or contract of SIIS existing on June 30, 1999, until December 31, 2000, or until the agreement or contract expires, is renewed, reissued, or amended, whichever occurs first.

Industrial Insurance Benefits

Senate Bill 37 requires an injured employee to sign all medical releases necessary for the insurer to obtain information and records about a preexisting medical condition that is reasonably related to the industrial injury of the employee. In addition, the measure provides that an injured

employee may request a hearing officer or appeals officer to order the insurer to reimburse him for the cost associated with a second impairment rating that results in a higher percentage of disability than the first rating, if the hearing officer or appeals officer decides that the second determination of a higher percentage of disability is appropriate.

The bill provides that an employee, whose preexisting nonindustrial condition is aggravated due to a subsequent industrial accident or occupational disease, is entitled to workers' compensation benefits, unless the insurer can prove by a preponderance of the evidence that the subsequent injury or occupational disease is not a substantial contributing cause of the resulting condition. The bill also provides that an employee whose industrial injury or occupational disease is subsequently aggravated outside of the workplace is entitled to workers' compensation benefits, unless the insurer can prove by a preponderance of the evidence that the injury or occupational disease is not a substantial contributing cause of the resulting condition.

The bill allows an insurer to close certain claims if the medical benefits for the claims are less than \$300 and the injured employee does not receive treatment for the injury for a 12-month period. The bill requires the insurer to provide written notice to the claimant of the closure of such a claim. Further, the bill provides that under certain circumstances, workers' compensation payments for a permanent total disability must be reduced by an amount equal to the amount of the permanent partial disability lump sum previously paid to the injured employee.

The bill clarifies that a position offered by an employer to an injured employee with a temporary total disability must provide a gross wage that is equal to or substantially similar to the gross wage the employee was earning at the time of his injury in order for the employer to be exempt from certain provisions governing vocational rehabilitation. Further, the bill provides that an insurer and an injured employee may jointly select the physician or chiropractor used to determine the percent of the injured employee's disability; otherwise, the insurer must select the rating physician or chiropractor from the rotating list of such practitioners maintained by the Administrator of the Division of Industrial Relations. The bill also changes the factor for compensation of a permanent partial disability from 0.54 percent to 0.6 percent for each 1 percent of impairment of the whole man for injuries sustained on or after January 1, 2000.

The bill changes, from 90 days to 6 months, the length of time an injured employee with existing marketable skills may receive job placement assistance. The bill also extends, by 3 months, the time period that an injured employee who does not have existing marketable skills is eligible to receive vocational rehabilitation, depending on the injured employee's percent of impairment.

Further, the bill provides that under certain circumstances an injured employee may receive vocational rehabilitation services at a location outside of the State of Nevada, but the location may not be more than 50 miles from Nevada's border. The bill also provides that under certain

circumstances, the insurer, organization for managed care, health care provider, third-party administrator, or employer must pay a benefit penalty to the injured worker that is not less than \$5,000, but not greater than \$25,000.

Office for Consumer Health Assistance

Senate Bill 37 creates the Office for Consumer Health Assistance (OCHA) in the Office of the Governor. The bill provides that the Governor must appoint a Director of the office who is a physician, registered nurse, advanced practitioner of nursing, or a physician's assistant. The bill also transfers the three ombudsmen positions of SIIS, and two positions to assist those ombudsmen, including the equipment and supplies associated with their positions, to OCHA. In addition, the bill transfers one position from the Health Division, Department of Human Resources, and one position from the Division of Health Care Financing and Policy, Department of Human Resources, to the OCHA.

The bill appropriates from the State General Fund \$212,404 for Fiscal Year (FY) 1999-2000, and \$251,001 for FY 2000-2001, to pay for a portion of the cost of the OCHA. In addition, the bill appropriates from the Fund for Workers' Compensation and Safety \$262,085 for FY 1999-2000, and \$325,848 for FY 2000-2001, to pay for the cost associated with the positions transferred to OCHA from SIIS. Further, the bill appropriates from the State General Fund \$36,248 for FY 1999-2000, and \$50,314 for FY 2000-2001, to pay for the cost associated with the position transferred from the Health Division to OCHA.

The measure provides that the duties of the director include responding to inquiries related to health care and workers' compensation, assisting consumers and injured employees in understanding their rights and responsibilities under health care plans and industrial insurance policies, and investigating complaints. The director may employ the persons necessary to carry out the functions of the office. The director may also adopt the regulations necessary to carry out the provisions of the bill related to the Office.

Finally, the bill requires the director to submit a written report to the Governor, on or before February 1 of each year, that includes the number and geographic origin of the inquiries received by OCHA, the type of assistance provided to each health care consumer and injured employee who sought assistance, and the disposition of each inquiry and complaint received by the Director.

Effective Dates

Many sections of the bill are effective on July 1, 1999, including sections relating to the creation of the Office for Consumer Health Assistance. Sections of the bill that exempt SIIS employees from the State Personnel System are effective on the date the Governor issues a proclamation that

certain events have occurred. Sections of the bill that authorize a hearing and appeals officer to order an insurer to reimburse an injured employee for the expense of a second impairment rating; revise the provisions governing the effect on the availability of compensation of a preexisting condition and of an aggravation of an industrial injury or disease that is not related to employment; revise provisions governing compensation for permanent total disability; and expand the length of certain programs of vocational rehabilitation, are effective on January 1, 2000.

Background Information

Testimony indicated that the Governor intends to lift the hiring freeze for all state employees, instead of SIIS employees only, on June 30, 1999. Testimony also indicated that SIIS will not layoff employees before October 1, 1999, instead of the previously discussed date of July 1, 1999. General Counsel for SIIS also indicated that SIIS intends to issue a memorandum of understanding to the Division of State Lands giving the State of Nevada a right of first refusal to purchase at fair market value any real estate that SIIS offers for sale in the future.

LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventieth Session
February 15, 1999**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 9:30 a.m., on Monday, February 15, 1999, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Mark Amodei
Senator Dean A. Rhoads
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Crystal M. Lesbo, Committee Policy Analyst
Sue S. Matsuka, Committee Policy Analyst
Vance A Hughey, Committee Policy Analyst
Ardyss Johns, Committee Secretary

OTHERS PRESENT:

Maynard R. Yasmer, Administrator, Rehabilitation Division, Department of Employment, Training and Rehabilitation
Robert A. Ostrovsky, Lobbyist, Nevada Resort Association
Robert J. Gagnier, Lobbyist, Executive Director, State of Nevada Employees Association (SNEA)
Danny L. Thompson, Lobbyist, Political Director, Nevada State American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
William J. Miller, First Vice President and Actuary, Reliance National Insurance Company

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Scott M. Craigie, Lobbyist, Liberty Mutual Insurance Group, Alliance of American Insurers
Alice A. Molasky-Arman Commissioner, Division of Insurance, Department of Business and Industry
Samuel P. McMullen, Lobbyist, Las Vegas Chamber of Commerce
Kevin Spilsbury, Employers of Nevada

Chairman Townsend opened the meeting with the introduction of Bill Draft Request (BDR) 53-767.

BILL DRAFT REQUEST 53-767: Revises provisions relating to certain revolving accounts of rehabilitation division of department of employment, training and rehabilitation. (Later introduced as S.B. 190.)

Maynard R. Yasmer, Administrator, Rehabilitation Division, Department of Employment, Training and Rehabilitation, explained the purpose of the BDR was to combine two existing revolving accounts through which his department provides service to the blind and severely disabled.

SENATOR O'CONNELL MOVED TO INTRODUCE BDR 53-767.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS AMODEI, RHOADS AND SCHNEIDER WERE ABSENT FOR THE VOTE.)

* * * * *

- ✓ Chairman Townsend announced the committee would concentrate on the area of workers' comp and asked Senator O'Connell, who was chairman of the Legislative Committee on Workers' Comp, to give a brief overview regarding what took place during the interim.
- ✓ Senator Ann O'Connell, Clark County Senatorial District No. 5, began by giving some data on the hearings making note of the fact that everyone had an opportunity to have input on the bills to be considered. She said there were 10 different meetings held, for a total of 50 hours spent on hearings alone, with an average attendance of approximately 70 people. She further stated the research staff spent 3300 hours before and after the hearings, and the Legal

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Division spent 1103 hours preparing the 15 bills that will be reviewed over the next 3 days.

- ✓ Senator O'Connell proceeded to walk the committee through the notebook entitled *Legislative Committee on Workers' Compensation, Summary of Suggested Legislation* (Exhibit C. Original is on file in the Research Library.) member. She pointed out the first page with the heading "Legislative Committee on Workers' Compensation Index of Committee Bills to Committee Recommendations" stating:

From the committee, we had approximately 48 different proposals and the chairman did not want to deal with 48 different proposals so he asked that we condense them into topics which we have tried to do. So, if you're looking at the first line, you'll see it says S.B. 37. It will then give you the BDR number, the bill topic; then when you get over to the corresponding recommendation numbers, those are from the bulletin. The bulletin is the last thing in the back of your notebook, and the first number, which is 10 there, represents the tenth proposal that was made to the committee. Then you'll see, in parentheses, 16 and 17. Those would be the page numbers that the committee will find that information from the bulletin on. So you see that the tenth proposal, thirteenth, fourteenth, fifteenth and sixteenth are all put together in S.B.37.

If you follow the bills down, that's the way to read that first page. You go from there to the actual bill number and you'll see that we've done a section by section on each of the bills. If you're looking for anything in particular, hopefully, you'll be able to quickly pick it up with a section by section. And with that, Mr. Chairman, if you would then like to take testimony, or if anybody has any questions about the information we have prepared for you...

Chairman Townsend opened the hearing on Senate Bill (S.B.) 37

SENATE BILL 37: Makes various changes regarding industrial insurance. (BDR 53-382)

Chairman Townsend pointed out the bill has to do with changes in the current system regarding its ability to compete in the market place.

Robert A. Ostrovsky, Lobbyist, Nevada Resort Association, stated he was part of a group who discussed the changes found in section 2 which were intended to address the issue of the treatment of current state workers who are employed by the State Industrial Insurance System. The group questioned, he continued, what would happen to those employees in a competitive environment. He said the option in the bill, essentially indicates those employees will be taken out of the state personnel system and given certain reemployment rights if they are laid off or choose to leave the system. Mr. Ostrovsky claimed the policy issue is whether or not they should be covered by the State Personnel Act. The methodology that is set up for the reattainment of employment rights within the executive branch of government, he said, are meant to address the situation where they would lose their current state personnel rights and would become employees of the newly formed insurance company.

Mr. Ostrovsky told the committee he had proposed the second part of the bill, which starts in section 3, subsection 4, paragraph (a). He said his concern was that the account for extended claims was not getting the kind of financial public exposure desired in terms of being able to measure and look at the continuing liabilities accrued there, and whether or not they were successfully funded. He stated this would require a report, including a balance sheet, statement of operations, the amount of money paid on the claims and operating expenses applied to those, investment income, report on the accumulated deficit or earnings, and the managers' opinion about the adequacy of the account to meet the obligation. He added while everyone was hopeful that the money set aside in the last legislative session would fund the account for extended claims, he wanted to make sure that everyone could see those numbers, and stated the old law that was passed only talked about numbers for the new system, but not extended claims.

Mr. Ostrovsky referred to the first line on page 4 noting that even though there is confidential information the insurance system needs to maintain in a competitive market environment, they are required, upon request, to provide such confidential information to certain agencies. He noted these were the

only sections of the bill in which he was involved and thought someone else needed to speak to the other sections of the bill.

Chairman Townsend asked about new language on pages 4 and 5 regarding extended claims and Mr. Ostrovsky replied the new language was needed in order to make the earlier changes effective.

Sue S. Matuska, Committee Policy Analyst, Research Division, Legislative Counsel Bureau, agreed with Mr. Ostrovsky adding the language was there to make sure it was clear this report would not be considered proprietary information; that the system was entitled to keep private.

Robert J. Gagnier, Lobbyist, Executive Director, State of Nevada Employees Association, spoke against those sections of the bill that would take the employees out of the state personnel system. He said he felt that taking the employees of this agency out of the State Personnel Act is not, in the long term, in the public interest and added he did not think there was any need to do so. Further, he said, under the current system, uniform regulations applying to all the employees, if applied in a proper manner, ensure those employees of equal treatment.

Mr. Gagnier stated when layoff rights in the bill were previously discussed, the manner in which layoffs would take place within the agency if they were necessitated was not addressed. He stressed employee rights needed careful consideration. He said classified service means employees are not treated in an arbitrary and capricious fashion, and not that they have a guarantee to a job, noting that a substantial number of state employees are terminated every year for one reason or another. Classified service assures compliance with laws through the fact the employees can only be dismissed for cause, which, he said, has always been a main concern. Continuing, Mr. Gagnier said this gives employees more of a right to speak up, and mentioned their coverage under the whistle-blower law. He claimed if the employee is not within the state personnel system, he is outside the protection of the whistle-blower law; and, therefore, could not bring things to the attention of the Legislature or the administration.

Danny L. Thompson, Lobbyist, Political Director, Nevada State American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), stated the AFL-CIO is concerned with the same provision Mr. Gagnier mentioned; that of

removing employees from classified service. Mr. Thompson pointed out in 1993, the State Industrial Insurance System had a \$2.1 billion debt and, after making several changes, it is now debt-free and making a profit. Therefore, he said, there was no need for S.B. 37.

William J. Miller, First Vice President and Actuary, Reliance National Insurance Company, stated his reason for coming to the hearing from Philadelphia was the possibility of his company entering the property casualty market, especially workers' compensation. He said the fact that it is an extremely competitive market, would help to drive the prices down for employers of Nevada and so they would want to attract as many insurance carriers as possible. He expressed concern, however, about what might happen if and when the account for extended claims runs out of money, which he estimated would probably happen in early 2012. If that estimate is correct, he added, there would still be over \$300 million in unfunded liabilities.

Mr. Miller pointed out that a great deal would hinge upon the ability of what he estimated at \$700 million in assets, to generate investment income. He said it was this issue holding his company back and added if there was more certainty about how the extended account fund would be funded long term; a lot of carriers would take an aggressive approach.

Robert A. Ostrovsky, Lobbyist, Nevada Resort Association, addressing Mr. Millers' concerns, surmised it would be a legislative issue if the account for extended claims ran short of money, and suggested the Governors' proposal would address that issue. Mr. Ostrovsky said if the system could get market gains in the next 10 years like the gains it had in the last 10 years, it would not be a problem. However, he added, "that is another whole story."

Mr. Ostrovsky noted the purpose of section 3 of S.B. 37 was to allow the system to enter into an agreement with insurance companies to sell entire lines of insurance as opposed to just workers' compensation. Further, he said, there was a question about whether or not the state was taking on a new liability and the new language in this section addressed that issue.

Mr. Ostrovsky pointed out section 5 of the bill requires the system to comply with the directions of the insurance commissioner's office in providing information to the insurance commissioner that he feels is appropriate.

Scott M. Craigie, Lobbyist, Liberty Mutual Insurance Group, Alliance of American Insurers, stated while his clients are not taking a position on the personnel act issue of S.B. 37, they are in favor of the remainder of the bill.

A letter, dated February 11, 1999, from Samuel Sorich, Assistant Vice President, Western Regional Manager, National Association of Independent Insurers (Exhibit D), was submitted for distribution to the committee members.

Senator Townsend closed the hearing on S.B. 37 and opened the hearing on S.B. 43.

SENATE BILL NO. 43: Makes various changes concerning applicability of insurance code to state industrial insurance system and private carriers of industrial insurance. (BDR 53-396)

Senator Townsend referred the committee to page 6 in Exhibit C.

Alice A. Molasky-Arman, Commissioner, Division of Insurance, Department of Business and Industry, questioned section 1 of the bill which, she said, establishes the due-process standards for the system insofar as disciplinary action taken by the commissioner's office. She pointed out it is not the process that is generally applied to insurers, but to self-insurers and associations of self-insurers. Ms. Molasky-Arman stated a bill was proposed by the administration in which the Division of Insurance had a provision that would change the manner in which disciplinary action is taken against private carriers. It would put them under the same process standards currently in place, she said, because there should be no difference in dealing with an insurer because it is workers' compensation rather than life insurance or health insurance. She told the committee she would provide them with a copy of the language used in that bill, noting she thought it would be appropriate to have it consistent across the board.

Senator O'Connell remarked this issue had not come up during the hearings, and Ms. Molasky-Arman agreed it had not. Ms. Molasky-Arman said she thought this procedure was originally adopted in Assembly Bill (A.B.) 609 of the Sixty-ninth Session.

ASSEMBLY BILL 609 OF THE SIXTY-NINTH SESSION: Makes changes to provisions governing industrial insurance. (BDR 53-1502)

Ms. Molasky-Arman claimed there was no opportunity to address disciplinary action at that time, and that was the standard of proceeding as far as the private carriers were concerned and noted the Division of Insurance probably has one of the most advanced set of rules of procedure.

Mr. Craigie stated he had testified at length during the interim on having the State Industrial Insurance System (SIIS) be treated like any other insurance entity. He called attention to page 3, section 2, subsection 2, where it spells out how and where SIIS will be judged differently than other carriers because it is a state fund and will remain that way, at least until there is another proposal. He noted the legislative staff had done an outstanding job in putting this bill together and concluded his clients were in full support of S.B. 43.

Senator Townsend closed the hearing on S.B. 43 and opened the hearing on S.B. 93.

SENATE BILL 93: Revises provisions governing administration of state industrial insurance system. (BDR 53-393)

Mr. Ostrovsky stated this bill was a result of a proposal he had made to the study committee, noting it was not combined with any other bills and covers only one subject matter. He explained his idea was to reinstitute a board of directors made up of nine members and appointed by three different groups. He said three members would be appointed by the majority leader of the Senate in consultation with the minority leader. Three would be appointed by the speaker of the Assembly in consultation with the minority leader of that body; and, he concluded, the last three members would be appointed by the Governor. Further, Mr. Ostrovsky said, each appointee would have to be a policyholder of the system in working toward the concept of a mutual insurance company made up of its policyholders, and run for the benefit of the policyholders. In addition, he stated, one of each group of three would be required to have had previous experience in investment, risk management, occupational safety, casualty insurance or law, so that no less than three members of the board would be professionals in one of those areas.

Mr. Ostrovsky stated terms of all appointees would be 4 years and no member of the board could serve more than two full terms. In the event of a vacancy on the board during the legislative session, the same people who made the original

appointment would appoint someone to fill the vacancy. Otherwise, he said, it would be up to the Legislative Commission to make an interim vacancy appointment. He added the Governor could always fill appointments of that office. The board would elect a chairman from among its own members for a 1-year term and, he declared, the chairman would not be permitted to serve more than two consecutive terms.

Mr. Ostrovsky pointed out the board would meet at least quarterly and would receive for their attendance at least \$80 per day, as fixed by the board, and a per diem allowance equal to that generally given to other state employees. He said the primary duties of the board would be to approve annual and biannual budgets, approve investment policies, appoint an independent certified accountant and, before each legislative session, prepare a report to the Legislature. He noted they would not be allowed to adopt regulations for the operation of the system and added, the board would set policy, but the manager would set procedures and regulations as needed. He mentioned that whereas previously, the Governor hired the manager like a cabinet member, the board would now appoint a manager who would serve at the pleasure of the board, and be the chief operating officer, responsible for all duties of the system.

Senator Rhoads asked why the board, instead of the Governor, should appoint the manager. Mr. Ostrovsky explained the person who ran the system had to be loyal to the board, and if the Governor made the appointment, and had the board in place separately from the manager, the manager's loyalty would be to the Governor. He added if the Governor is to run the system, there would be no need for a board.

Mr. Thompson stated even though the AFL-CIO has no problem with a board, there should be some workers on the board. He proposed an amendment that would require one out of each group of three be a worker, in order to give the policyholder somewhere to go with any complaints they may have about policies. Ultimately, he said the other partner in workers' compensation is the worker, who should be afforded the same opportunity.

Samuel P. McMullen, Lobbyist, Las Vegas Chamber of Commerce, stated he wanted to go on record saying, "we strongly support this bill".

Kevin Silsbury, Employers of Nevada, said:

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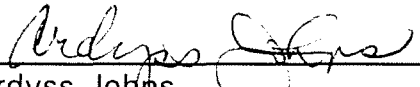
I would like to go on record in strong support of S.B. 93 but also would like to point out some small housekeeping items as Mr. Ostrovsky did from Nevada Resort Association, and that there is a conflict in S.B. 37, section 9 that does conflict back to S.B. 93 on who the manager serves and appoints his salaries.

Ms. Matuska replied each bill stands alone, and any conflicts would be addressed when the bills approached passage, but stated, at present, they are different concepts.

Chairman Townsend concurred pointing out these bills would be held until the Governor has had time to bring forward his proposal at which time any conflicts would be resolved. He then closed the hearing on S.B. 93.

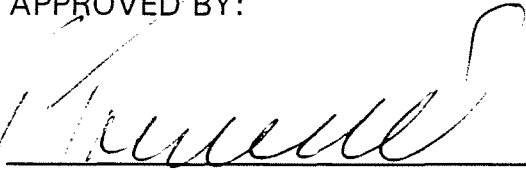
There being no further business, the meeting was adjourned at 10:45 a.m.

RESPECTFULLY SUBMITTED:



Ardyss Johns,
Committee Secretary

APPROVED BY:



Senator Randolph J. Townsend, Chairman

DATE: 3/29/99

*Legislative Committee on
Workers' Compensation*



Summary of Suggested Legislation

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Legislative Committee on Workers' Compensation
Index of Committee Bills to Committee Recommendations

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**National Association
of Independent Insurers**

980 Ninth Street, Suite 1600, Sacramento, CA 95814-2736

Samuel Sorich
ASSISTANT VICE PRESIDENT
WESTERN REGIONAL MANAGER

February 11, 1999

The Honorable Randolph J. Townsend
Chairman, Senate Commerce & Labor Committee
Nevada State Capitol Building
Carson City, NV 89701

Dear Senator Townsend,

The National Association of Independent Insurers (NAII) is the nation's largest property/casualty insurance trade association with a membership of more than 600 insurance companies. More than 150 NAII members are doing business in Nevada. These companies are responsible for approximately 30% of the property/casualty insurance premiums written in Nevada.

Many NAII member companies have applied for licenses to write workers compensation insurance in Nevada. Some other NAII members are considering applying for workers compensation licenses.

In discussing the Nevada workers compensation system with a number of our members, concerns have been expressed about the State Insurance Fund's account for extended claims. According to the independent auditors' September 25, 1998 report to the Fund, the account for extended claims faces a sizable deficit. NRS 616B.087 provides that any assessment imposed on insurers to pay for the account's liabilities must be approved by the Legislature.

I sense some caution among insurers about how the liabilities of the account for extended claims will be paid. I believe it would be helpful for the Senate Commerce & Labor Committee to examine the condition of the account and to review the program for resolving the account's deficit. The Committee's consideration of the account would benefit consumers of workers compensation insurance, prospective insurer participants in the market and the public in general. Adding certainty to the issues surrounding the account's deficit could spur more insurers to vigorously compete in the Nevada workers compensation insurance market. That result can only be positive for the purchasers of workers compensation insurance.

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February 11, 1999

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Thank you for your consideration of these comments. Please let me know if you want NAI to provide further information.

Sincerely,



Samuel Sorich
Assistant Vice President

cc: Members of the Senate Commerce & Labor Committee

**THE
SMITH
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**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventieth Session
April 5, 1999**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:02 a.m., on Monday, April 5, 1999, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Mark Amodei
Senator Dean A. Rhoads
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Crystal Suess, Committee Secretary

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Crystal Suess, Committee Secretary

OTHERS PRESENT:

Douglas Dirks, Chief Executive Officer, Employers Insurance Company of Nevada
Lenard Ormsby, General Counsel, Employers Insurance Company of Nevada
Danny L. Thompson, Lobbyist, Nevada State American Federation of Labor-Congress of Industrial Organizations
Robert J. Gagnier, Lobbyist, State of Nevada Employees Association
Paula Berkley, Lobbyist, Truckee Meadows Human Services Association
Jon L. Sasser, Lobbyist, Washoe Legal Services

Senate Committee on Commerce and Labor

April 5, 1999

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Thomas M. Patton, First Assistant Attorney General, Office of the Attorney General

Greg W. Ferraro, Lobbyist, Blue Cross and Blue Shield of Nevada

James L. Wadhams, Lobbyist, Blue Cross and Blue Shield of Nevada

Chairman Townsend opened the hearing on Senate Bill (S.B.) 37.

SENATE BILL 37: Makes various changes regarding industrial insurance.
(BDR 53-382)

Douglas Dirks, Chief Executive Officer, Employers Insurance Company of Nevada (EICON), said he was presenting the Governor's proposal to mutualize EICON. He gave a history of the workers' compensation insurance. He said in 1993 a comprehensive overhaul of the state's workers' compensation program was performed, because the system had a \$2.2 billion unfunded liability. That was the beginning of bringing the system to opening the market to competition on July 1, 1995. The system was given a 4-year window to prepare for competition by taking what had been a very traditional monopolistic state fund, and turning it into a competitive insurance company. EICON is now 90 days away, and is still working feverishly to prepare to be a successful competitor in the open marketplace.

Mr. Dirks explained a mutual insurance company is owned by its policyholders, who hold an interest in the company; a mutual interest. The Governor's proposal turns over the ownership of the company to its policyholders. He stressed the Governor is extremely concerned that the state's financial statement still reflects the financial condition of the state fund, which on an accounting basis causes in excess of a \$600 million deficit in the state's financial statement related to EICON. He stated this proposal would completely remove from the state's financial statements the deficit reported from EICON and the state insurance fund. Additionally, Mr. Dirks said, the Governor wants to create an entity that has a substantial financial condition so that it can compete in a very competitive marketplace, and sustain its operations on a going forward basis.

Mr. Dirks stated the Governor wants very much a company that can succeed, a domestic insurance company located in Nevada, employing Nevadans, and providing services to Nevada businesses. This is an excellent opportunity to create a mutual company out of an 86-year-old state fund that can accomplish

that, keep jobs in Nevada, and be located close to the business locations of its policyholders. Finally, the Governor requested providing a proposal that can provide an appropriate transition for EICON employees. Mr. Dirks elucidated that initially no provisions were made for the employees who would be transitioning into a competitive marketplace. He submitted an EICON letter to its employees (Exhibit C) informing the employees of the Governor's proposal addressing the structure of the plan, retirement plan, and layoff protection.

Mr. Dirks addressed the structure of the proposal, saying it is driven by a number of different considerations. The two primary considerations are the state constitution and the Internal Revenue Service (IRS). He said the state constitution is a concern because state insurance was created as a constitutional trust, and EICON is a statutory trustee of that constitutional trust. The drafters of this bill have honored the constitutional trust concept that as these funds are moved from EICON to the mutual company, which will be Employers Mutual Insurance Company of Nevada (EMICON), they would be held in trust. Those funds would be set aside only to provide benefits and the administrative cost of the workers' compensation program. He said the important thing is these funds now and forever will be constitutional trust assets held to pay benefits to injured workers, and the administrative costs associated with providing those benefits.

Mr. Dirks explained the IRS has played a role in the changeover. He expounded that EICON has been working closely with the IRS to develop a proposal. In turn the IRS would provide EICON with a "private-letter ruling" that would give EICON the necessary comfort that, if structured the way it is proposed, there will be no or minimal tax consequences on the mutualization of EICON.

Mr. Dirks continued that because of those IRS concerns, EICON is proposing the passage and approval of S.B. 37. He said after passage and approval, EICON would enter into a reinsurance transaction. The reinsurance transaction would transfer from the state's financial statement and from EICON's financial statement, approximately \$1.6 billion in liabilities in exchange for a reinsurance premium. EICON would transfer a substantial amount of assets of approximately \$800 million in exchange for the assumption of \$1.6 billion in liabilities. He conveyed the reinsurance would completely remove that liability from the state's financial statement, and also provide reinsurance coverage to EICON in the amount of \$2 billion. He explained that EICON is actually buying \$400 million more reinsurance coverage than the liability being transferred. He

said that additional reinsurance coverage is intended to take into account some adverse development that could occur 40, 50, 60, or 80 years down the road. It would also entirely remove the \$600 million deficit currently reported on the state's financial statements. He said it is anticipated that the reinsurance transaction would occur prior to July 1, 1999. He stated on July 1, 1999, as a result of this legislation, a new public, as opposed to a private, mutual insurance company will be created.

Mr. Dirks explained EICON expects to receive the IRS "private-letter ruling" after July 1, 1999. He said upon receipt of the "private-letter ruling" and the reinsurance transaction, the Governor has the discretion and authority under this bill to proclaim, by executive order, that the public mutual company will become a private mutual company on January 1, 2000. He said after January 1, 2000, the board of directors would be elected by the policyholders. With the proclamation the Governor will transfer the state's mutual share in the company created on July 1, 1999, to the policyholders. At that time the policyholders would receive their mutual shares in the company. He said from that point on there would no longer be a state-run workers' compensation insurance company. Employers Mutual Insurance Company of Nevada (EMICON) would be a private insurance subject to all the provisions of the insurance code that govern private mutual insurance companies (Exhibit D).

Mr. Dirks stated a brief summary of the transition proposal, and of the proposals dealing specifically with the rights that EICON employees would be afforded, if the bill were passed, has been placed on the internal Intranet site and through the electronic bulletin board. EICON also anticipates briefing the employees soon as to the provisions of the bill. He added EICON has initiated dialogue with pension, compensation, and health and welfare consultants who will be conducting focus groups with EICON's employees on what will become future benefit programs being developed for the private company. The consultants will ask for input from the employees as to what they consider are the most important factors in developing such a program. The program includes setting aside up to \$2 million for training. He said if employees wish to go somewhere else and want to develop additional skills to make them more marketable, EICON is providing \$2 million in retraining funds to the Department of Employment, Training and Rehabilitation so that EICON employees can avail themselves of additional retraining.

Mr. Dirks concluded this proposal would accomplish all of the goals and

requirements set forward by the Governor. It would remove the deficit from the state's financial statements. It would provide an entity that would be competitive in the competitive workers' compensation marketplace. Also it would provide a transition plan for EICON employees, who for the last 6 years have been key participants in working EICON's way out of a \$2.2 billion unfunded liability.

Senator Shaffer wanted to know where the deficit goes once it is removed. Mr. Dirks answered the deficit on the books today is an accounting deficit. The \$600 million represents the time value of money. The reinsurers would take \$800 million of investments and invest it over the next 30 years; and again for another 30 years after that, and pay out the liabilities. It is believed that the \$800 million being transferred would fully fund that liability. In fact, if EICON set aside the \$800 million it would do the same thing. What is being purchased through the reinsurance agreement is that if there is any adverse development; for example, if \$1.6 billion is not the true liability, but in fact \$1.8 billion is, the reinsurers would pick up the additional \$200 million. He said the deficit would be taken care of immediately through the accounting for the transaction.

Lenard Ormsby, General Counsel, Employers Insurance Company of Nevada, said by the end of the day a section-by-section outline would be delivered to the senators' offices. He said the outline would show the creation of the new entities, which is a two-step process of the creation of the public and then private insurance company. He said the bulk of the amendment (Exhibit E. Original is on file in the Research Library.) changes deals with the alignment of the new companies to private carriers; so replete throughout the amendment is the removal of the word "system." He said the third area deals with the personnel issues. Another area deals with the new companies. He said one thing he likes is that EICON employees will have more than 6 months to compare the benefits of state government versus the benefits offered by the new private company starting in January 1, 2000. He said, in addition to the vacation and sick leave rolling into the new public mutual on July 1, 1999, the proposal includes that if an employee goes with EMICON after January 1, 2000, their sick leave and vacation time would be rolled into the new company. Additionally, there would be a medical plan with no waiting period.

Mr. Ormsby said the repealers deal with those sections primarily addressing those times and opportunities that dealt with the system that would be

removed as part of the process that would align EICON with other private carriers. He said that statutorily the system has been responsible for certifying employee-leasing companies. On July 1, 1999, the amendment would require certification of employee-leasing companies to transfer from the system to Division of Industrial Relations (DIR). Additionally, statutorily, EICON is the administrator of the uninsured fund. The amendment would transfer that responsibility to DIR, who would have to find an administrator to take over the fund. He added that EICON would have the opportunity to bid on certification of employee-leasing companies just the same as a competitive and proper bidder. He said there is a section in the amendment that would grandfather EICON's existing contracts. He said some of those contracts are the owner-controlled insurance program (OCIP) agreements and contractor-controlled insurance programs (CCIPs), and also the retrospective agreements. He said the retrospective agreements were entered into the first part of 1999 and would run for 2 years. He said the purpose for those contracts, which are about one-fourth to one-third of EICON's annual premium, and represent about 100 to 200 employees, is to preserve those jobs. As a public policy statement, it makes sense for those contracts to survive without any effect, so they can carry out through the term of their agreement; and EICON can, again, attempt to lose as few people as physically possible.

Chairman Townsend remarked the committee will have questions at the next meeting on Friday, April 9, 1999. He said, one question is the full understanding of the employee issues. This will be crucial because not only are they EICON employees, but they are people to whom the Legislature has a responsibility, as well. He brought attention to the solvency issue, regarding if there is anything that may have been forgotten or missed that would not provide a seamless transition to protect those assets as EICON moves into the competitive world. He said he also wants to make sure the Legislature has not unbalanced the concept of the level playing field for all the parties.

Danny L. Thompson, Lobbyist, Nevada State American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), said the issue of three-way insurance has a long history with everyone. He said the AFL-CIO has been opposed to it for a number of sessions, has had it killed at least three times, and has had the Governor veto it; but last session the AFL-CIO did not oppose three-way insurance. He added currently the EICON employees have layoff rights, a pension in place, sick leave, and other things in place. He emphasized the AFL-CIO views this action in the strongest terms as union busting, and is

adamantly opposed to that portion of the proposal. He said, of course, the proposal has just been presented this morning, and the AFL-CIO will thoroughly go over the proposal and digest it. Mr. Thompson told the committee to make no mistake where the AFL-CIO separates in their support of three-way insurance. The AFL-CIO does not support the privatizing of EICON employees, and once the employee privatizing takes place the state will lose all control of the fund. He said once three-way insurance comes, there would be a lot of small employers who will not be happy with the new rates.

Robert J. Gagnier, Lobbyist, State of Nevada Employees Association (SNEA), stated SNEA is definitely in opposition to the bill and the proposal. He commended EICON for their efforts in trying to ease the transition for the employees. He said SNEA believes this is a transition that does not need to be made. He continued that the only reason this amendment is needed for clarification is because those employee benefits are being taken away. He pointed out that tenure has not been addressed. He said all of the employees would become at-will employees with no reason as to how they would be discharged. He noted there is no system in place that says an employee will be paid equal pay for equal work. Mr. Gagnier stated SNEA has concerns for older employees who cannot exercise that option because they do not have enough time in employment or they are not quite old enough. SNEA foresees that without a proper layoff procedure, these are the people that would be hurt the most. He concluded that he would reserve further comments until SNEA has had a chance to digest the proposals, and will return with a written statement discussing each of the sections and SNEA's position regarding them.

Chairman Townsend observed that the EICON employees have rights; but the question is where do they go should the workload at EICON become drastically reduced because customers have chosen to go elsewhere for their coverage. He thought the proposal was certainly better than having a large group of people just standing on street corners. He concluded on that basis, what was the objection.

Mr. Gagnier stated the bill does not give the EICON employees anything they do not already have. He noted the bill does set aside a sum for retraining, which is different from what is now in place. He pointed out it is not difficult to reemploy clerical employees; but when discussing positions peculiar to workers' compensation, those people would have more of a difficult time whether it is under this bill or under current law. He stated under current law

the employees have layoff rights, but that does not guarantee those employees a job in state government nor does the bill. He opined it is just a matter of whether EICON employees are affected under this bill or under current statutes and regulations.

Chairman Townsend queried what would happen, under current statute, to 450 people who are out of work and there is a hiring freeze. Mr. Gagnier responded that the employees would have to be laid off.

Chairman Townsend wanted to know if there were opportunities for the EICON employees under the proposal of lifting the hiring freeze. Mr. Gagnier asked why the Governor could not lift the hiring freeze in any event. He wanted to know why the lifting of the hiring freeze had to be tied to EICON employees.

Chairman Townsend restated that what he was asking was if this is the only option, then are not the employees being offered something that is more positive to stay in state government, if they choose to leave. Mr. Gagnier responded he would have to study the proposal further; but at this point, the only thing that is in addition is the \$2 million for retraining. He stated there is a regulation on how people get laid off. This bill would allow EICON to pick and choose who gets laid off.

Chairman Townsend pointed out that EICON employees would be competing in the real world, so these employees are afforded different opportunities. They are going to compete against private carriers who are not affected by these regulations.

Mr. Thompson interjected that he has spent time in the Senate finance committee listening to the woes of the state budget. He said it appears that removing the hiring freeze does not mean a whole lot. It appears the state is not going to be doing a lot of hiring, considering the fact that he listened to the Assembly Ways and Means committee say they were taking the soda machine money from the prison guards to shore up the state General Fund. He noted if the Senate finance committee needs to take soda machine money from prison guards, then absorption of up to 600 EICON employees into other state jobs just does not add up.

Senator O'Connell pointed out that EICON people are not being paid through the state budget; they are being paid from funds received from employers. Mr.

Thompson responded that he is talking about moving those employees into other state jobs, and that is where there would not be enough money to absorb everyone. He added that unless someone is way off the mark, and he did not think that was the case, those jobs are not going to be available within the state system.

Senator O'Connell commented there would be a lot of people going into the insurance business, and will be looking for the expertise these employees have.

Chairman Townsend closed the hearing on Amendment No. 190 to S.B. 37, and opened the hearing on Senate Bill (S.B.) 12.

SENATE BILL 12: Revises provisions governing conversion of nonprofit hospital, medical or dental service corporations to for-profit corporations or entities. (BDR 57-203)

Paula Berkley, Lobbyist, Truckee Meadows Human Services Association (TMHSA), offered written information to the committee (Exhibit F). Chairman Townsend inquired where they obtained the figure of \$30 million. Ms. Berkley replied that costs keep going up. It has been estimated at \$400 a member, and when multiplied out it is actually over \$30 million.

Jon L. Sasser, Lobbyist, Washoe Legal Services, offered several amendment versions to the bill (Exhibit G). He explained option one is the present bill with the amendment previously discussed allowing for the attorney general's discretion. Option two would expand the bill to all nonprofits. Option three would broaden the bill to cover only health care nonprofits. He added he also prepared reasons to give the committee some comfort as to why not broadening the scope would be all right in terms of public policy and in terms of law. It would not violate any constitutional prohibitions against any special legislation.

Chairman Townsend asked Mr. Sasser to clarify where he obtained the basis for option three. Mr. Sasser answered the definition of nonprofit health care entities was taken word for word from the National Attorneys General Association model legislation.

Thomas M. Patton, First Assistant Attorney General, Office of the Attorney General, said he concurs with Mr. Sasser that the language in option three is

April 5, 1999

Dear Employees:

The Governor's proposal to privatize the State's workers compensation program will be introduced in the Senate Commerce and Labor Committee this week. The proposal will be amended into SB 37, a bill previously heard by the committee. All provisions in the original SB 37 will be removed and replaced by the Governor's proposal.

The proposed legislation reflects the Governor's belief that with the opening of our market to competition, there is no longer a compelling need or reason for the state to operate an insurance company. The Governor also believes that the best opportunity for Employers Insurance Company of Nevada to succeed in the competitive environment is as a private company. Finally, the Governor does not want the state to ever face the financial catastrophe it faced in 1992 when SIIS was within 18 months of collapse.

Although the amendment is in excess of 100 pages, most of the provisions creating the private company are contained within a few provisions of the amendment. The balance of the amendment is comprised of provisions removing "State Industrial Insurance System" from the law and repealing the provisions of NRS that created the State Industrial Insurance System. Some provisions concerning special benefits that will be provided for our employees are not required in the bill but will be testified to and placed on the record.

Structure of the Plan

As currently proposed, on July 1, 1999, Employers Insurance Company of Nevada will become a public mutual insurance company with the state of Nevada as its sole mutual interest holder. It will not be an agency of the executive branch of government but will be a governmental agency eligible for participation in the Public Employees Retirement System and the state health and welfare plan. Employees will not be in the classified service of the state. All annual leave, sick leave and catastrophic leave will automatically roll over for each employee to the new public company. The Governor will appoint a board of directors and a chief executive officer who will assume their duties on July 1, 1999.

On January 1, 2000, upon a proclamation of the Governor, the public mutual insurance company will become a private mutual insurance company and will no longer be a governmental agency. The state will transfer its mutual interest to the policyholders of on January 1, 2000. Employees will no longer be in state service and will no longer participate in PERS or in the state health and welfare plan. All annual leave, sick leave and catastrophic leave will automatically roll over for each employee to the new private company. The policyholders will elect the new board of directors.

Retirement Plan:

All permanent employees of Employers Insurance Company of Nevada will continue to participate in PERS until December 31, 1999. After December 31, 1999, Employers Mutual Insurance Company of Nevada will establish a new private retirement program to cover its employees. As a private company, EMICON would also participate in social security.

At January 1, 2000, all employees, whether permanent or probationary, of Employers Insurance Company of Nevada will automatically and immediately vest in the private company's pension plan.



EMPLOYERS INSURANCE COMPANY
OF NEVADA

EXHIBIT C

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Until December 31, 1999, Employers Insurance Company of Nevada and from January 1, 2000 until June 30, 2001, the new company will have authority to purchase up to five years of service for all employees that would be eligible to retire at an unreduced benefit with such purchase. We believe that approximately 150 of our current 900 employees are or would be eligible to retire with such a purchase.

The authority of the Company to purchase years of service for our employees would continue until June 30, 2001.

Layoff Protection:

The adoption of AB 552 in 1995 which authorized the opening of the Nevada workers compensation market to competition included no provisions concerning the employees of the State Industrial Insurance System. Inherent in the decision to create a competitive market was the fact that Employers Insurance Company of Nevada will lose market share and will be a smaller company. If EICON loses one-half of the market, approximately 450 jobs will be lost. If EICON loses two-thirds of the market, approximately 600 jobs will be lost. However, no legislation was adopted to provide a transition for our employees. The Governor's proposal includes provisions to assist those EICON employees who desire to continue in state service to transfer to other state agencies.

Upon passage and approval of the legislation, all current employees of Employers Insurance Company of Nevada will be eligible to place themselves on the state reemployment list. An actual layoff notice will not be required for our employees to avail themselves of this priority hiring. Additionally, upon passage and approval, the Governor will lift the statewide hiring freeze imposed upon other state agencies only as to the hiring of employees of Employers Insurance Company of Nevada. EICON employees will be placed on the top of all rehiring lists ahead of any other layoffs that might occur in other agencies. This priority rehiring would remain in effect until December 31, 2002.

Also, the Governor has approved setting aside up to \$2 million to provide retraining for EICON employees who choose to pursue other careers.

Summary:

As the Governor's proposal takes final form, we are meeting with the consultants we have hired to review options for retirement, health and welfare, and compensation plans that will be available to the new company. To assist us, we will be asking our employees to participate in focus groups in the next several weeks to provide us input into what elements they consider most important in these plans.

Also, we will provide a question and answer format on E-net in the next several weeks so that we can respond to employee questions as the bill progresses through the legislative process.

Although the proposal to create a private company creates a high level of uncertainty for all of us, it is nevertheless imperative that we continue to focus our energies and skills on preparing EICON for the July 1 opening of the market. Regardless of whether we remain an agency of the state or become a private company, our future success will be determined by our ability to retain as many of our policyholders as possible.

Douglas D. Dirks



EMPLOYERS INSURANCE COMPANY
OF NEVADA

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Timeline of events for transition of Employers Insurance Company of Nevada to Employers Mutual Insurance Company of Nevada

Upon Passage and Approval

- * EICON employees are removed from the Personnel Act with the exception of retirement and leave rights.
- * EICON employees are automatically entitled to voluntarily place themselves on the re-employment list with State Personnel and may remain on the list until December 31, 2002. Employees do not have to receive a layoff notice to be placed on the layoff list.
- * The hiring freeze will be lifted for EICON employees to transfer to other state positions.
- * EICON will finalize the reinsurance transaction to satisfy the debt on claims arising prior to July 1, 1995.

On July 1, 1999

- * Insurance Commissioner will issue EMICON a certificate of authority to operate exclusively as a tax exempt, workers compensation mutual insurance company owned and operated by the State of Nevada.
- * EMICON may have to commence laying off personnel and EMICON will deposit 2 million dollars with DETR which will be used to retrain appropriate employees for future employment.
- * EMICON will operate under and comply with the rules and regulations associated with a domestic mutual insurer in Nevada.

January 1, 2000

- * Upon the consummation of the reinsurance transaction and receipt of a favorable ruling from the IRS, the Governor will issue a proclamation and EMICON will be transformed into a fully licensed workers compensation mutual insurance company owned and operated by its policyholders.
- * Insurance Commissioner will issue EMICON a certificate of authority to operate as a fully licensed property and casualty insurer in Nevada.
- * EMICON will operate under and comply with the rules and regulations associated with a mutual insurer in Nevada and must qualify to write other lines of insurance.

COMPARISON OF RIGHTS OF EMPLOYEES UNDER EICON/EMICON VERSUS PERSONNEL ACT

Downsizing of employees

Private Company

State Personnel Rules

Downsize by need and merit

Downsize by need and
seniority

Purchase of up to five years of
retirement credit for 150
employees

No purchase of
retirement credit

Removal from hiring freeze for
priority rehiring in other state positions

Hiring freeze remains

Eligibility for re-employment
upon passage and approval

Not eligible until
layoff

Re-employment rights for over
two-years

Re-employment rights
one-year

Retraining for layoff employees

No retraining

Leave and vacation time will
roll with employee to new job
in EMICON

Leave and vacation
time will roll with
employee to new job
in state government



EMPLOYERS INSURANCE COMPANY
OF NEVADA

2 33
2564

Amendment No. 190

Senate Amendment to Senate Bill No. 37		(BDR 53-382)	
Proposed by: Committee on Commerce and Labor			
Amendment Box:			
Resolves Conflicts with: N/A			
Amends:	Summary: No	Title: Yes	Preamble: No
		Joint Sponsorship: No	

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>		Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>		Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	
Receded <input type="checkbox"/> Not <input type="checkbox"/>		Receded <input type="checkbox"/> Not <input type="checkbox"/>	

Amend the bill as a whole by deleting sections 1 through 13 and adding new sections designated sections 1 through 156, and the leadlines of repealed sections, following the enacting clause, to read as follows:

"Section 1. NRS 612.265 is hereby amended to read as follows:

612.265 1. Except as otherwise provided in this section, information obtained from any employing unit or person pursuant to the administration of this chapter and any determination as to the benefit rights of any person is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's or employing unit's identity.

2. Any claimant or his legal representative is entitled to information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the division for any other purpose.

SSM/SJC/JKN

Two-Thirds Not Required

Date: 4/4/99

S.B. No. 37—Makes various changes regarding industrial insurance.

EXHIBIT E

ORIGINALS ARE ON FILE IN
THE RESEARCH LIBRARY



145 pages

34
2565

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventieth Session
April 7, 1999**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 7:00 a.m., on Wednesday, April 7, 1999, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Mark Amodei
Senator Dean A. Rhoads
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Ardyss Johns, Committee Secretary

OTHERS PRESENT:

Brian Herr, Lobbyist Executive Director, External Affairs, Nevada Bell
Robert A. Ostrovsky, Lobbyist, Cox Communications, and Nextlink
Steve Tackes, Lobbyist, MCI Worldcom, and Nextlink
Dan Reaser, Lobbyist, Nevada Bell
Michael A. Pitlock, Commissioner, Public Utilities Commission of Nevada
Gardner F. Gillespie, Lobbyist, Cox Communications, and Nextlink
Frederick Schmidt, Consumer's Advocate, Chief Deputy Attorney General,
Bureau of Consumer Protection, Office of the Attorney General

Senate Committee on Commerce and Labor
April 7, 1999
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Chairman Townsend opened the meeting asking for a motion to request a waiver for S.B.37 in order to extend the right of the committee to have jurisdiction until April 23. In addition, he explained, it would extend the jurisdiction of the Senate Floor until April 30, extend the Assembly committee's time frame until April 17, and it would extend jurisdiction of the Assembly Floor until April 24.

SENATE BILL 37: Makes various changes regarding industrial insurance.
(BDR 53-382)

SENATOR O'CONNELL MOVED TO REQUEST A WAIVER ON S.B. 37

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS SHAFFER, SCHNEIDER AND AMODEI WERE ABSENT FOR THE VOTE.)

* * * * *

Chairman Townsend opened the work session on S.B. 207 and S.B. 440.

SENATE BILL 207: Requires public utilities commission of Nevada to establish standards of conduct and reporting relating to provision of local telecommunication services. (BDR 58-1034)

SENATE BILL 440: Provides for alternative regulation of certain providers of telecommunication services. (BDR 58-1239)

Brian Herr, Lobbyist, Executive Director, External Affairs, Nevada Bell, told the committee that all of the parties involved in S.B. 207 and S.B. 440 had begun negotiations at 7:00 a.m. the previous morning and concluded at approximately 9:00 p.m. that night with agreement on all of the issues. He said as the parties attempted to blend the various different drafts of the bills, they found some difficulty in making sure the language said what everyone wanted it to say. He stated they continued until 1:00 a.m. this morning to produce a single draft, after which the parties met again this morning at 6:30 a.m. to go over the details. He begged the indulgence of the committee and asked for an hour to make sure all parties were in agreement before bringing forward consensus language in both S.B. 207 and S.B. 440.

**MINUTES OF THE
SENATE COMMITTEE ON FINANCE**

**Seventieth Session
April 12, 1999**

The Senate Committee on Finance was called to order by Chairman William J. Raggio, at 8:15 a.m., on Monday, April 12, 1999, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator William J. Raggio, Chairman
Senator Raymond D. Rawson, Vice Chairman
Senator Lawrence E. Jacobsen
Senator William R. O'Donnell
Senator Joseph M. Neal, Jr.
Senator Bob Coffin
Senator Bernice Mathews

STAFF MEMBERS PRESENT:

Dan Miles, Senate Fiscal Analyst
Bob Guernsey, Principal Deputy Fiscal Analyst
Barbara Moss, Committee Secretary

GUEST LEGISLATORS PRESENT:

Senator Maurice E. Washington, Washoe County Senatorial District No. 2

OTHERS PRESENT:

Larry L. Spitler, Lobbyist, Clark County School District
Rosetta Johnson, President, Alliance for the Mentally Ill of Nevada (NAMI),
chartered by the National Alliance for the Mentally Ill
Elizabeth Lee, President, Washoe County Affiliate, NAMI
Anna Uptergrove, President, Carson City Affiliate, NAMI
Vic Davis, President, Southern Nevada Affiliate, NAMI
Richard Passo, Citizen
Chris Welter, Citizen
Geri Coyne, Citizen
Dr. Paula R. Ford, Executive Director, WE CAN, Inc., Nevada Chapter, National
Committee to Prevent Child Abuse
May S. Shelton, Director, Washoe County Department of Social Services
Dennis Baughman, Public Hearing Officer, Nevada Department of Transportation
Tina Clowers, Citizen
Tim Clowers, Citizen
Gloria MacDonald, Director of Finance, Nevada State Contractors Board
Margi A. Grein, Executive Officer, Nevada State Contractors Board
Fred L. Hillerby, Lobbyist, Nevada State Contractors Board
Scott K. Sisco, Administrative Services Officer, Department of Museums, Library
and Arts

whatever form is ultimately taken when moving into the competitive environment. Mr. Dirks asserted the business plan has not changed substantially and the state will continue to do what it has always done. There have been significant readjustments reflecting the competitive environment, he remarked.

Mr. Dirks stated the Governor has proposed the mutualization of EICON. He defined "mutualization" as being converted to a private mutual insurance company owned by its policyholders. He explained that in a mutual insurance company, the policyholders participate in management of the company by electing their own board, and the board selects the management of the company. Mr. Dirks indicated EICON will no longer be an agency of the state, but will be a private mutual insurance company owned by its policyholders.

Mr. Dirks indicated the Governor submitted an amendment to S.B. 37 which is a proposal driven by a number of issues and scheduled to be heard in the Senate Committee on Commerce and Labor April 13, 1999.

SENATE BILL 37: Makes various changes regarding industrial insurance.
(BDR 53-382)

Mr. Dirks said that first and foremost, there will be a potential tax liability "or event" upon formation of a private company. He indicated the Governor requested the formation of the private company to be "tax efficient" (as described by the Internal Revenue Service [IRS]) which means to pay no tax, optionally, and should any tax be required, to pay as little as possible. Mr. Dirks indicated the EICON requested a private-letter ruling from the IRS providing that mutualization of the state fund would not result in tax implications, either to the state or its policyholders. He said the EICON does not anticipate the private-letter ruling will be returned before the end of the legislative session; and therefore the Governor's ruling has taken the following form:

Upon passage and approval a number of things would happen. The EICON employees would be placed in the unclassified service of the state. After passage and approval, the EICON, as a company, would enter a reinsurance transaction with one, or more likely several, private international reinsurers. The reinsurance transaction would meet one of the Governor's critical goals, which is to remove the deficit and liability from the state's financial statements. This is one of the goals set by the Governor which will be achieved through this reinsurance transaction and accomplished prior to July 1, 1999.

On July 1, 1999, a tax-exempt public mutual insurance company would be created. While it would still be an agency of the State of Nevada, it would no longer be a part of the Executive Branch and a board of directors would be appointed by the Governor. The employees would continue in the service of the state and participate in the Public Employees Retirement System [PERS] and the state's health and welfare program.

After July 1, 1999, a response to the private-letter ruling request will be received from the IRS. It is anticipated to be a favorable ruling and will state that there will be no tax implications to the state or policyholders upon privatization. The Governor will then issue a proclamation making EICON a private mutual insurance company January 1, 2000.

Mr. Dirks indicated the appropriate steps will be followed to ensure there are no negative tax consequences, and as a private company the employees will transfer out of PERS into a private retirement, health, and welfare system. He explained the transaction will occur over a time frame of about 8 months and the state fund will be turned into a private mutual insurance company.

Senator Raggio asked the advantages of privatization. Mr. Dirks listed the advantages:

1. The State of Nevada's financial statements will not reflect a liability and the \$600 million deficit will be eliminated. A substantial sum of assets will be exchanged for the EICON to assume the liabilities. At this point, based on the preliminary pricing, the EICON's financial position will improve, and the state's financial position will improve by approximately \$800 million.
2. As a private insurance company, the state will never again experience a \$2.2 billion unfunded liability as it did in 1992. The Governor recommended the state be removed from the business of managing insurance companies. There will no longer be a need for the state to be a provider of workers' compensation insurance.
3. The proposal provides a mechanism by which a transition time and benefit can be provided to employees as they move away from the state system into a private setting.

Responding to a query from Senator Coffin, Mr. Dirks said that given the structure of the plan and the reinsurance treaties being negotiated and almost consummated, there should be no impact on the rates on a go-forward basis. Senator Coffin asked how privatization will affect employees who are eligible for retirement. Mr. Dirks answered legislation has been proposed that would allow the purchase of up to 5 years of experience for employees who are eligible to retire with an unreduced benefit. He indicated approximately 150 current employees would be impacted. He explained this impact would "free up" 150 positions and would prevent 150 individuals from being laid off.

Further, Mr. Dirks declared that upon passage and approval of the legislation, the employees will be treated as though they have been laid off. He indicated this action will make the employees immediately eligible for reemployment rights in other state agencies on a priority basis. He noted that employees who wish to continue in the state system because of the PERS retirement plan will receive every consideration to enable them to transfer to another state agency on a priority basis. Mr. Dirks said some individuals could decide, after examining the pension plan of the new company, to go forward with its plan. He stated that each employee will make an individual decision.

Senator Coffin asked whether these steps will be accomplished by July 1, 1999. Mr. Dirks answered employees will be given the ability to take action for several years after adoption of the legislation without a break in service. He mentioned that PERS allows employees to buy years of service for up to 18 months after departing state service, and the legislation is designed to enable employees to do that as well. Mr. Dirks explained that should an employee decide to try the private company and then change his or her mind, the priority reemployment rights to make the transition will be retained until 2001 for the first group of employees.

Senator Neal commented that personnel reduction amounts to about \$25 million and asked the number of people it represents. Mr. Dirks said that based on estimates of market shares, it is projected size of the reduction will be

approximately 450 employees the first year and 600 the second, which would bring the total staffing level to about 350 employees. He indicated the reduction would occur regardless of whether or not the Governor's proposal is adopted. It is the impact of the marketplace opening July 1, 1999, Mr. Dirks remarked.

Senator Neal asked the ramifications should the private-letter ruling not be received from the IRS. Mr. Dirks explained:

Under the legislation that we have proposed, one of the requirements that the Governor has to consider in issuing the proclamation making this the private company is that there is a favorable ruling from the IRS.

Mr. Dirks indicated that should the ruling be unfavorable, the state would continue as a public-mutual insurer, which means it would continue to be an agency of the State of Nevada, although not in the Executive Branch. He explained there would be a board of directors appointed by the Governor, and the EICON would continue to participate in PERS and the state health and welfare program.

Senator Neal said the *Nevada Constitution* requires the Legislature to provide a fund for industrial insurance. He asked whether that fund would be compatible with the change to a private organization. Mr. Dirks replied the constitution requires all amounts paid into the workers' compensation fund to be held in trust. He said the constitution does not create the entity that manages the program, it merely provides that the amounts paid are held in trust. He explained that under the Governor's proposal the trust dollars will continue to have trust status. The private company will not be able to use the amounts paid under the constitution for other purposes. Mr. Dirks indicated the funds will continue their trust status for the life of the injured workers who are the beneficiaries of the trust dollars. He stated the constitutional trust provision will remain, but the assets will be transferred and held in another trust.

Senator Neal inquired how the funds would be accessed. Mr. Dirks answered the funds would be held by the new company in trust and used only to satisfy claims and other expenses relating to claims that occurred prior to the date of the transaction. Senator Neal queried whether two budgets would be submitted to the Legislature. Mr. Dirks indicated the EICON would be a private company and as such would never submit another budget to the Legislature. Senator Neal asked the accounting procedure for the trust funds. Mr. Dirks said the funds would be held in trust and only used for the designated purpose subject to the oversight of the insurance commissioner.

Senator Neal clarified the Legislature would be out of the picture and the insurance commissioner would account for the funds. Mr. Dirks stated the EICON would be a private company with assets held subject to a trust restriction.

Continuing with the budget, Mr. Dirks indicated the budget reflects "a couple of" significant changes, but for the most part it is a continuation of the existing program.

M-200 Demographics/Caseload Changes – Page SPEC PURPOSE-2

Mr. Dirks indicated decision unit M-200 is one of the most significant items in the budget. He declared a decrease in revenue of approximately 32 percent from the base, which is about \$155 million, is projected for the first year as the marketplace

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventieth Session
April 13, 1999**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:10 a.m., on Tuesday, April 13, 1999, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Mark Amodei
Senator Dean A. Rhoads
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Kathryn Lawrence, Committee Secretary

OTHERS PRESENT:

Scott Scherer, General Counsel, Governor's Office
Douglas Dirks, Chief Executive Officer, Employers Insurance Company of Nevada
Lenard Ormsby, General Counsel, Employers Insurance Company of Nevada
Ann Nelson, Associate General Counsel, Employers Insurance Company of Nevada
Roger Bremner, Administrator, Division of Industrial Relations, Department of Business and Industry
Alice A. Molasky-Arman, Commissioner, Division of Insurance, Department of Business and Industry
Danny L. Thompson, Lobbyist, Nevada State AFL-CIO
Robert J. Gagnier, Lobbyist, State of Nevada Employees Association/AFSCME

Senate Committee on Commerce and Labor
April 13, 1999
Page 2

Paul Brown, Assistant General Counsel, American International Group
Incorporated

SENATE BILL 37: Makes various changes regarding industrial insurance.
(BDR 53-382)

Scott Scherer, General Counsel, Governor's Office, stated the Governor proposed for the state to completely withdraw from workers' compensation insurance. He explained the Employers Insurance Company of Nevada (EICON) will have to lay off employees regardless what is voted on this legislative session because they are \$1.6 billion in debt. He pointed out the Governor has three primary goals; first, to eliminate the \$1.6 billion in liabilities off the state's books; second, to ensure the state does not create another huge unfunded liability as faced in the early 1990s; and third, to ensure the state reduces the number for the employees laid off. He submitted Amendment No. 190 to the committee (Exhibit C. Original is on file in the Research Library.). Senator Schneider questioned how many states had converted their workers' compensation divisions into a private corporation. Mr. Scherer referred the question to Douglas Dirks.

Douglas Dirks, Chief Executive Officer, Employers Insurance Company of Nevada (EICON), replied the last existing state fund that was turned into a competitive company was the Oregon fund, approximately 30 years ago. Senator Schneider asked how many states are currently competitive markets. Mr. Dirks replied there are 22 states with competitive state funds and there would be 5 with monopolies. He submitted a letter (Exhibit D) and a sequence of events (Exhibit E) to the committee.

Mr. Dirks stated:

What I would like to do this morning is take you through about four different discussions, not exactly a high-level overview, but a context of going through the bill section by section. I would like to begin with an overview of what the reinsurance transaction is, how it would occur, and what the pieces of that transaction are. Sometime prior to July 1, 1999, we would enter into a lost portfolio transfer with several reinsures. Under that transaction, we would transfer some amount of money; at this point I am guessing it will be between \$775 million-\$800 million, in cash,

transferred to a reinsurer. Simultaneous to that transfer, the reinsurers will assume liability. They will assume liabilities up to \$2 billion for all of our claims that have occurred prior to July 1, 1995.

The \$800 million in cash that we transfer to them will be reinvested in risk-free securities, with an asset-liability match in a trust fund, and the amounts deposited in that trust can only be used for paying the claims liability that they have accepted under this transfer. Those assets will be discounted and the transfer of the liability will be discounted on our financial statement at a rate not to exceed 6-percent. First, the rate that will ultimately be used to discount those liabilities will be based on whatever the yield is, and the assets invested in the trust. We have chosen that approach because it gives us great security. In the event that the reinsurer or reinsurers financially fail, down the road, the assets are held in a trust. They cannot be commingled with the reinsurer's other assets. We think that gives us great security for those assets. Secondly, by placing it in a trust discounted in lieu of going out and purchasing, as security for that asset pool, letters of credit, we believe we can reduce the costs of this transaction by several tens of millions of dollars. Again, we save money and we have what we believe is a very high level of security for those assets that will be used to pay out liabilities on claims for potentially the next 60-80 years.

The reinsurers will all be A-rated reinsurers; A & M Best Rates Insurance Companies, these will all be A-rated, the top-rated reinsurers in the country. Again, it will be syndicated. We will not be placing this risk with one insurer; it will be placed amongst several, based on a sharing agreement that will be reached as we finalize the agreement. On July 1, 1999, the reinsurers will be responsible financially for the payment of those claims. As it is currently structured, we will continue to manage the claims on behalf of the reinsurers and they will pay us back, at this point in the negotiations, 7 percent of the cost of the claims paid as a fee to us for managing the claims for them. This achieves a couple of results. First, we can retain more jobs because we will continue to manage the claims even though we will no longer have financial responsibility for them. Second, in the reinsurer's opinion, we are

best positioned to manage these claims because we are managing them now. We know the claims, we know the injured workers, we know the medical providers that are taking care of these injured workers; so the reinsurers that have met with us are of the opinion that we are best positioned to continue managing these claims for them.

In the event that our pricing proves higher than it should have been, let's [let us] assume we pay \$775 million for this transaction and the payout pattern turns out to be more favorable than any of us thought. The reinsurance agreement will have a profit-sharing component to it, where we will share in the profit. That also does a couple of things. First, we've [we have] got a profit incentive and that always helps. Second, it makes certain that as we manage those claims on behalf of the reinsurer, we manage them effectively and efficiently because if we do, we share in the profit from doing that. And so the profit-sharing agreement inures to the benefit of both our companies in a go-forward basis and the reinsurers by making certain that we do not exceed the limits. We believe today that the ultimate liability, and this a kind of a consensus of all the actuaries from all of the reinsurers, the ultimate liability for the pre-July 1, 1995, claims is approximately \$1.45 billion. Currently in our books, we are booking that at about \$1.6 billion. We are buying reinsurance protection up to \$2 billion. So we are buying \$550 million more reinsurance that we currently think the claims will ultimately develop to.

We again believe that adds a level of protection to this transaction because if for some reason there is medical inflation in the future, or if there is some unanticipated change in the payout level, that additional coverage will protect the reinsurers. And now we are paying for that coverage, we are paying for \$2 billion of coverage. If, in fact, it turns out to be a \$4 billion, we will get that extra payment back through the profit-sharing agreement. The risk the reinsurers are taking off from the state's books and are taking off from our books is a possibility that the claims-payment pattern will accelerate, that claims will become due at a more rapid rate, or that there will be medical inflation in excess of what is anticipated in the pricing of this transaction. They do not assume any market

risk. They will invest the assets in U.S. treasuries or other risk-free investments and they will match the assets and liabilities out of the yield curves so that if there is a dramatic swing in the market, it should not impact this transaction. They are removing, to the fullest extent possible, market risks. That is our brief overview of the reinsurance transaction; again its primary function is to remove liabilities from the state's books, ensure solvency of the company going forward, and doing it in a cost-efficient manner.

Senator Schneider asked who would be the owners of the new company. Mr. Dirks explained the new company ultimately would be owned by the policyholders. He repeated it would be a mutual insurance company owned by its policyholders.

Mr. Dirks maintained:

Next I would like to move very briefly to the tax implications of this transaction. As you read through this amendment, it probably looks contorted when you look at this, and you must think there had to have an easier way to do this. We certainly thought that, and then we called the Internal Revenue Service [IRS]. And as you would expect when you call the IRS, if there is a more difficult way to do it, they've [they have] probably got it. That is not a criticism necessarily of the IRS, they are our friends, but they have their rules that they have to satisfy, too. I have to say, in fairness to the IRS, they have been extremely helpful in accelerating this process, understanding that you are working under a 120-day legislative deadline, and they have been extremely helpful to us. But they have to apply their rules, and to make certain that this transaction is done in a way that does not cause tax liabilities to the state or to the policyholders. We had to follow a fairly difficult course to put together a proposal that would make sure there were not tax liabilities. That is why you see what we refer to as the two-step; where we initially create a public entity and then subsequently create a full-private mutual. That is being done solely to satisfy the requirements of the IRS code so that we can do this in a tax-efficient manner. We do not have room to maneuver here. The IRS did not come to us and say, "there are four different ways you can do this, choose the one you like best." We have found

one way to do this and it somewhat limits our ability to change the structure within which we do this. If you are comfortable with the policy goal of ultimately creating a private mutual insurance company owned by its policyholders, we have laid out what we believe, and the service tells us, and the only way we can do that without incurring substantial tax liabilities. So when it comes to the structure of the deal, of the creation of the mutual, there is not a lot of room to move, because if we alter those provisions we run the risk of creating serious tax complications and taxable events.

Senator Schneider inquired if the IRS agreed for the procedure to be in writing.

Mr. Dirks responded:

They will put that in writing. We are at the point now where we have requested a private-letter ruling. We expect within the next several weeks, we will get a reaction from the IRS. We have been having conversations with them through our counsel in Washington [D.C.] for the last several months. We expect a firm written response from the IRS probably mid-to-late summer, which is why this proposal provides that the Governor, upon receipt of that private letter ruling, can by proclamation create the private company. If we get a response back that says, "No, I am sorry, it was close, but it did not quite work, and you owe us \$100 million in tax;" at that point, you will have given, through this legislation, the Governor the authority to say, "I do not think we want to do this. That does not make sense to me". So, because we will not have the private-letter ruling prior to the end of this legislative session, we have provided, in the bill, the Governor the authority to say whether or not he wants to complete this transaction based on the IRS's response, through the written private-letter ruling.

There are a number of timelines in this bill that I would like to go through; and, again, a lot of these timelines are driven because of the two-step approach we have to take to satisfy the IRS code requirements. Let me give these to you very quickly, and, again, at a very high level. At passage and approval, a number of things would occur. First, the employees at EICON would become eligible for reemployment rights. Second, the Governor, prior to July 1,

1999, but subsequent to passage and approval, would appoint the Chief Executive Officer of Employers Mutual Insurance Company of Nevada. Third, prior to July 1, 1999, the Governor would appoint a board of directors. Subsequent to passage of approval and prior to July 1, 1999, we will enter into the reinsurance transaction. I cannot give you a specific date on that, but it is anticipated that would occur prior to July 1, 1999. At July 1, 1999, EICON, the former State Industrial Insurance System, would become a public mutual insurance company. It would be a tax-exempt entity under section 501(c)(27) of the IRS [Internal Revenue Code] code. It is not yet, at this point, a private insurance company. It is a public entity, but not a part of the executive branch of government. Its employees would continue to participate in the Public Employees Retirement System; they would continue to participate in the state's health and welfare program, and would be eligible for all the current leave package that is available to state employees. But they would be in the unclassified service of the state and it would be a public entity, not a part of the Executive Branch of government. That board of directors would be responsible for adopting a budget; setting the investment guidelines for the company. Subsequent to July 1, 1999, and at this point, we have a board of directors appointed by the Governor; we expect to receive from the IRS a private-letter ruling to the effect that the transaction that we have entered into through this legislation would not result in significant tax consequences. Upon the receipt of that private-letter ruling with the completion of the reinsurance transaction, this legislation would, through your power, delegate to the Governor the authority to proclaim that the public mutual would become a private mutual insurance company, owned by its policyholders, effective January 1, 2000.

Senator Rhoads inquired how the Governor would respond to a negative answer from the IRS.

Mr. Dirks clarified:

If we get a letter back from the service that is drastically bad, we will continue as a public mutual insurance company, meaning we will have a board of directors appointed by the Governor; we will

be an agency of the state, but not a part of the Executive Branch. We will be tax-exempt. At that point, you would probably come back in the 2001 [Legislative] Session and reevaluate it. But if the service gives us a negative response or a response different from what we expect and from what we require, we would continue as a 501(c)(27) entity. At January 1, 2000, the Governor, through the proclamation and through this legislation, would transfer the interest in the public mutual to the policyholders of the new private mutual insurance company. At that point, the policyholders, the businesses of Nevada, would become the mutual owners of this insurance company. Those policyholders, pursuant to bylaws, would elect their own board of directors. And that board of directors would be responsible, as any other private company's board of directors, for selecting the management of the company and overseeing the management of the company. And so that is the timeline again, a lot of that is driven by the need to do the reinsurance transaction at the right time and the need to follow the IRS's requirements through the private-letter ruling.

Finally, I would like to conclude with where I probably should have started, which is why are we doing this anyway. When I look back at workers' compensation, and I have been in Nevada 7 years today, I have almost been with the company for 6 years; when I look at the history of workers' compensation and the state's role in it as a monopoly, and as a semi-monopoly, and now moving into a competitive environment, I think what we are left with is a company that was never designed to be anything, but rather evolved into what it is today. When we, in 1995, authorized through A.B. 552 [Assembly Bill (A.B.) 552 of the Sixty-eighth Session], the opening of the market to competition, we really did not change the structure of the company.

ASSEMBLY BILL 552 OF THE SIXTY-EIGHTH SESSION: Makes various changes to provisions governing industrial insurance. (BDR 53-1991)

Mr. Dirks continued:

I guess we must have assumed that the structure would be appropriate as a monopoly and just as it would be as a competitive

company. I do not think that is the case. I think if we were going to start all over today and say we are going to have a state involved in the workers' compensation environment, we would not design what we have got. And in fact, if you look at the newer state funds, none of them look like us. They are created as mutual insurance companies; they are not created as arms of the state, extensions of the state. Because if the best way to run an insurance company were applying state rules to it, I would expect that all the private insurance companies would have state rules. But none of them have state rules, and that leaves me to believe that running an insurance company like any other state agency cannot be the best way to do this. So I think this bill gives us an opportunity to look at it, and say, "What is the best way to do this?" The Governor has done that; the Governor has designed what he thinks is best and his design is let's [let us] create a mutual insurance company owned by its policyholders. And in that way, we can have the greatest likelihood of success for this company; for those who work for this company. I think the evolution in the marketplace suggests a need for a fundamental change in the way we are structured. I want this company to succeed. I want it to succeed for a number of reasons. I want it to succeed for our policyholders. We have never received a dime of state money.

Our success, to date, has been because of the hard work of our policyholders and the financial backing through the premium paid of our policyholders. It is time to fundamentally change this and recognize that they are the owners of this company, because they are the ones that funded it, and they are the ones who are ultimately responsible for it. Also, I think it is critical to point out that as we are established, there is nothing that would prevent a recurrence of what happened in the late 80s [1980s] and early 90s [1990s], and I do not think any of us want to go back to that, where we've [we have] got an unfunded liability in excess of \$2 billion. And I think this bill gives us the opportunity to say we are never going back there again, because we came pretty close to total collapse back in 1992, and we are darn lucky it did not happen, and I can't [cannot] imagine any reason why we would want to take the chance that it would happen again.

Lenard Ormsby, General Counsel, Employers Insurance Company of Nevada (EICON), stated the initial intent was to have the employment rights and the hiring freeze be lifted upon passage and approval. He stated those two events would not be effective until July 1, 1999. He explained this bill, upon July 1, 1999, would turn EICON into Employers Mutual Insurance Company of Nevada, a state-owned mutual insurance company. He urged the bill authorizes the commissioner to issue a certificate of authority to us, effective July 1, 1999, and then we would have to comply with all rules, regulations, policies, and procedures of Title 57 of *Nevada Revised Statutes* (NRS), just like any other insurance company which has received a similar certificate of authority.

Mr. Ormsby emphasized, from July 1, 1999 until January 1, 2000, we would be restricted to write only workers' compensation insurance. He justified on January 1, 2000, we would still have a certificate of authority from the insurance commissioner, but it would be a full property and casualty certificate (P & C), which would allow the new policyholder-owned company to seek qualifications to sell other lines of business. Mr. Ormsby read Exhibit F.

Ann Nelson, Associate General Counsel, Employers Insurance Company of Nevada (EICON), stated, for the record, her agency will be submitting several amendments to the committee in final form. She voiced the Department of Museums, Library and Arts had proposed language, which would be submitted to the committee in the future.

Roger Bremner, Administrator, Division of Industrial Relations, Department of Business and Industry, submitted and read his memo to the committee (Exhibit G).

Alice A. Molasky-Arman, Commissioner, Division of Insurance, Department of Business and Industry, stated she was in complete agreement with Mr. Ormsby's testimony.

Senator O'Connell questioned if training was going to be provided to employees who may be laid off. Mr. Ormsby stated there would be \$2 million set aside for training.

Danny L. Thompson, Lobbyist, AFL-CIO, stated he was in opposition to this bill. He submitted his statement to the committee (Exhibit H). He stated without

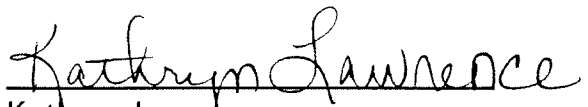
this bill being passed, it would be possible to train employees, remove the hiring freeze, and the employees would still have all the current benefits.

Robert J. Gagnier, Lobbyist, State of Nevada Employees' Association, read Exhibit H to the committee. He stated for employees who desired to relocate to another agency or who desired to retire, passage of this bill would be acceptable. He concluded passage of this bill would be difficult for many employees who did not desire to relocate.

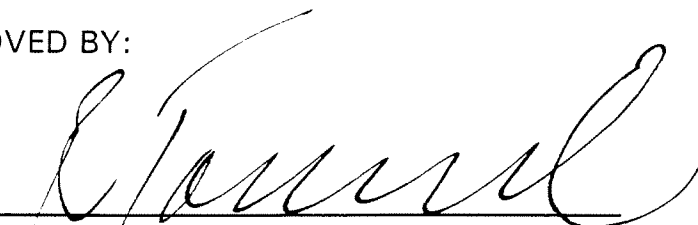
Paul Brown, Assistant General Counsel, American International Group Incorporated, stated if the main goal was to establish a private workers' compensation insurance market, neither the current law, nor S.B. 37, was acceptable. He submitted his letter to the committee (Exhibit I). Chairman Townsend stated the committee was only to review the amendment to S.B. 37.

There being no further discussion, the meeting was adjourned at 10:45 a.m.

RESPECTFULLY SUBMITTED:


Kathryn Lawrence,
Committee Secretary

APPROVED BY:



Senator Randolph J. Townsend, Chairman

DATE: 7/14/99

Amendment No. 190

Senate Amendment to Senate Bill No. 37		(BDR 53-382)	
Proposed by: Committee on Commerce and Labor			
Amendment Box:			
Resolves Conflicts with: N/A			
Amends:	Summary: No	Title: Yes	Preamble: No
		Joint Sponsorship: No	

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____
Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____

Amend the bill as a whole by deleting sections 1 through 13 and adding new sections designated sections 1 through 156, and the leadlines of repealed sections, following the enacting clause, to read as follows:

"Section 1. NRS 612.265 is hereby amended to read as follows:

612.265 1. Except as otherwise provided in this section, information obtained from any employing unit or person pursuant to the administration of this chapter and any determination as to the benefit rights of any person is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's or employing unit's identity.

2. Any claimant or his legal representative is entitled to information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the division for any other purpose.

SSM/SJC/JKN

Two-Thirds Not Required

Date: 4/4/99

S.B. No. 37—1

trial insurance.

ORIGINALS ARE ON FILE IN
THE RESEARCH LIBRARY

145 pp



• A 5 8 3 7 1 9 0 •

EXHIBIT C
2837

April 5, 1999

Dear Employees:

The Governor's proposal to privatize the State's workers compensation program will be introduced in the Senate Commerce and Labor Committee this week. The proposal will be amended into SB 37, a bill previously heard by the committee. All provisions in the original SB 37 will be removed and replaced by the Governor's proposal.

The proposed legislation reflects the Governor's belief that with the opening of our market to competition, there is no longer a compelling need or reason for the state to operate an insurance company. The Governor also believes that the best opportunity for Employers Insurance Company of Nevada to succeed in the competitive environment is as a private company. Finally, the Governor does not want the state to ever face the financial catastrophe it faced in 1992 when SIIS was within 18 months of collapse.

Although the amendment is in excess of 100 pages, most of the provisions creating the private company are contained within a few provisions of the amendment. The balance of the amendment is comprised of provisions removing "State Industrial Insurance System" from the law and repealing the provisions of NRS that created the State Industrial Insurance System. Some provisions concerning special benefits that will be provided for our employees are not required in the bill but will be testified to and placed on the record.

Structure of the Plan

As currently proposed, on July 1, 1999, Employers Insurance Company of Nevada will become a public mutual insurance company with the state of Nevada as its sole mutual interest holder. It will not be an agency of the executive branch of government but will be a governmental agency eligible for participation in the Public Employees Retirement System and the state health and welfare plan. Employees will not be in the classified service of the state. All annual leave, sick leave and catastrophic leave will automatically roll over for each employee to the new public company. The Governor will appoint a board of directors and a chief executive officer who will assume their duties on July 1, 1999.

On January 1, 2000, upon a proclamation of the Governor, the public mutual insurance company will become a private mutual insurance company and will no longer be a governmental agency. The state will transfer its mutual interest to the policyholders of on January 1, 2000. Employees will no longer be in state service and will no longer participate in PERS or in the state health and welfare plan. All annual leave, sick leave and catastrophic leave will automatically roll over for each employee to the new private company. The policyholders will elect the new board of directors.

Retirement Plan:

All permanent employees of Employers Insurance Company of Nevada will continue to participate in PERS until December 31, 1999. After December 31, 1999, Employers Mutual Insurance Company of Nevada will establish a new private retirement program to cover its employees. As a private company, EMICON would also participate in social security.

At January 1, 2000, all employees, whether permanent or probationary, of Employers Insurance Company of Nevada will automatically and immediately vest in the private company's pension plan.



EMPLOYERS INSURANCE COMPANY
OF NEVADA

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EXHIBIT D
2838

Until December 31, 1999, Employers Insurance Company of Nevada and from January 1, 2000 until June 30, 2001, the new company will have authority to purchase up to five years of service for all employees that would be eligible to retire at an unreduced benefit with such purchase. We believe that approximately 150 of our current 900 employees are or would be eligible to retire with such a purchase.

The authority of the Company to purchase years of service for our employees would continue until June 30, 2001.

Layoff Protection:

The adoption of AB 552 in 1995 which authorized the opening of the Nevada workers compensation market to competition included no provisions concerning the employees of the State Industrial Insurance System. Inherent in the decision to create a competitive market was the fact that Employers Insurance Company of Nevada will lose market share and will be a smaller company. If EICON loses one-half of the market, approximately 450 jobs will be lost. If EICON loses two-thirds of the market, approximately 600 jobs will be lost. However, no legislation was adopted to provide a transition for our employees. The Governor's proposal includes provisions to assist those EICON employees who desire to continue in state service to transfer to other state agencies.

Upon passage and approval of the legislation, all current employees of Employers Insurance Company of Nevada will be eligible to place themselves on the state reemployment list. An actual layoff notice will not be required for our employees to avail themselves of this priority hiring. Additionally, upon passage and approval, the Governor will lift the statewide hiring freeze imposed upon other state agencies only as to the hiring of employees of Employers Insurance Company of Nevada. EICON employees will be placed on the top of all rehiring lists ahead of any other layoffs that might occur in other agencies. This priority rehiring would remain in effect until December 31, 2002.

Also, the Governor has approved setting aside up to \$2 million to provide retraining for EICON employees who choose to pursue other careers.

Summary:

As the Governor's proposal takes final form, we are meeting with the consultants we have hired to review options for retirement, health and welfare, and compensation plans that will be available to the new company. To assist us, we will be asking our employees to participate in focus groups in the next several weeks to provide us input into what elements they consider most important in these plans.

Also, we will provide a question and answer format on E-net in the next several weeks so that we can respond to employee questions as the bill progresses through the legislative process.

Although the proposal to create a private company creates a high level of uncertainty for all of us, it is nevertheless imperative that we continue to focus our energies and skills on preparing EICON for the July 1 opening of the market. Regardless of whether we remain an agency of the state or become a private company, our future success will be determined by our ability to retain as many of our policyholders as possible.

Douglas D. Dirks



EMPLOYERS INSURANCE COMPANY
OF NEVADA

Timeline of events for transition of Employers Insurance Company of Nevada to Employers Mutual Insurance Company of Nevada

Upon Passage and Approval

- * EICON employees are removed from the Personnel Act with the exception of retirement and leave rights.
- * EICON employees are automatically entitled to voluntarily place themselves on the re-employment list with State Personnel and may remain on the list until December 31, 2002. Employees do not have to receive a layoff notice to be placed on the layoff list.
- * The hiring freeze will be lifted for EICON employees to transfer to other state positions.
- * EICON will finalize the reinsurance transaction to satisfy the debt on claims arising prior to July 1, 1995.

*gov. will
appt. Board*

On July 1, 1999

- * Insurance Commissioner will issue EMICON a certificate of authority to operate exclusively as a tax exempt, workers compensation mutual insurance company owned and operated by the State of Nevada.
- * EMICON may have to commence laying off personnel and EMICON will deposit 2 million dollars with DETR which will be used to retrain appropriate employees for future employment.
- * EMICON will operate under and comply with the rules and regulations associated with a domestic mutual insurer in Nevada.

January 1, 2000

- * Upon the consummation of the reinsurance transaction and receipt of a favorable ruling from the IRS, the Governor will issue a proclamation and EMICON will be transformed into a fully licensed workers compensation mutual insurance company owned and operated by its policyholders.
- * Insurance Commissioner will issue EMICON a certificate of authority to operate as a fully licensed property and casualty insurer in Nevada.
- * EMICON will operate under and comply with the rules and regulations associated with a mutual insurer in Nevada and must qualify to write other lines of insurance.

public mutual → private mutual

*EMICON emp.
will elect a
board of
directors*



EMPLOYERS INSURANCE COMPANY
OF NEVADA

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EXHIBIT E

2840

COMPARISON OF RIGHTS OF EMPLOYEES UNDER EICON/EMICON VERSUS PERSONNEL ACT

Downsizing of employees

<u>Private Company</u>	<u>State Personnel Rules</u>
Downsize by need and merit	Downsize by need and seniority
Purchase of up to five years of retirement credit for 150 employees	No purchase of retirement credit
Removal from hiring freeze for priority rehiring in other state positions	Hiring freeze remains
Eligibility for re-employment upon passage and approval	Not eligible until layoff
Re-employment rights for over two-years	Re-employment rights one-year
Retraining for layoff employees	No retraining
Leave and vacation time will roll with employee to new job in EMICON	Leave and vacation time will roll with employee to new job in state government



SUBJECT INDEX OF PROPOSED AMENDMENT TO SB 37

Organizational structure and responsibilities of new company:

Sections 5, 17, 18, 19, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 129, 130, 131, 135, 136, 145, 146, 147, 148, 150, 151, 152 and 153

Current organizational structure and responsibilities of system:

Sections 29, 33, 34, 35, 53, 54, 60, 61, 62, 63, 68, 69, 78, 79, 85, 89, 91, 94, 95, 96, 97, 98, 99, 101, 102, 103, 110, 127, 128, 133, 134 and 137

Transfer of duties from system to other state agency:

Sections 37, 38, 39, 40, 41, 49, 64, 75, 88, 84 and 105

Employees of system and of new company:

Sections 138, 139, 140, 141, 142, 143, 144, 149 and 154

Alignment of system with private carrier:

Sections 1, 7, 8, 12, 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 36, 42, 46, 47, 48, 50, 52, 58, 65, 66, 67, 70, 71, 72, 73, 74, 76, 77, 82, 86, 87, 90, 104, 106, 107, 108, and 109

Definitions added or deleted:

Sections 4, 9, 10, 11, 80, 81, 83, 92, 93, 100, 126 and 132

Miscellaneous sections:

Sections 2, 3, 6, 16, 43, 44, 45, 51, 55, 56, 57, 59, 111, 112 and 155

INDEX OF SECTIONS IN PROPOSED AMENDMENT TO SB 37

Section	NRS	Subject
1.	612.265	Aligns SIIS or system with Private Carrier for unemployment consideration
2.	New	Adds sections 3 and 4 of this act
3.	New	Conflict between Title 57 and Chapters 616 and 616 controlled by Chapters 616 and 617
4.	New	New definition of State Industrial Insurance System
5.	616A.015	Assignment and delegation language from System to successor organizations
6.	616A.025	Words mean as intended
7.	616A.045	Aligns SIIS or system with Private Carrier for advisory organization
8.	616A.127	Aligns SIIS or system with Private Carrier for school to career program
9.	616A.270	Deletes State Industrial Insurance System from definition of insurer
10.	616A.290	Deletes State Industrial Insurance System from definition of private carrier
11.	616A.290	Adds Employers Mutual Insurance Company of Nevada to definition of private carrier
12.	616A.400	Aligns SIIS or system with Private Carrier for Administrator's oversight on the delivery of workers' compensation benefits
13.	616A.470	Aligns SIIS or system with Private Carrier for the collection of revenue for NAIW, Department of Administration, etc.
14.	616A.475	Aligns SIIS or system with Private Carrier for the production of data to DIR
15.	616A.485	Aligns SIIS or system with Private Carrier concerning access to insurer's information

Section	NRS	Subject
16.	New	Identifies that Sections 17, 18 and 19 are new.
17.	New	Chief Executive Officer of successor organization shall use the money paid for the purpose of providing compensation for industrial insurance and occupational diseases and the administrative expenses incidental thereto. If successor ceases providing workers compensation, monies go to Insurance Commissioner for administration
18.	New	Creates the state insurance fund in the state treasury to fulfill requirements of section 17
19.	New	Successor organization may discount reserves for accounting periods before July 1, 1995 in an amount of not more than 6%
20.	616B.027	Aligns SIIS or system with Private Carrier for retention of copy of claim file in the state
21.	616B.030	Aligns SIIS or system with Private Carrier for issuance of insurance policy
22.	616B.036	Aligns SIIS or system with Private Carrier for providing coverage for small groups
23.	616B.083	Removes different financial statement requirements for system and aligns with private carriers concerning information to be filed
24.	616B.086	Aligns SIIS or system with Private Carrier regarding disciplinary action by Insurance Commissioner
25.	616B.194	Aligns SIIS or system with Private Carrier with the production of information to Insurance Commissioner
26.	616B.224	Remove's system's ability to charge a penalty for non-payment to align it is private carriers
27.	616B.227	Aligns SIIS or system with Private Carrier with employer's requirement reports and payment of premium
28.	616B.230	Aligns SIIS or system with Private Carrier for requirement of state or county to budget for workers compensation coverage

Section	NRS	Subject
29.	616B.386	Removes system for alternative insurer for former self insured employer
30.	616B.460	Aligns SIIS or system with Private Carrier for requirement to notify DIR within 24 hours after change of insurer
31.	616B.500	Aligns SIIS or system with Private Carrier with selection of managed care organization
32.	616B.527	Aligns SIIS or system with Private Carrier with use of managed care organization
33.	616B.554	Redacts the exception to system participating in the self insured employer subsequent injury fund
34.	616B.575	Redacts the exception to system participating in the self insured association subsequent injury fund
35.	616B.584	Redacts the exception to system participating in the private carrier subsequent injury fund
36.	616B.659	Aligns SIIS or system with Private Carrier with election of coverage by sole proprietors
37.	616B.670	Transfers responsibility for employee leasing to DIR
38.	616B.673	Transfers responsibility for employee leasing to DIR
39.	616B.676	Transfers responsibility for employee leasing to DIR
40.	616B.679	Transfers responsibility for employee leasing to DIR, changes National Staff Leasing Association to National Association of Professional Employer Organization or its successor
41.	616B.694	Changes manager to administrator to cooperate with ESD
42.	616C.015	Aligns SIIS or system with Private Carrier with the rule that notices of injuries do not have to be filed with the insurer
43.	616C.055	Removes NRS 616B.515 which is being repealed
44.	616C.090	Removes NRS 616B.515 which is being repealed

Section	NRS	Subject
45.	616C.110	Removes NRS 616B.540 which is being repealed
46.	616C.190	Aligns SIIS or system with Private Carrier for out of state employment for not more than 6 months
47.	616C.200	Aligns SIIS or system with Private Carrier for out of state injuries
48.	616C.215	Aligns SIIS or system with Private Carrier with insurer's right to subrogation
49.	616C.220	Transfers responsibility for the uninsured fund to the administrator
50.	616C.255	Aligns SIIS or system with Private Carrier for collection of premium and liability for accident benefits
51.	616C.260	Removes NRS 616B.515 which is being repealed and replaced with NRS 616B.257
52.	616C.275	Aligns SIIS or system with Private Carrier for causes of action by insurer against employer who violates this section
53.	616C.355	Removes manager's ability to hold employer hearings
54.	616C.385	Removes appeal to District Court of manager's hearing decisions
55.	616C.440	Removes NRS 616B.185 which is repealed
56.	616C.475	Removes NRS 616B.185 and 616B.515 which are repealed
57.	616C.500	Removes NRS 616B.185 which is repealed
58.	616C.535	Aligns SIIS or system with Private Carrier for voluntarily executing agreements for vocational rehabilitation services
59.	616C.590	Removes NRS 616B.185 which is repealed
60.	616D.050	Removes rules for manager's appeals which have been removed
61.	616D.070	Removes sanctions by manager against party in manager's appeal
62.	616D.080	Removes mileage for witnesses at manager's appeal
63.	616D.100	Removes official record requirements for manager's appeal

Section	NRS	Subject
64.	616D.200	Changes benefit penalty standard from premium of system to premium established by rates adopted by Insurance Commissioner; removes penalty of actual cost to system to reopen the account
65.	616D.210	Aligns SIIS or system with Private Carrier with prohibition of business opening a new workers' compensation policy if employer owes other insurer money
66.	616D.250	Aligns SIIS or system with Private Carrier with penalty for employer who refuses to produce its books and records to administrator or taxation
67.	616D.260	Aligns SIIS or system with Private Carrier with right of administrator to issue a subpoena to require an employer to produce a document
68.	616D.400	Removes criminal penalty for failure of a person who fails to make records available to the manager
69.	616D.430	Removes requirement that monies recovered from restitution on behalf of system be deposited with state treasurer
70	617.1665	Aligns SIIS or system with Private Carrier with requirement that employers pay premiums for coverage under NRS 617
71.	617.1675	Aligns SIIS or system with Private Carrier for fund for silicosis
72	617.168	Aligns SIIS or system with Private Carrier for fund for asbestos
73.	617.225	Aligns SIIS or system with Private Carrier with sole proprietor's election of coverage under NRS 617
74.	617.342	Aligns SIIS or system with Private Carrier for notice of an occupational disease
75.	617.401	Transfers responsibility for the uninsured fund to the administrator
76.	617.430	Aligns SIIS or system with Private Carrier with benefits to employees for diseases under NRS 617

Section	NRS	Subject
77.	209.189	Aligns SIIS or system with Private Carrier with the fund for prison industries for the purchase of workers' compensation insurance
78.	218.2754	Removes system from requirement for fiscal notes
79.	218.5377	Removes system from requirements for the workers' compensation interim committee duties
80.	218.610	Removes system from the definition of agency of the state
81.	218.737	Removes system from the definition of agency of the state
82.	228.420	Aligns SIIS or system with Private Carrier for cooperation with the AGFU
83.	232.550	Removes system from definition of insurer
84.	232.680	Establishes DIR assessment based upon annual expenditures for claims for injuries on or after July 1, 1999
85.	242.131	Removes DOIT services from use by system
86.	244.33505	Aligns SIIS or system with Private Carrier for requirement for business license at county level
87.	268.0955	Aligns SIIS or system with Private Carrier for requirement for business license at city level
88.	277.185	Removes system from requirement to cooperate in the collection of information for tax, ESD, workers' compensation, etc.
89.	281.125	Removes exclusion that salaries of employees of system be funded by specific legislative appropriation
90.	281.390	Aligns SIIS or system with Private Carrier with requirement that state agency notify insurer of fact that employee is eligible for sick leave and temporary total disability at the same time
91.	284.173	Removes exclusion from requirement that contracts of system be approved by the Board of Examiners
92.	286.070	Public employer includes Employers Mutual Insurance Company of Nevada

Section	NRS	Subject
93.	287.045	Includes employees of Employers Mutual Insurance Company of Nevada to participate in state medical benefit plan
94.	333.020	Removes exclusion of system from purchasing rules
95.	333.470	Removes ability of system from obtaining supplies, material and equipment from state purchasing
96.	338.1905	Removes system from requirement to appoint an energy retrofit coordinator
97.	353.210	Removes system from the state budget process
98.	353.246	Removes system from the state budget process
99.	353.335	Removes system from exception from rules concerning gifts or grants
100.	353A.010	Removes system from definition of agency
101.	355.140	Three LCB clean up provisions; removes prohibition or reverse-repurchase agreements for monies invested pursuant to NRS 616
102.	355.150	Removes system from requirements for investments pursuant to NRS 355.140
103.	355.160	Removes system from requirements for investments pursuant to NRS 335.140 and 150
104.	396.591	Aligns SIIS or system with Private Carrier for providing workers' compensation coverage for athletes of the University of Nevada
105.	433A.430	Changes standard for administrator reimbursing physicians for examination of mentally ill person to be reasonable rather than set by system
106.	475.110	Aligns SIIS or system with Private Carrier with providing workers' compensation coverage for conscripted fire fighters
107.	475.230	Aligns SIIS or system with Private Carrier for reimbursement of fire department for cost of workers' compensation for fires on property owned by the state

Section	NRS	Subject
108.	538.101	Aligns SIIS or system with Private Carrier with providing workers' compensation coverage for commissions appointed by Governor
109.	624.328	Aligns SIIS or system with Private Carrier with disclosure by ESD of subcontractors who are delinquent in payment by subcontractor
110.	668.045	Removes authority for bank giving security for public money of the system
111.	New	Adds sections 112 to 125 to Title 57
112.	New	Words are as intended
113.	New	Board means board of directors of the company
114.	New	Chief Executive Officer means Chief Executive Officer of the company
115.	New	Company means Employers Mutual Insurance Company of Nevada
116.	New	STATE INDUSTRIAL INSURANCE SYSTEM means the entity established by Section 79 of Chapter 642
117.	New	Employers Mutual Insurance Company of Nevada is created to provide workers' compensation and insurance incidental thereto; company shall provide coverage upon satisfaction of reasonable requirements, is limited to workers' compensation and is subject to Title 57; Insurance Commissioner shall issue the initial certificate of authority and company must file all necessary and proper documents with the Insurance Commissioner; and, the state is not liable for any benefits or debts of the company
118.	New	Governor shall appoint the Chief Executive Officer who shall be bonded
119.	New	Initial four member board of directors to be appointed by Governor with attendant qualifications
120.	New	Election of chairman of board and requirements therefor
121.	New	Board meetings and voting requirements
122.	New	Board shall be paid a per diem allowance and travel

Section	NRS	Subject
123.	New	Board shall: adopt bylaws, approve budgets and approve investment policy of company
124.	New	Board member disclosure of conflict of interest and result
125.	New	Employees of system are exempt from the Personnel Act with the exception of leave and PERS
126.	680A.030	Employers Mutual Insurance Company of Nevada is included in definition of mutual insurer under the law
127.	680B.027	Removes language which included system in provision for payment of premium tax
128.	680B.060	Removes provision which provided part of the premium tax to the account for extended claims
129.	681.020	Excludes assets pursuant to section 17 from inclusion as assets of a successor organization
130.	682A.020	Successor organization to system may hold any assets which could have been held by system; changes shall to may
131.	682B.055	Insurance Commissioner must allow successor organization to use money held in trust as deposit for authority to transact industrial insurance in this state
132.	686B.1759	Removes system from definition of insurer
133.	687A.020	Removes system from exclusion from definition of direct insurance
134.	695C.120	Removes contracting with manager of system from definition of powers of a health maintenance organization
135.	696B.360	If successor organization ceases to provide workers' compensation insurance benefits, Insurance Commissioner must deposit monies in trust for payment of claims
136.	Section 17	This section establishes that premium dollars received by system or successor organization prior to January 1, 2000 must be held in trust

Section	NRS	Subject
137.	Repealers	NRS 616 616B.087 and 616B.088 which separated the fund into two accounts are repealed; list of other repealed sections
138	TL ¹	This section provides employees of the system with re-employment rights if laid off prior to July 1, 1999
139.	TL	This section provides employees of the system with re-employment rights if laid off prior to December 31, 2002
140.	TL	This section provides employees of the system with re-employment rights if laid off after January 1, 2000 but before December 31, 2002
141.	TL	This section provides employees of the system with the right to immediately go onto the re-employment list
142.	TL	This section provides for contract for retraining between Employers Mutual Insurance Company of Nevada and DETR
143.	TL	This section authorizes Employers Mutual Insurance Company of Nevada to purchase up to five years of retirement for qualified employees
144.	TL	This section provides a three-year window for employees of the system to qualify and obtain a license as an agent if the employee continues to perform the same duties as before July 1, 1999
145.	TL	This section prohibits the Insurance Commissioner from altering the enforceability of any contract of the system which exists on June 1, 1999
146.	TL	A certificate of insurance to an employee leasing company before July 1, 1999 shall be effective until its expiration date
147.	TL	Successor organization of system may enforce any lien created by system before July 1, 1999
148.	TL	Governor shall appoint the Chief Executive Officer and board asap after July 1, 1999

¹ TL stands for Transitory Language which will not be codified

Section	NRS	Subject
149.	TL	Any employee of system on June 30, 1999 shall be deemed to be an employee of Employers Mutual Insurance Company of Nevada on July 1, 1999
150	TL	Transfer of assets and liabilities from system to Employers Mutual Insurance Company of Nevada on July 1, 1999
151.	TL	Governor may proclaim the creation of Employers Mutual Insurance Company of Nevada, a private mutual insurer, upon the consummation of the reinsurance transaction and the satisfactory ruling from the IRS
152.	TL	Employers Mutual Insurance Company of Nevada, the private mutual insurer must file the necessary and proper documents on or before February 1, 2000
153.	TL	This section repeals any regulation adopted by the system
154.	TL	Employees of Employers Mutual Insurance Company of Nevada are eligible to participate in the state group medical program on July 1, 1999
155.	Dates	This section provides the effective dates of the chapters

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
LEGAL COUNSEL

LEGISLATIVE MEMO

PROPOSED AMENDMENTS TO SENATE BILL 37

A number of the proposed sections in SB 37 conflict with sections of SB 495 (which passed out of the Senate Committee on Commerce and Labor on Friday, April 9, 1999), particularly with regard to Employee Leasing Companies, and the Uninsured Employers' Claim Fund.

AMEND Sec. 26(3) to add the phrase "**and 617**" after "616D" and "**within the time period specified in NRS 616B.460**" after the word "rejection." NRS 616B.460 currently requires notification within twenty-four hours; using the phrase proposed by DIR would keep NRS 616B.224(3) consistent with any amendments to NRS 616B.460. The new subsection would read:

3. *The failure* of any employer to ^{comply} employ with the provisions of this section ~~and NRS 616B.218~~ operates as a rejection of chapters 616A to 616D **and 617**, inclusive, of NRS. ~~[effective at the expiration of the period covered by his estimate.]~~ The insurer shall notify the administrator of each such rejection **within the time period specified in NRS 616B.460.**

DELETE Sections 37 through 41 (which concern Employee Leasing Companies) in their entirety. Sections 1, 19 through 24 of SB 495 (which passed out of the Senate Committee for Commerce and Labor on April 9, 1999) cover the same issues. DIR believes the amendments to Employee Leasing in SB 495 are preferable.

DELETE Sections 49 and 75 (Uninsured Employers' Claim Fund) in their entirety. Sections 25 and 35 of SB 495 (which passed out of the Senate Committee for Commerce and Labor on April 9, 1999) address the same issue; DIR prefers the language of SB 495, Secs. 25 and 35.

AMEND Sec. 53 by adding the words "**or the administrator's designee**" after the word "administrator" the two times it is used in the section.

AMEND Sec. 54 by adding the words "**administrator or the administrator's designee**" after the words "appeals officer."

DIR's Proposed Amendments to
SB 37

AMEND Sec. 60(1), Sec. 61(1) and (3), Sec. 62(3) and (3), and Sec. 63(1)(a) by adding the words "*or the administrator's designee*" after the word "administrator."

AMEND Sec. 67 by adding the words "*the administrator*" before the words "a private carrier" to make it consistent with Sec. 64.

NEW/tb

cc: Roger Bremner, DIR Administrator
Amanda Getzoff, LV Directors Office

R:\1999\LEGSLTV\SB37\AMEN.MEM
April 12, 1999

Points for Senate Commerce and Labor Committee....4/13/99

1. The State should not eliminate the option of a State System. Once eliminated, it will be difficult to re-enact, even though several states have recently re-instituted state systems. Please remember that the workers' compensation law requires that the employee give something up in return for guaranteed coverage. Keep your options open.

2. What about the constitutional provision for a trust fund for industrial insurance. (Art 9, Sect 2[2])

3. The provisions of the amendment have some desirable points for those employees who wish to leave the system, but will be devastating for those who wish to stay.

A. For the older employees who wish to simply bailout, it's a good deal, because the system will apparently agree to buy five years of retirement time at a cost of between \$7 million and \$10 million. (If the mgt figure of 150 employees is correct.)

B. It is also a good deal for those who wish to move into another state position.

4. But it is not a good deal in the following ways:

A. For employees who have many years vested in the retirement system but are not yet able to retire, they will lose the value of their retirement.

B. It is not a good deal for the employees of other State agencies who may be laid off. They will have EICON employees take precedence over them in their own agency.

C. Employees who choose to stay, or cannot find a position with another agency, they will go from a structure with guaranteed benefits to an at-will system where much will be promised but nothing will be guaranteed.

D. Much is being said about the fact that the governor has said he will lift the hiring freeze for these employees...he could do that without this bill. If, as the EICON management has predicted, there is a big reduction warranted, the hiring freeze could be lifted.

E. Much is also being said about the proposed \$2 million training pot, is that too, predicated upon passage of this bill.

F. In the same vein, lifting the hiring freeze and retraining the employees for other state jobs sounds great...but what kind of jobs. Most of the growth in the

number of state positions during the biennium will be for correctional officers. There should be no problem with lower level clerical positions, the turnover is high. Beyond that, the worker's compensation classifications are peculiar to the system and there are few calls for employees of those areas.

G. Finally in this area, there are many employees who elected to work at NIC, SIIS or EICON. They may like the work. They don't want to leave. They are good at their job but they do not feel that they should give up what they have taken years to earn. And they will give up a great deal.

These then are the things the employees will be forced to give up with the passage of this proposal:

CURRENT RIGHTS, GUARANTEED BY LAW - ELIMINATED UNDER SB 37

(Management, in its effort to diminish employee opposition, may promise to provide equal or better benefits, but it will not be guaranteed by law or contract. They will do as they wish. The following are not necessarily in order of importance.)

- * Dismissal for cause. Currently employees have the right to an impartial hearing if they are fired. The employees of the new company will be at-will employees with no such legal rights.
- * ALL leave rights...annual leave, sick leave, catastrophic leave, pay for unused sick leave at retirement, etc.
- * Longevity Pay
- * A layoff regulation based upon merit and seniority that does not allow the playing of favorites.
- * Cash or comp time for overtime. Overtime is time worked in excess of 8 hours per day. As a private employee, overtime will only be time worked over 40 hours per week and there can be NO comp time accumulation.
- * A uniform classification and pay system that requires equal pay for equal work and a method for requesting reclassification.
- * One of the best retirement plans in the country. SB37 will end coverage under the Public Employees Retirement System. Company employees will be covered by Social Security. Social Security costs the employer and employee 6.2% each. PERS is 19.5%. The difference of 7.1% is not enough to buy a pension as good as PERS, even when combined with Social Security.
- * Employer required to pay a specified amount for health, life, dental, vision, disability and job related death.
- * A legally binding grievance procedure and a progressive discipline law.
- * The right to transfer and/or promote to other state agencies. The right to be restored to your former job if your promotion does not work out.
- * The right to participate in the Deferred Compensation Plan and the right to pay for some benefits with pre-taxed dollars.
- * The right to return to work after a leave of absence due to on-the-job-injury and the right to have your employer pay your health insurance while on such leave for up to nine months.
- * Protection afforded by the State Whistleblower law.

* The right to take examinations and interviews for state jobs without use of leave time.

* All personnel actions to be based upon merit and fitness. Discrimination based upon race, creed, color, national origin, sex, age, political affiliation or disability prohibited.

AMERICAN INTERNATIONAL GROUP, INC.

160 WATER STREET, 24TH FLOOR

NEW YORK, N.Y. 10038

PAUL S. BROWN
ASSISTANT GENERAL COUNSEL
STATE REGULATORY AFFAIRS
DOMESTIC BROKERAGE GROUP

(212) 820-4579
FAX: (212) 820-4557

April 13, 1999

Senator Randolph J. Townsend
Chairman, Committee on Commerce and Labor
Nevada State Senate
401 S. Carson Street
Carson City, NV 89701

Re: Senate Amendment to Senate Bill No. 37

Dear Chairman Townsend:

I am writing on behalf of the American International Group, Inc. (AIG), one of the largest property and casualty insurers, as well as one of the largest writers of workers' compensation insurance, in the country. We appreciate the opportunity to comment on this very important legislation and wish our comments could be more positive. Unfortunately, we do not think the proposed amendment to the bill will achieve what we believe are the goals of the Governor and this Committee. We, therefore, urge you and the other members of the Commerce and Labor Committee to reconsider the above-referenced proposal and not to adopt it in its current form.

The current workers' compensation law in Nevada was enacted in 1997 with the goal of opening up the workers' compensation market to private insurers and moving away from the previous monopolistic State Industrial Insurance System (SIIS). We, like many other companies, have taken all the necessary licensing steps to enable us to enter the market as of July 1, 1999. As that date approaches, however, we are concerned about potentially problematic provisions in the law.

The current law calls for the division of the old SIIS into two accounts in a new State Insurance Fund: the Account for Administration of Extended Claims and the Account for Administration of Current Claims. Included in Section 616B.087, the section dealing with the extended claims, was a provision that allowed the legislature to approve an assessment on insurers to fund the account. Recent estimates have indicated that the account for extended claims is under funded somewhere in the range of \$600 million to \$1 billion. Private insurers will be entering a new market where, on the very first day, they will potentially face enormous assessments. Any company that wrote insurance in Maine in the mid-1980's and faced huge residual market loads, and survived to tell about it, would almost certainly pause now before entering a similar market situation. Only now are insurers slowly starting to reenter the Maine insurance market. We

appreciate that the amendment to Senate Bill 37 attempts to deal with this deficit situation but, unfortunately, it fails to adequately address our concerns.

The proposed amendment calls for the formation of the Employers' Mutual Insurance Company of Nevada (Employers' Mutual), a mutual insurer that will provide workers compensation and employer liability insurance to employers in the state, as an ongoing concern. This entity will assume all the debts and liabilities of the SIIS and State Insurance Fund. The proposal provides Employers' Mutual with several competitive advantages over private carriers coming into the market. We can only assume that the purpose of this is to enable the entity to write itself out from under the liabilities of the SIIS. While that purpose is laudable, the effect on the market will be the same as that of the current law; private carriers may be reluctant to enter the market. It is not a fear of competition, but a reaction to anti-competitive forces in the marketplace that may cause companies to rethink their business strategies. A level playing field is essential to competition and the advantages granted to Employers' Mutual, such as the reserve discounts available to it, render the playing field uneven and all but guarantees that Employers' Mutual will retain its market share. This may provide a disincentive for insurers and may make the workers' compensation market in Nevada less attractive.

We have recently been dealing with anti-competitive state funds in several states, including Texas, New York and Oregon. The difference is that in those states the tide is shifting and they are moving away from some of the unfair advantages that those funds have enjoyed. In Texas, legislation has been introduced to eliminate the fund's financial advantages and change it from a competitive fund to a market-stabilizing fund. In New York there have been discussions between industry and the Governor's office to eliminate the advantages enjoyed by that state fund, including being able to write workers' compensation policies at discounts of 30 or 40 percent. Lastly, efforts are currently underway to rein in the activities of the Oregon state fund, which is now seeking to compete extremely aggressively with the private carriers. The enactment of Senate Bill 37, with the proposed amendment, would be directionally incorrect for the State of Nevada.


In addition to the anti-competitive aspects of the new entity, the issue of future assessments remains a concern. The proposal does not address what will happen in the event the Governor does not sign the proclamation discussed in Section 151 of the amendment, an indication that Employers' Mutual is not financially stable and not able to reorganize as a private mutual insurer. We fear that the legislature will at that time assess the industry for any remaining liabilities of the SIIS. Also, if the Governor does sign the proclamation and the entity fails after becoming a private company, its outstanding liabilities become a burden for the guaranty fund and, ultimately, industry.

For these reasons, we are skeptical that the proposed amendment to Senate Bill 37 will bring the state any closer to the competitive, private workers' compensation insurance market it seeks.

Senator Randolph J. Townsend
April 13, 1999
Page Three

We, therefore, respectfully recommend that the Committee on Commerce and Labor not adopt the amendment to Senate Bill 37, in its current form.

Sincerely,

A handwritten signature in black ink, reading "Paul S. Brown". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Paul S. Brown

4

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventieth Session
April 14, 1999**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:10 a.m., on Wednesday, April 14, 1999, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Mark Amodei
Senator Dean A. Rhoads
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Crystal M. Lesbo, Committee Policy Analyst
Ardyss Johns, Committee Secretary

OTHERS PRESENT:

John D. Madole Jr., Lobbyist, Nevada Association of Mechanical Contractors,
and Nevada Chapter of Associated General Contractors
James L. Wadhams, Lobbyist, American Insurance Association, US Bank Plaza
Clark Knauss, President, Lucky Concrete Inc.
Danny L. Thompson, Lobbyist, American Federation of Labor-Congress of
Industrial Organizations
Norman L. Dianda, President, Q and D Construction Inc.
Patricia Bullentini, Safety/Workers' Compensations Manager, Martin Iron Works
Inc.
Martin R. Giudici, President, American Ready-Mix
Dorothy B. North, Lobbyist, Nevada Association of Alcohol and Drug Counselors
Marilynn K. Morrical, Lobbyist

Senate Committee on Commerce and Labor
April 14, 1999
Page 13

Mary F. Lau, Lobbyist, Retail Association of Nevada, stated the amendment read as the Retail Association of Nevada had requested.

Mr. Capurro concurred with Ms. Lau and added that the amendment included the request of the insurance commissioner to provide information with respect to new members coming into the association.

The next order of business was S.B. 55, Amendment No. 176 (Exhibit O).

SENATE BILL 55: Makes various changes regarding industrial insurance. (BDR 53-387)

Samuel P. McMullen, Lobbyist, Las Vegas Chamber of Commerce; Nevada Self-Insurers Association, and Retail Association of Nevada, stated Amendment No. 176 was perfect.

Chairman Townsend asked if anyone was present to comment on S.B. 42, Amendment 175 (Exhibit P). When nobody responded, he stated he had read it and told the committee it was definitional.

SENATE BILL 42: Revises provisions governing payment of workers' compensation for subsequent injuries from subsequent injury funds. (BDR 53-389)

- ✓ Chairman Townsend stated that due to the lateness of the hour, a work session on S.B. 37 would be scheduled for the following week on April 21 and April 22 and said it had to be out of committee by April 23. This, he said, would give the committee 3 full days to deal with all of the issues of that bill.

SENATE BILL 37: Makes various changes regarding industrial insurance. (BDR 53-382)

Carol A. Jackson, Director, Department of Employment, Training and Rehabilitation, expressed her compassion for the employees of the State Industrial Insurance System (SIIS). She said her department would assist with those employees affected by the privatization of that system. She stated she would sit down with them individually to assess their skills, knowledge and abilities to decide what type of training programs they should have. She claimed it was not the intent of the employment department to provide college

Senate Committee on Commerce and Labor

April 14, 1999

Page 14

degrees for those individuals. But, she added, if someone needed just a couple of credits to get a degree that would allow them to get a job paying a livable wage, the department could assist under those circumstances.

Ann Nelson, Associate General Counsel, Employers Insurance Company of Nevada, told the committee that one of the things she and Ms. Jackson were working on was identifying jobs both within the state and within the private sector. She said the services Ms. Jackson's department would be providing were to train for both state and private sector jobs.

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventieth Session
April 21, 1999**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:10 a.m., on Wednesday, April 21, 1999, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Mark Amodei
Senator Dean A. Rhoads
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Crystal M. Lesbo, Committee Policy Analyst
Kathryn Lawrence, Committee Secretary

OTHERS PRESENT:

Lenard T. Ormsby, General Counsel, Employers Insurance Company of Nevada
Jack Kim, Lobbyist, Sierra Insurance Group
Alice A. Molasky-Arman, Commissioner, Division of Insurance, Department of Business and Industry
William H. Malphurs, Director of Carrier Selection, National Council on Compensation Insurance Inc.
Clifford N. King, Supervisor, Property and Casualty Section, Division of Insurance, Department of Business and Industry
Barry Lipton, Vice President and Actuary, Western Region, National Council on Compensation Insurance Inc.
James R. York, Lobbyist, Nevada Independent Insurance Agents
Robert A. Ostrovsky, Lobbyist, Nevadans for Affordable Health Care

Daryl E. Capurro, Lobbyist, Nevada Motor Transport Association

Chairman Townsend opened the hearing on Senate Bill (S.B.) 37.

SENATE BILL 37: Makes various changes regarding industrial insurance.
(BDR 53-382)

Lenard T. Ormsby, General Counsel, Employers Insurance Company of Nevada, referred to a handout (Exhibit C) showing that S.B. 37 will have no effect on the worker's compensation environment. Chairman Townsend asked Mr. Ormsby to repeat this statement so everyone will be clear on this point. Mr. Ormsby continued by giving an overview of Exhibit C.

Senator Rhoads asked if the current policyholders with Employers Insurance Company of Nevada (EICON), which are going to be cancelled, will be notified prior to July 1, 1999. Mr. Ormsby replied that EICON had begun to adopt policy anniversary dates approximately 18 months ago dependent on when a company first started a policy. Mr. Ormsby continued by explaining that any changes to a policy, or decision by EICON not to reinsure, starting July 1, 1999 will be given a 60-day written notice per regulation.

Chairman Townsend commented there is a current bill being heard that dictates insurers cannot cancel a policy unless the insurance company can demonstrate an increase in risk or substantial change in requirements to cover a policyholder. Mr. Ormsby stated he is not familiar with the bill. Chairman Townsend asked Jack Kim, Lobbyist, Sierra Insurance Group, if he is familiar with this bill. Mr. Kim replied that he is, and stated it only applies to homeowners and will not affect the workers' compensation environment.

Mr. Ormsby reiterated the three goals that Governor Kenny Guinn wanted to accomplish with S.B. 37, which are to remove the old debt through reinsurance, eliminate any future possibility of an unfunded liability by creating a mutual insurance company within the guaranty association, and provide a safety net for employees. Mr. Ormsby stated that EICON will take the steps necessary to create a mutual insurance company between July 1, 1999 and January 1, 2000. Mr. Ormsby outlined that these qualifications include consummation of the reinsurance transaction, having the insurance commissioner sign off on the prequalification financial analysis of the new company, and receive a favorable

ruling from the Internal Revenue Service (IRS).

Chairman Townsend asked Mr. Ormsby to give an overview of the reinsurance process. Mr. Ormsby replied EICON has the finances available to pay for reinsurance and the reinsurance market has softened making it easier to get reinsurance at a competitive rate, and added they have numerous reinsurance companies looking at them right now. Mr. Ormsby pointed out that he believes this transaction will be completed before July 1, 1999. Chairman Townsend asked if the transaction will be to a single reinsurer or if it will be to numerous companies buying different parts of the company. Mr. Ormsby replied they have bids under both circumstances, but thinks it will probably be under the circumstance of numerous companies, and added that one of the conditions will require the trust fund stay in Nevada.

Alice A. Molasky-Arman, Commissioner, Division of Insurance, Department of Business and Industry, testified that Assembly Bill 552 of the Sixty-eighth Session required an advisory organization to be responsible for a rating plan to be approved by the insurance commissioner to establish certain criteria.

ASSEMBLY BILL 552 OF THE SIXTY-EIGHTH SESSION: Makes various changes to provisions governing industrial insurance. (BDR 53-1991)

Ms. Molasky-Arman pointed out these criteria included rating plans for a uniform system of classification for risk, for experience of employers, a manual that would be used by all insurers, and a plan to establish the residual market. Ms. Molasky-Arman stated that the National Council on Compensation Insurance (NCCI) submitted a residual market plan that had two choices, "Direct assignment to all insurers in the voluntary market of those employers who were to be in the assigned-risk plan, [and] the other option was a reinsurance pooling mechanism." Ms. Molasky-Arman testified that they chose the reinsurance pooling mechanism, which would make the NCCI the administrator of the plan, and pointed out this is a role separate from its services and support to the insurance commissioner and regulatory duties. Ms. Molasky-Arman explained they chose this plan because it has incentives to insurers to include all employers in the voluntary market, as well as operating under a national workers' compensation reinsurance pool. Ms. Molasky-Arman added that all the insurers in the voluntary market are required to subscribe to the articles of agreement of the national workers' compensation reinsurance pool.

William H. Malphurs, Director of Carrier Selection, National Council on Compensation Insurance Inc., explained that the residual market plan is a mechanism which accepts risks that are unable to find coverage in a voluntary market and the reinsurance pool is the financial aspect.

Senator O'Connell commented that the committee was supposed to receive a copy of the insurance rates. Clifford N. King, Supervisor, Property and Casualty Section, Division of Insurance, Department of Business and Industry, replied that they have the rates available and can accommodate both the whole manual or specific rate pages. Senator O'Connell asked if she could get more information on the surcharges.

Mr. King explained the traditional definition of three-way insurance is voluntary insurance, involuntary insurance and self-insurance, which is not like it is in Nevada, which has EICON, private carriers and self-insurance. Mr. King stated that there are over 232 licensed carriers in Nevada, which can write workers' compensation policies, and are planning on adding these policies to their portfolio of accounts.

Senator O'Connell queried if there are 8,600 employers currently writing policies at the minimum \$120 premium. Mr. Ormsby stated that EICON has between 7,500 and 8,600 employers paying this premium, and approximately 20,000 employers that have a premium of \$1,000 or less. Senator O'Connell expressed concern with the assigned-risk surcharge, and having these 20,000 employers with small accounts being included in the risk pool. Mr. King replied that there are a number of carriers that have expressed interest in writing policies for these accounts.

Senator O'Connell pointed out that she is confused because NCCI has a set a minimum premium rate of \$750, and has told EICON that they must graduate these lower cost accounts up to \$750 before the 4-year rate transition. Barry Lipton, Vice President and Actuary, Western Region, National Council on Compensation Insurance Inc., explained that NCCI does have a standard of minimum premiums ranging from \$400 to \$750 that would be met after a 5-year transition. Mr. Lipton clarified that an employer paying the \$120 under the EICON system will be paying \$210 during the first year of the rate transition. Mr. King clarified that all carriers will be using the same rules and rates and all carriers will be charging the minimum \$210.

Senator O'Connell asked if the process in determining the assigned-risk pool has been determined. Mr. Malphurs replied the risk pool has been divided and spread among among all of the carriers in the State of Nevada.

Mr. King stated rates are now structured by law to ease into the new three-way system, and there are carriers that would write policies under the current minimum rate if they were able. Chairman Townsend asked what statutory or regulatory hurdles are in the way of keeping these carriers from offering these cheaper rates. Ms. Molasky-Arman stated A.B. 609 of the Sixty-ninth Session established *Nevada Revised Statutes* (NRS) 686B.177, known as administered pricing for the period of July 1, 1999 to June 30, 2003, which would require the minimum premium of all carriers in the first year not to be deviated from, but can deviate by 5 percent each year thereafter.

ASSEMBLY BILL 609 OF THE SIXTY-NINTH SESSION: Makes various changes to provisions governing industrial insurance. (BDR 53-1502)

Senator O'Connell asked what would happen if they had this provision sunset on July 1, 1999. Ms. Molasky-Arman replied that it would drastically increase the oversight of the Division of Insurance over the workers' compensation insurance industry.

Senator Shaffer asked if an insurer could offer a cheaper workers' compensation premium, but make up the difference in some other aspect of a package deal. Ms. Molasky-Arman stated that is possible because all other lines of insurance, other than workers' compensation are open. Senator Shaffer stated that he thinks this would allow the monoline workers' compensation insurers to be at a disadvantage.

Mr. Ormsby commented that the 4-year administered pricing was implemented to avoid predatory pricing. Chairman Townsend asked if there is a prohibition at selling insurance at below cost, and if not, why? Mr. King replied that the rates must be adequate and not discriminatory. Chairman Townsend pointed out if it would not be better to have an open market to let the competition bring the rates down. Ms. Molasky-Arman stated that the Division of Insurance investigates an insurance company's financial solvency, marketing practices and any indication of financial impairment prior to being qualified for selling workers' compensation insurance in Nevada.

Mr. Ormsby stated that A.B. 609 of the Sixty-ninth Session was meant to make a fully competitive system that will protect the injured worker. Chairman Townsend queried the sunset of this provision in 2001, and investigate the market at that time in the 2001 Legislative Session. Mr. Ormsby replied that this committee and the interim committees could investigate this issue during the entire time, and would be a more prudent approach.

Chairman Townsend noted that it is the concern of the committee that employers are not aware of the contents of their policies, and will not shop around for other choices until there is a free market. Mr. Malphurs replied that the chairman is correct because most people will stay with a provider if they are satisfied with the service, and are not forced to look elsewhere.

James R. York, Lobbyist, Nevada Independent Insurance Agents, stated that the independent insurance agents have been overlooked in this issue because they are not affiliated with a direct provider. Mr. York commented that the independent insurance agents would now be able to provide a full range of coverage for their customers that include workers' compensation insurance combined with the other lines of insurance and to be able to compete with large carriers.

Chairman Townsend asked if the independent insurance agents are properly trained and licensed to sell workers' compensation insurance, and expressed concern that small businesses that do not acquire a complete insurance package, including health care, will be discriminated against. Mr. York replied that training and certification is currently mandated, and believes there will not be any discrimination against the smaller employers. Mr. York added that he believes the current 4-year pricing is going to work, and if it is changed at this late date the process will slow down.

Mr. Lipton added that NCCI would be prepared to support any pace the state would like the workers' compensation insurance industry to follow.

Robert A. Ostrovsky, Lobbyist, Nevadans for Affordable Health Care, explained that the administered pricing was put into effect to protect EICON from being devastated when the three-way system was to be put into effect. Mr. Ostrovsky added this would allow EICON to satisfy the debt it had accumulated, as well as maintain the claims they currently have. Mr. Ostrovsky pointed out that he thinks EICON will be left with a large amount of policyholders from the


Senate Committee on Commerce and Labor
April 21, 1999
Page 7

small- and medium-sized businesses. Mr. Ostrovsky asserted that he also thinks it would be in the best interest of employers to get rid of administered pricing as soon as possible, and thinks the phaseout should be around 2 years instead of the currently implemented 4 years.

Daryl E. Capurro, Lobbyist, Nevada Motor Transport Association, expressed concern with the accessibility of his organization to gain information on employers workers' compensation records during this transition from either EICON or another insurance provider. Chairman Townsend stated that this issue was covered in another bill already passed through this committee. Mr. Ormsby added that an amendment being submitted tomorrow for this bill would contain information relating to this issue, which will state that the rules concerning this issue will stay the same.


Chairman Townsend adjourned the meeting at 10:25 a.m.

RESPECTFULLY SUBMITTED:



Scott Corbett,
Committee Secretary

APPROVED BY:



Senator Randolph J. Townsend, Chairman

DATE: 4/21/99

**EFFECT OF AMENDMENTS TO SB 37¹ ON THE
WORKERS COMPENSATION PROGRAM IN NEVADA**

	Current	7/1/1999	1/1/2000
Premium Rates	Set by EICON	Set by NCCI ²	Set by NCCI
Classifications	Set by EICON	Set by NCCI	Set by NCCI
E-Modification Factor	Set by EICON	Set by NCCI	Set by NCCI -
Selection of Insurer	Monopoly	Competitive	Competitive
Non-selection of Employer/Insured	Monopoly	Underwritten	Underwritten
Residual Market Assigned Risk	Monopoly N/A	Set by NCCI 25% surcharge	Set by NCCI 25% surcharge
Insurance Policy	N/A	NCCI Policy	NCCI Policy
Insurance Policy Rules/ Requirements	N/A	NCCI Manual	NCCI Manual
Benefits to Injured Workers	NRS 616-617	NRS 616-617	NRS 616-617
Injured Worker Appeals	NRS 616 DOA	NRS 616 DOA	NRS 616 DOA
Benefit Penalty Enforcement	NRS 616 DIR	NRS 616 DIR	NRS 616 DIR
Cancellation Rules for Insurers	NRS 616	NRS 687	NRS 687

¹ Presented to the Senate Commerce and Labor Committee 4-21-99 by Employers Insurance Company of Nevada

² The current rating advisory organization selected by the Insurance Commissioner is the National Council on Compensation Insurance.

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventieth Session
April 22, 1999**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:10 a.m., on Thursday, April 22, 1999, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Mark E. Amodei
Senator Dean A. Rhoads
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider
Senator Maggie Carlton

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn Hettrick, Douglas and Carson City counties Assembly
District No. 39
Assemblyman David E. Goldwater, Clark County Assembly District No. 10

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Crystal M. Lesbo, Committee Policy Analyst
Ardyss Johns, Committee Secretary

OTHERS PRESENT:

Clifford N. King, Supervisor, Property and Casualty Section, Division of
Insurance, Department of Business and Industry
Amy Halley Hill, Lobbyist, Las Vegas Chamber of Commerce, and Nevada
Self-Insurers Association
Lenard Ormsby, General Counsel, Employers Insurance Company of Nevada

Assemblyman David E. Goldwater, Clark County Assembly District No. 10, related the genesis of A.B. 470. Previous legislation has addressed many patients rights, but did not apply to workers' compensation. He asserted that of the many problems with the health system, one half are the result of workers' compensation and managed-care matters. Chairman Townsend asked Assemblyman Goldwater if there was a reason the previous legislation did not cover workers' compensation. Assemblyman Goldwater answered it was omitted as a compromise, and it was surmised changes in the workers' compensation system would provide relief on the health side.

Chairman Townsend closed the hearing on A.B. 470, and opened the hearing on Senate Bill (S.B.) 37.

SENATE BILL 37: Makes various changes regarding industrial insurance.
(BDR 53-382)

Mr. Ormsby introduced a proposed amendment to S.B. 37 (Exhibit E. Original is on file in the Research Library.). He summarized the three goals of the bill; to remove the old debt, prevent new debt, and provide a safety net to employers. Mr. Ormsby pointed to section 5 of Exhibit E, which was drafted by the Legislative Counsel Bureau to assure EICON is the successor in all matters of the state system of industrial insurance existing on December 31, 1999.

Mr. Ormsby explained premiums received by the predecessor organization will be transferred to the successor organization; and the commissioner of insurance will take possession of all funds, if the successor organization does not provide workers' compensation. Mr. Ormsby read page 128 of Exhibit E, which is the section establishing the new structure of the state system of industrial insurance effective January 1, 2000.

Senator O'Connell asked Mr. Ormsby who would write the bylaws for the successor company. He replied an interim board of directors would write the bylaws, which could be changed when the policyholders elect the permanent board of directors. In answer to an inquiry by Senator Rhoads, Mr. Ormsby said S.B. 37 does not establish who is eligible for the board of directors. Previous versions of the legislation authorized a five-member board with qualifications in business; and rules to prohibit somebody from being a member if they are employed by, are counsel for, or are a lobbyist for another insurance company. The interim board would be appointed by existing management and the

policyholders would elect the board to replace the interim board after January 1, 2000. Mr. Ormsby said the policyholders would nominate the slate of directors.

Senator O'Connell asked Mr. Ormsby why section 5 of Exhibit E reads "names of employers, their addresses" instead of "names of businesses, their business addresses." Mr. Ormsby said to his knowledge, the business address is the only address on file.

Roger Bremner, Administrator, Industrial Relations Division, Department of Business and Industry, said it is the intent of the department to provide business-oriented information only, and personal information would not be released. Mr. Bremner agreed with Senator O'Connell that the intent of the department should be put into regulation.

Samuel P. McMullen, Lobbyist, Las Vegas Chamber of Commerce, said the chamber would like to make suggestions. Mr. McMullen approved of testimony by Mr. Ostrovsky, heard during a previous meeting of the Senate Committee on Commerce and Labor, detailing the history of premium regulation. The chamber recommends the private company being created out of EICON, be given a shorter transition time than 5 years, and the appointment of an advisory board made up of policyholders to formulate the bylaws. Mr. McMullen assured Chairman Townsend the chamber desires the election of a board by policyholders, as soon as possible, to make all decisions.

Chairman Townsend summarized the section of Exhibit E which states if any successor organization established by S.B. 37 wishes to transact property and casualty insurance, existing trust money will not be considered an asset in the determination of the financial condition of the successor organization. The chairman asked Mr. Ormsby if those assets could be used to create other product lines. Mr. Ormsby answered other sections of S.B. 37 deal with the use of those funds, and the bill states the successor organization shall be licensed for workers' compensation insurance only. The successor organization may apply for additional licenses with the Commissioner, Division of Insurance, Department of Business and Industry.

Ann Nelson, Associate General Counsel, Employers Insurance Company of Nevada, clarified the Legislative Counsel Bureau determined monies currently held in trust can be used only for workers' compensation and associated expenses, under the Constitution of the State of Nevada.

Mr. Thompson asserted the issue of monies held in trust is the major problem concerning S.B. 37. He stated it is his belief the whole subject of whether EICON can assume the assets of the trust fund is in question, and the problem will end up in court. Mr. Thompson continued there are huge concerns and not enough details in Exhibit E. Mr. Ormsby reiterated the legal issue has been analyzed in detail, and is believed to be in accordance with the Constitution of the State of Nevada. Mr. Thompson said in previous testimony heard by the Senate Committee on Commerce and Labor, Paul Brown of the American International Group Inc. (AIG) raised these same concerns. He averred there could be reluctance on the part of insurers to enter the market, since on the first day, they might face liabilities. Many questions need to be answered before this bill is processed.

Chairman Townsend said he is trying to get an understanding of how EICON can compete in other lines of insurance, since language in S.B. 37 and the Constitution of the State of Nevada declares the trust fund cannot be used for anything except workers' compensation. Mr. Ormsby explained that on January 1, 2000, EICON would not have the ability to sell other lines of insurance. The trust provisions apply to EICON when the current system expires on December 31, 1999, and the trust monies will transfer to the successor to be held in trust. He declared a successful calendar year 2000 could generate assets to allow expansion into comprehensive and liability markets. The option also exists to partner with another company to capture those markets.

Mr. Ormsby explained to Senator O'Connell that the attorney general has not issued an opinion relating to the constitutionality of the transfer of the trust fund.

Daryl E. Capurro, Lobbyist, Nevada Motor Transport Association, testified the association is self-insured. He said under current law, self-insured employers are required to gather from an employer, interested in joining a self-insured group, 5 years of previous information. Mr. Capurro said the association would be more comfortable if S.B. 37 stated that would continue, whether the data is provided by the successor organization or any other insurance company that may have acquired compensation business.

Mr. Capurro read from page 135 of Exhibit E which says: "The commissioner of insurance shall not enter any order or take any action that would alter the terms, conditions or enforceability of any contracts of the state industrial

insurance system that exist on June 30, 1999." He recommended since the commissioner is responsible for all insurance, she should have the ability to look at all contracts, books, records, and other items insurance companies would possess.

Mr. Ormsby responded to Mr. Capurro by saying the matter of records would transfer to the successor organization. Under current law, the policyholder has the right to his or her records, and that right would continue. Mr. Ormsby testified he did not know what right a policyholder has to access records with a private insurance company.

Mr. Ormsby said in establishing the retrospective rate agreements, EICON negotiated in good faith with policyholders with the intent of having those survive. The goal of the section of Exhibit E, referred to by Mr. Capurro, was to look at the continuation of contracts through existing terms, in order to reinforce the plan to contract in good faith for a term of 2 years.

Senator Carlton asked if workers' records are going to Archives and Records of the Department of Museums, Library and Arts, as stated on page 131 of Exhibit E, and the archives are open to the public, how would those records be protected. Ms. Nelson said the purpose is to have Archives and Records return the records to EICON. The records have been stored at Archives and Records for over 80 years, and have not been available to the public.

Ray E. Bacon, Lobbyist, Nevada Manufacturers Association, testified the association has a 2-year contract with EICON. Mr. Bacon asked for clarification if the agreement would have legal status when the successor company commences.

Chairman Townsend asked Mr. Capurro if The Nevada Motor Transport Association is requesting all such contracts be terminated. Mr. Capurro answered that is not the objective. He said the position of the association is the provision is severe and potentially ties the hands of the commissioner to look at what might have transpired up to June 30, 1999.

Gary E. Milliken, Lobbyist, Associated General Contractors, Las Vegas Chapter, questioned if an Owner Controlled Insurance Program (OCIP) were agreed to today, would the terms be deemed approved until the contract expires? Chairman Townsend answered under S.B. 37, if the agreement was entered in

good faith, it cannot be canceled, just reviewed.

Scott M. Craigie, Lobbyist, Liberty Mutual Insurance Group, stated the group approves of the Governors' goal to move workers' compensation out of the state fund system, and S.B. 37 is a reasonable solution. Mr. Craigie said Liberty Mutual Insurance Group approves of the language in Exhibit E, with the exception of verbiage changes recommended in Exhibit F. The change reads "Any contracts of the state industrial insurance system that exist on June 30, 1999, shall be deemed approved until the first anniversary date of the contract, or until the contract is renewed, reissued or amended." The provision as it reads currently, "The commissioner of insurance shall not enter any order or take any action that would alter the terms, conditions or enforceability of any contracts of the state industrial insurance system that exist on June 30, 1999," allows the option to move between EICON rates and National Council on Compensation Insurance Inc. (NCCI) rates. Such an option would not be available to competing insurance carriers, and Mr. Craigie said Liberty Mutual Insurance Group wants the ability to capture some of that business.

Chairman Townsend asked Mr. Ormsby if the average length of contracts is approximately 2 years. Mr. Ormsby described three contract types: contracts with major construction contractors in southern Nevada; agreements with associations; and individual employer agreements. The contracts are for 1 or 2 years, and EICON wants these agreements to survive. Servicing the policies helps to preserve jobs for the extent of the contract. Mr. Ormsby suggested a "snapshot" of all contracts on June 30, 1999, and these contracts continue, as written.

Chairman Townsend said the disagreement deals with two issues; the sanctity of contracts, and the opportunity for all competitors to operate after certain dates, on a level playing field. He requested the parties convene and find common ground.

The meeting was recessed at 10:20 a.m.

The meeting was reconvened at 10:45 a.m.

Senator O'Connell asked Mr. Ormsby if EICON would be mandated to apply NCCI rates on individual and retrospective plans after July 1, 1999. Mr. Ormsby said the agreements created under the old system remain based upon

the old system. Under the proposed amendment, if the agreements are amended, changed, or reissued, they would be rewritten, and the new contract would fall under NCCI rates.

Mr. Ormsby read Exhibit G, the compromise language agreed upon during the recess. Mr. Craigie said language in the exhibit exempts consolidated insurance coverage programs, such as OCIP.

Mr. Ormsby explained Exhibit H entitles the state industrial insurance system to the home-office credit.

In answer to an inquiry by Senator O'Connell, Mr. Ormsby said, under Exhibit G, as soon as a contract expires, "grandfathering" under the old rules would also expire. If a party requests an extension before the expiration of a contract, that would be considered an amendment and would terminate the contract.

Mr. Milliken was informed by Senator O'Connell the OCIP contracts could not be amended.

Mary Keating, CPA, Chief Administrative Officer, Administrative Services Unit, Division of Industrial Relations, Department of Business and Industry, explained one of her duties is to assess the workers' compensation fund. Ms. Keating referred to Exhibit I which would return certain employers back into the system.

Crystal M. Lesbo, Committee Policy Analyst, Research Division, Legislative Counsel Bureau, assured Chairman Townsend she agreed with the change recommended by Ms. Keating.

Mr. McMullen asked where the certificate of authority to transact industrial insurance transfers to, after December 31, 1999, if the Governor determines that the system has purchased a sufficient amount of reinsurance to enable it to operate in a financially responsible manner. Mr. Ormsby answered the delegation portion would go to the successor organization, and is a part of the overall reinsurance agreement.

Chairman Townsend requested those affected by S.B. 37 and Exhibit E review the documents, and suggest a change to policy questions such as Mr. McMullen has raised. The changes will be discussed on April 23, 1999, at the next

Senate Committee on Commerce and Labor
April 22, 1999
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meeting of the Senate Committee on Commerce and Labor.

The meeting was adjourned at 11:00 a.m.

RESPECTFULLY SUBMITTED:

Cynthia Cook
Cynthia Cook,
Committee Secretary

APPROVED BY:

Randolph J. Townsend
Senator Randolph J. Townsend, Chairman

DATE: 4/14/99

Amendment No. 708

Senate Amendment to Senate Bill No. 37

(BDR 53-382)

Proposed by: Committee on Commerce and Labor

Amendment Box: Replaces Amendment No. 190.

Resolves Conflicts with: N/A

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____
Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____

Amend the bill as a whole by deleting sections 1 through 13 and adding new sections designated sections 1 through 140 and the leadlines of repealed sections, following the enacting clause, to read as follows:

"Section 1. NRS 612.265 is hereby amended to read as follows:

612.265 1. Except as otherwise provided in this section, information obtained from any employing unit or person pursuant to the administration of this chapter and any determination as to the benefit rights of any person is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's or employing unit's identity.

2. Any claimant or his legal representative is entitled to information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the division for any other purpose.

SJC/SSM/JKN

Two-Thirds Not Required

Date: 4/21/99

S.B. No. 37—Makes various changes regarding industrial insurance.

ORIGINALS ARE ON FILE IN
THE RESEARCH LIBRARY

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3157
EXHIBIT E

Offered by Scott Craigie

ADDITIONAL AMENDMENTS TO SB 37 AMENDMENT 190

OK
Sec. 65. NRS 616D.210 is hereby amended to read as follows:

2. The [system-or] private carrier shall not ~~knowingly~~ insure any business which engages in the conduct described in subsection 1, unless the premium and any interest and penalties owed to the [system-or] private carrier have been paid.

3. As used in this section, "business" includes, but is not limited to, a firm, sole proprietorship, ~~general or limited partnership~~, voluntary association or private corporation.

Sec. 144. [Notwithstanding the provisions of chapter 683A of NRS, a person employed by the state industrial insurance system on June 3, 1999:

1. Whose duties include the:

(a) Acceptance of applications submitted by employers for industrial insurance; and

(b) Delivery of certificates of insurance which indicate that an employer has obtained a policy of industrial insurance; and

2. Who, on July 1, 1999, is employed by the employers' mutual insurance company of Nevada created pursuant to section 117 of the act in the same capacity, is not required to become licensed as an agent pursuant to chapter 683A of NRS until January 1, 2003.]

NRS 683A.110 is hereby amended to read as follows:

In addition to persons excluded by the terms thereof, the definitions of an agent, broker, solicitor or managing general agent shall not be deemed to include any of the following:

1. Salaried employees rendering solely clerical and administrative services in the office of the employer.

2. Salaried administrative and clerical employees of agents, and brokers, ~~and the state industrial insurance system or its successors~~ *and the employers mutual insurance company of Nevada or its successors*, performing any functions in the office and under the supervision of the employer and receiving no commissions.

Yrs 5/15
3. Salaried employees of insurers, or of organizations employed by insurers, ~~or of the employers mutual insurance company of Nevada or its successors~~, engaged in inspecting, rating or classifying risks, or in general supervision of agents, and not in the solicitation or writing of insurance.

Offered by Scott Craigie

Proposed amendment

Replace the current Section ¹³⁴145 with the following language:

¹³⁴Section 145. Any contracts of the state industrial insurance system that exist on June 30, 1999 shall be deemed approved until the first anniversary date of the contract, or until the contract is renewed, reissued or amended.

Proposed language to replace the current language in Section 134.

Any retrospective rating agreements or contracts of the state industrial insurance system that exist on June 30, 1999 shall be deemed approved until December 31, 2000, or until the contract expires or is renewed, reissued or amended.

This language is written to exempt consolidated insurance coverage programs such as OCIPs, CCIPs, etc.

999 including accepting applications and issuing certificates of workers
compensation insurance until January 1, 2003

Sec. 12. NRS 680B.050 is hereby amended to read as follows:

680B.050 1. Except as otherwise provided in this section, a domestic or foreign insurer which owns and substantially occupies and uses any building in this state as its home office or as a regional home office, as defined in subsection 2, is entitled to the following credits against the tax otherwise imposed by NRS 680B.027:

- (a) An amount equal to 50 percent of the aggregate amount of the tax as determined under NRS 680B.025 to 680B.039, inclusive; and
- (b) An amount equal to the full amount of ad valorem taxes paid by the insurer during the calendar year next preceding the filing of the report required by NRS 680B.030, upon the home office or regional home office together with the land, as reasonably required for the convenient use of the office, upon which the home office or regional home office is situated.

These credits must not reduce the amount of tax payable to less than 20 percent of the tax otherwise payable by the insurer under NRS 680B.027.

2. For the purposes of this section, a "regional home office" means an office of the insurer performing for an area covering two or more states, with a

minimum of 25 employees on its office staff, the supervision, underwriting, issuing and servicing of the insurance business of the insurer.

3. The insurer shall on or before March 1 of each year furnish proof to the satisfaction of the executive director of the department of taxation, on forms furnished by or acceptable to the executive director, as to its entitlement to the tax reduction provided for in this section. A determination of the executive director of the department of taxation pursuant to this section is not binding upon the commissioner for the purposes of NRS 682A.240.

4. An insurer is not entitled to the credits provided in this section unless:

- (a) The insurer owned the property upon which the reduction is based for the entire year for which the reduction is claimed; and
- (b) The insurer occupied at least 70 percent of the usable space in the building to transact insurance or the insurer is a general or limited partner and occupies 100 percent of its ownership interest in the building.

5. If two or more insurers under common ownership or management and control jointly own in equal interest, and jointly occupy and use such a home office or regional home office in this state for the conduct and administration of their respective insurance businesses as provided in this section, each of the insurers is entitled to the credits provided for by this section if otherwise qualified therefor under this section.

~~6. The State Industrial Insurance System shall be entitled to a credit of an amount equal to 50 percent of the aggregate amount of the tax as determined under NRS 680B.025 to 680B.039, inclusive, against the tax otherwise imposed by NRS 680B.027. This credit must not reduce the amount of tax payable to less than 20 percent of the tax otherwise payable by the system under NRS 680B.027.~~

Second
Parallel
Section

232.680 1. The cost of carrying out the provisions of NRS 232.550 to 232.700, inclusive, and of supporting the division, a full-time employee of the legislative counsel bureau, the fraud control unit for industrial insurance established pursuant to NRS 228.420 and the legislative committee on workers' compensation created pursuant to NRS 218.5375, must be paid from assessments payable by each [:

(a) ; and
~~(a) Insurer] insurer based upon expected annual [premiums to be received; and~~

(b)
~~(b) Employer who provides accident benefits for injured employees pursuant to NRS 616C.265, based upon his expected annual expenses of providing those benefits.~~

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retain to here → For the purposes of this subsection, the "premiums to be received" by a self insured employer or an association of self insured public or private employers shall be deemed to be the same fraction of the premiums to be received by the state industrial insurance system that his expected annual expenditure for claims is of the expected annual expenditure of the system for claims.]
retain ↓
expenditures for claims for injuries occurring on or after July 1, 1999. The division shall adopt regulations which establish formulas of assessment which result in an equitable distribution of costs among the insurers [and employers] who provide accident benefits for injured employees. The formulas may utilize actual expenditures for claims.

2. Federal grants may partially defray the costs of the division.

3. Assessments made against insurers by the division after the adoption of regulations must be used to defray all costs and expenses of administering the program of workers' compensation, including the payment of:

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventieth Session
April 23, 1999**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:00 a.m., on Friday, April 23, 1999, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Mark Amodei
Senator Dean A. Rhoads
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Crystal M Lesbo, Committee Policy Analyst
Beverly Willis, Committee Secretary

OTHERS PRESENT:

Drennan A. Clark, Major General, The Adjutant General of Nevada, Office of the
Military
Ray E. Bacon, Lobbyist, Nevada Manufacturers Association
Daryl E. Capurro, Lobbyist, Managing Director, Nevada Motor Transport
Association
C. Joseph Guild, Lobbyist, Union Pacific Railroad
Jan Gilbert, Lobbyist, Northern Nevada Coordinator, Progressive Leadership
Alliance of Nevada
John F. Wiles, Division Counsel, Division of Industrial Relations, Department of
Business and Industry
David L. Going, District Manager, Compliance Unit, Occupational Safety and
Health Enforcement Section, Division of Industrial Relations, Department

Environmental Protection, local fire marshals and local law enforcement.

Danny Evans, Chief Administrative Officer, Occupational Safety and Health Enforcement Section, Division of Industrial Relations, Department of Business and Industry, testified that the Occupational Safety and Health Enforcement Section has been inspecting approximately 6 or 7 high-risk facilities every 6 months, as well as an annual certification.

Chairman Townsend closed the hearing on A.B. 111 and opened the hearing on A.B. 253.

ASSEMBLY BILL 253: Removes limitation on payment of death benefit for transportation of remains of deceased employee beyond continental limits of United States. (BDR 53-778)

Chairman Townsend commented that A.B. 253 was heard in another bill, but will process this bill through the committee as a normal bill. The chairman added that the entire committee supports this bill.

Chairman Townsend closed the hearing on A.B. 253 and opened the hearing on Senate Bill (S.B.) 37, as well as opening comment on the proposed Amendment No. 720 (Exhibit D. Original is on file in the Research Library.) to S.B. 37.

SENATE BILL 37: Makes various changes regarding industrial insurance. (BDR 53-382)

Chairman Townsend commented that there are some technical problems with proposed Amendment No. 720 (Exhibit D).

Lenard T. Ormsby, General Counsel, Employers Insurance Company of Nevada, commented that he believes this amendment has been drafted as intended. Mr. Ormsby commented that the language in section 129, subsection 2, paragraph (b) subparagraph (2), contains *Nevada Revised Statutes* 616B.176, which states:

Any real property acquired by the system must be held by the division of state lands of the state department of conservation and natural resources in the name of the State of Nevada. 2. The system [Employers Insurance Company of Nevada or State

Industrial Insurance System] has the sole power to sell or exchange such property, and any money received there from must be deposited in the state insurance fund.

Mr. Ormsby asserted that the language in Amendment No. 720 states the system owns the real property, and added that when he first reviewed the amendment he was also confused. Mr. Ormsby continued by saying the state must transfer the title to the properties owned by the system back to the system by January 1, consistent with NRS 616B.176.

Senator Amodei questioned what properties are being discussed. Mr. Ormsby stated that they are primarily office buildings, and added he will get a list of the properties to the chairman.

Senator Amodei queried the rationale behind ownership of the building instead of leasing the building from the state. Mr. Ormsby replied that the system owns the property at 515 E. Musser St. in Carson City, and the title to the property was quitclaimed to the state and will be quitclaimed back to the new company (Mutual Insurance Company). Senator Amodei stated that he believes this building is part of the capital complex and added he does not think they should be giving away a capital complex asset.

Senator O'Connell stated that this building does not belong to the state nor the system, but the policyholders, and asked Mr. Ormsby if this property will go back on the property tax rolls because the system will be a private insurance company. Mr. Ormsby replied that on January 1, 2000 the tax-exempt status they currently have will be expired, and all assets will be held in trust.

Senator O'Connell queried if the assets that the system currently has will be transferred to the debt that the system has acquired in order to make up the \$800 million for reinsurance. Mr. Ormsby replied that the system would expend approximately \$800 million to retire approximately \$2 billion that the system has. Senator O'Connell asked if the assets would be a part of the reinsurance transfer, specifically to the real property. Mr. Ormsby replied that they will not, and the system is currently converting equities to cash to consummate the reinsurance transaction. Senator O'Connell expressed that her concern is with the state providing an unequal playing field for workers' compensation insurance in giving the system, which will be private, property that has been paid for by the policyholder. Mr. Ormsby commented that the

policyholders that stay with the system, after January 1, 2000, would hold a mutual interest in the assets held by the system.

Senator Schneider asked if the properties held by the system were paid for by the policyholders or out of the General Fund. Mr. Ormsby replied since 1913 the system has not received any General Fund money, and receives all of its money from the policyholders.

Senator Amodei remarked that S.B. 37 uses language referring to the "system," and after January 1, 2000, the "system" will no longer be an entity, and added that he thinks Mr. Ormsby wants the benefits of being both a part of the state; holding onto real property, and being a private company. Mr. Ormsby responded that S.B. 37 acknowledges the current status of the system, with the rights of a state agency, and on January 1, 2000 the Mutual Insurance Company will become the successor of the interests of the system with no state agency status.

Scott Scherer, General Counsel, Governor's Office, pointed out that the state constitution requires any money paid into the workers' compensation fund may not be used for any other purpose. Mr. Scherer continued by saying that if the real property in question was left with the State of Nevada, the state could not use these buildings because of this fact.

Ms. Lesbo described the changes that were made from proposed Amendment No. 708 (Exhibit E. Original is on file in the Research Library.) to the new proposed Amendment No. 720 (Exhibit D).

Samuel P. McMullen, Lobbyist, Las Vegas Chamber of Commerce; Retail Association of Nevada; Nevada Self-Insurers Association; Barrick Goldstrike Mines, Inc., inquired on the timing and the process this bill will follow. Senator O'Connell commented that the committee would, "Leave the Governor's [Kenny Guinn] bill as is. So that there would not be anything that might be controversial in the Governor's bill, and then the changes that will be presented to the committee after they have decided, that this is a go, would be talked about to be put into other bills."

Chairman Townsend presented a proposed amendment to S.B. 37 that would amend proposed Amendment No. 720 (Exhibit F), and would allow the Governor to appoint an advisory committee consisting of policyholders of the

state industrial insurance system to draft the by-laws for the newly established mutual insurance company.

Mr. McMullen stated, for the record, that people need to understand that the by-laws explained in Exhibit F include the process in determining the first board of directors for the Mutual Insurance Company. Mr. Ormsby clarified that he thinks Mr. McMullen's concern is the by-laws adopted by the Governor-appointed advisory committee will address how to elect the board of directors for the Mutual Insurance Company, as well as the specific criteria for becoming a member.

David L. Howard, Lobbyist, Greater Reno-Sparks Chamber of Commerce, asserted that he had seen a different draft of Exhibit F that gave the Governor specific direction to appoint a diverse group of people to the advisory committee. He continued by saying the criteria included people from small, medium and large business, different industries, and different geographical locations in the state and Exhibit F does not include these, and he would like to see these provision included. Chairman Townsend noted that he drafted Exhibit F with the current language to give the Governor the choice to appoint anyone he chooses from the policyholder base.

Mr. Scherer and Senator O'Connell both agreed that a date should be added that would require these by-laws to be completed before January 1, 2000. Mr. Ormsby called attention to the fact that this date does not need to be added because this is one of the conditions that need to be met before the Governor can approve the transfer. Mr. Scherer added that the mutual interest holders in the Mutual Insurance Company, after January 1, 2000, will be able to change the by-laws set forth by the advisory committee.

Mr. Ormsby emphasized that Amendment No. 720 would reduce the number of employees that will be laid off and create greater opportunities for the employees that remain with the company. Mr. Ormsby added that also this amendment will allow the company to expand to other areas of insurance, as well as granting the company the real property to which it is entitled. Mr. Ormsby concluded by saying he believes this amendment satisfies all of the Governor's three goals: eliminate the old debt through the reinsurance transaction, eliminate any future debt, and provide a safety net for employees.

Robert J. Gagnier, Lobbyist, State of Nevada Employees Association,

commented that proposed Amendment No. 720 does not diminish the concerns of the State of Nevada Employees Association because of, "the constitutional question of Article 9, section 2." Mr. Gagnier pointed out that he has concerns with S.B. 37 and proposed Amendment No. 720. Mr. Gagnier explained this is because it can also affect the Public Employees' Retirement System (PERS) because the trust funds for both PERS and workers' compensation are included in the same section of the constitution that S.B. 37 will affect. Mr. Gagnier stated that if the money from workers' compensation can be turned over to a private company, then the same thing can be done with PERS, and added he is still opposed to the amendment.

Senator Schneider asked if this could actually happen. Mr. Scherer replied that the purpose of the trust funds being created for PERS and workers' compensation was to prevent the money from being raided for General Fund purposes, and the money will still be used for workers' compensation benefits. Mr. Scherer added that theoretically PERS could be taken into a private company, but would still have to only pay retirement benefits.

Mr. Ormsby stated that he understood that Article 9, section 2 of the Nevada Constitution states ". . . any successor organization to the State Industrial Insurance System shall continue to hold in trust any money paid to the system for the purpose of providing compensation for industrial accidents and occupational diseases . . ."

Senator Amodei asked what would happen with the trust money and the real property assets if S.B. 37 passes and the Mutual Insurance Company goes under. Mr. Ormsby replied that section 18 of S.B. 37 gives authorization to the insurance commissioner to initiate a receiver action and take possession of the assets and return them to the state treasury for the benefit of the injured workers. Mr. Scherer added that if the newly privatized company goes under the taxpayers would still be left to bail out the company, but we would have the same scenario if it remained a state entity.

Danny L. Thompson, Lobbyist, American Federation of Labor/Congress of Industrial Organizations, asserted that he has two concerns with S.B. 37, "the first is the existing employees of the system, and the second is what Mr. Scherer just explained" Mr. Thompson noted that he does not think enough question have been answered about the proposal to privatize the workers' compensation system to go forward, because benefits and rates will

be affected adversely to bail out the system. Mr. Thompson pointed out that he is adamantly opposed to this bill.

Chairman Townsend asked for a motion to amend and do pass S.B. 37 with proposed Amendment No. 720 (Exhibit D), and the proposed amendment allowing for an advisory committee (Exhibit F).

SENATOR O'CONNELL MOVED TO DO PASS S.B. 37 AS AMENDED WITH AMENDMENTS NO. 708 AND 720.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION FAILED. (SENATORS CARLTON, AMODEI, SCHNEIDER AND SHAFFER VOTED NO.)

* * * * *

Chairman Townsend opened the hearing on A.B. 470, and proposed the first year of the three-way system has established rates, and starting with the second year have an open rating system, as discussed previously.

ASSEMBLY BILL 470: Makes various changes concerning provisions of benefits for workers' compensation. (BDR 53-1298)

Mr. Ormsby noted that he had explained previously the reasons behind the administered pricing and transitioning of rates over a 4-year period to open competitive rates. Mr. Ormsby explained that the State Industrial Insurance System (SIIS) believed when Assembly Bill 609 of the Sixty-ninth Session passed that a period of time was needed to avoid confusion for both the policyholders and SIIS.

ASSEMBLY BILL 609 OF THE SIXTY-NINTH SESSION: Makes various changes to provisions governing industrial insurance. (BDR 53-1502)

Mr. Ormsby iterated that if the administered pricing is not removed after 1 year, and the system remains a monoline entity (only workers' compensation) the system would be at a competitive disadvantage. Chairman Townsend clarified that the committee nor anyone else in the Legislature is out to get the system, and does not want the system to be at a disadvantage.

Chairman Townsend asked if an amendment to A.B. 470 that would eliminate the administered rates after 1 year only if the system became a multiline entity would be fair, otherwise the law would stay the same. Mr. Ormsby replied that this is a public policy issue, and stated the impact on the system will be the same. Chairman Townsend stated he would have an amendment drafted that will deal with these issues allowing no disadvantage to the system, as well as allowing a competitive marketplace.

Mr. McMullen stated that he had handed out a proposed amendment to A.B. 470 (Exhibit G) that was approved by the sponsors of the bill.

SENATOR O'CONNELL MOVED TO SEND S.B. 37 TO THE SENATE FLOOR WITHOUT RECOMMENDATION WITH THE AMENDMENT NO. 720 AND THE OTHER PROPOSED AMENDMENT (EXHIBIT F).

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

* * * * *

Amendment No. 720

Senate Amendment to Senate Bill No. 37

(BDR 53-382)

Proposed by: Committee on Commerce and Labor

Amendment Box: Replaces Amendments Nos. 190 and 708.

Resolves Conflicts with: N/A

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____
Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____

Amend the bill as a whole by deleting sections 1 through 13 and adding new sections designated sections 1 through 141 and the leadlines of repealed sections, following the enacting clause, to read as follows:

"Section 1. NRS 612.265 is hereby amended to read as follows:

612.265 1. Except as otherwise provided in this section, information obtained from any employing unit or person pursuant to the administration of this chapter and any determination as to the benefit rights of any person is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's or employing unit's identity.

2. Any claimant or his legal representative is entitled to information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the division for any other purpose.

SJC/SSM/JKN

Two-Thirds Not Required

Date: 4/22/99

S.B. No. 37—Makes various changes regarding industrial insurance.

EXHIBIT D

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Amendment No. 708

Senate Amendment to Senate Bill No. 37		(BDR 53-382)	
Proposed by: Committee on Commerce and Labor			
Amendment Box: Replaces Amendment No. 190.			
Resolves Conflicts with: N/A			
Amends:	Summary: No	Title: Yes	Preamble: No Joint Sponsorship: No

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>		Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>		Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	
Receded <input type="checkbox"/> Not <input type="checkbox"/>		Receded <input type="checkbox"/> Not <input type="checkbox"/>	

Amend the bill as a whole by deleting sections 1 through 13 and adding new sections designated sections 1 through 140 and the leadlines of repealed sections, following the enacting clause, to read as follows:

"Section 1. NRS 612.265 is hereby amended to read as follows:

612.265 1. Except as otherwise provided in this section, information obtained from any employing unit or person pursuant to the administration of this chapter and any determination as to the benefit rights of any person is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's or employing unit's identity.

2. Any claimant or his legal representative is entitled to information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the division for any other purpose.

SJC/SSM/JKN

Two-Thirds Not Required

Date: 4/21/99

S.B. No. 37—Makes various changes regarding industrial insurance.

EXHIBIT E

143 pp.
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PROPOSED AMENDMENT TO S.B. 37

Add the following provision to Amendment 720 to S.B. 37 (presented in a conceptual form):

The governor shall appoint an advisory committee made up of policyholders of the state industrial insurance system. The committee shall be effective from July 1, 1999, until December 31, 1999, for the purpose of drafting the by-laws of the established mutual insurance company.

PROPOSED AMENDMENT TO A.B. 470

Add the following provisions to A.B. 470:

Sec. 1. NRS 616C.230 is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS for an injury:

- (a) Caused by the employee's willful intention to injure himself.
- (b) Caused by the employee's willful intention to injure another.
- (c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.
- (d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS 50.315 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, ~~+~~

~~— (1) If the laboratory that conducts the testing is located in a county whose population is 100,000 or more and the testing is of urine, the laboratory must be certified for forensic testing of urine for drugs by the College of American Pathologists or a successor organization or by the federal Department of Health and Human Services; and~~

~~— (2) Any such testing of breath for alcohol must be performed pursuant to the regulations of the federal Department of Transportation.~~ **licensed pursuant to the provisions of chapter 652 of NRS.**

3. No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.

4. If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended.

5. An injured employee's compensation, other than accident benefits, must be suspended if:

(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury. The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.

Sec. 2. NRS 616C.435 is hereby amended to read as follows:

616C.435 1. In cases of the following specified injuries, in the absence of proof to the contrary, the disability caused thereby shall be deemed total and permanent:

- (a) The total and permanent loss of sight of both eyes.
- (b) The loss by separation of both legs at or above the knee.
- (c) The loss by separation of both arms at or above the elbow.
- (d) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms, or one leg and one arm.
- (e) An injury to the skull resulting in incurable imbecility or insanity.
- (f) The loss by separation of one arm at or above the elbow, and one leg by separation at or above the knee.

2. The enumeration in subsection 1 is not exclusive. ~~+, and in all other~~ ***In all cases not specified in subsection 1, an insurer shall determine whether the disability of an injured employee is a permanent total disability [must be determined by the insurer] in accordance with the facts presented + and the provisions of this subsection. An insurer shall not determine that a disability of an injured employee is a permanent total disability unless information submitted by a physician or chiropractor establishes to the satisfaction of the insurer that the industrial injury or occupational disease contributed more to the impairment of his earning capacity or ability to retain or obtain employment than all other conditions or characteristics of the injured employee.***

Sec. 3. NRS 616C.490 is hereby amended to read as follows:

616C.490 1. Except as otherwise provided in NRS 616C.175, every employee, in the employ of an employer within the provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by an accident arising out of and in the course of employment is entitled to receive the compensation provided for permanent partial disability. As used in this section, "disability" and "impairment of the whole man" are equivalent terms.

2. Within 30 days after receiving from a physician or chiropractor a report indicating that the injured employee may have suffered a permanent disability and is stable and ratable, the insurer shall schedule an appointment with a rating physician or chiropractor to determine the extent of the employee's disability. The insurer shall select a physician or chiropractor from a group of rating physicians and chiropractors designated by the administrator, to determine the percentage of disability in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110. Rating physicians and chiropractors must be selected in rotation from the list of qualified physicians and chiropractors designated by the administrator, according to their area of specialization and the order in which their names appear on the list.

3. At the request of the insurer, the injured employee shall, before an evaluation by a rating physician or chiropractor is performed, notify the insurer of:

(a) Any previous evaluations performed to determine the extent of any of the employee's disabilities; and

(b) Any previous injury, disease or condition sustained by the employee which is relevant to the evaluation performed pursuant to this section.

The notice must be on a form approved by the administrator and provided to the injured employee by the insurer at the time of the insurer's request.

4. Unless the regulations adopted pursuant to NRS 616C.110 provide otherwise, a rating evaluation must include an evaluation of the loss of motion, sensation and strength of an injured employee if the injury is of a type that might have caused such a loss. ***A rating evaluation conducted pursuant to this section:***

(a) ***Must be based upon objective medical findings; and***

(b) ***Must not be based upon subjective pain.***

No factors other than the degree of physical impairment of the whole man may be considered in calculating the entitlement to compensation for a permanent partial disability.

5. The rating physician or chiropractor shall provide the insurer with his evaluation of the injured employee. After receiving the evaluation, the insurer shall, within 14 days, provide the employee with a copy of the evaluation and notify the employee:

(a) Of the compensation to which he is entitled pursuant to this section; or

(b) That he is not entitled to benefits for permanent partial disability.

6. Each 1 percent of impairment of the whole man must be compensated by a monthly payment:

(a) Of 0.5 percent of the claimant's average monthly wage for injuries sustained before July 1, 1981;

(b) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after July 1, 1981, and before June 18, 1993; and

(c) Of 0.54 percent of the claimant's average monthly wage for injuries sustained on or after June 18, 1993.

Compensation must commence on the date of the injury or the day following the termination of temporary disability compensation, if any, whichever is later, and must continue on a monthly basis for 5 years or until the claimant is 70 years of age, whichever is later.

7. Compensation benefits may be paid annually to claimants who will be receiving less than \$100 a month.

8. Where there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

9. The division may adopt schedules for rating permanent disabilities resulting from injuries sustained before July 1, 1973, and reasonable regulations to carry out the provisions of this section.

10. The increase in compensation and benefits effected by the amendment of this section is not retroactive for accidents which occurred before July 1, 1973.

11. This section does not entitle any person to double payments for the death of an employee and a continuation of payments for a permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal.

Sec. 4. NRS 616D.300 is hereby amended to read as follows:

616D.300 Unless a different penalty is provided pursuant to NRS 616D.370 to 616D.410, inclusive, a person who knowingly makes a false statement or representation, including, but not limited to, a false statement or representation relating to his identity or the identity of another person, or who knowingly conceals a material fact to obtain or attempt to obtain any benefit, including a controlled substance, or payment under the provisions of this chapter or chapter 616A, 616B, ~~or~~ 616C **or 617** of NRS, either for himself or for any other person, shall be punished as follows:

1. If the amount of the benefit or payment obtained or attempted to be obtained was less than \$250, for a misdemeanor.

2. If the amount of the benefit or payment obtained or attempted to be obtained was \$250 or more, for a category D felony as provided in NRS 193.130.

In addition to any other penalty, the court shall order the person to pay restitution.

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

**Seventieth Session
May 10, 1999**

The Committee on Commerce and Labor was called to order at 3:45 p.m., on Monday, May 10, 1999. Chairman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All Exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairman
Mr. Richard Perkins, Vice Chairman
Mr. Morse Arberry, Jr.
Mr. Bob Beers
Ms. Merle Berman
Mr. Joe Dini, Jr.
Mrs. Jan Evans
Ms. Chris Giunchigliani
Mr. David Goldwater
Mr. Lynn Hettrick
Mr. David Humke
Mr. Dennis Nolan
Mr. David Parks
Mrs. Gene Segerblom

GUEST LEGISLATORS PRESENT:

Senator Ray Rawson, Senate District 6
Senator Joe Neal, Senate District 4

STAFF MEMBERS PRESENT:

Vance Hughey, Committee Policy Analyst
Crystal Lesbo, Senior Research Analysts
Jane Baughman, Committee Secretary

John Holmes, President, Ridge Sierra Property Owners Association, submitted Exhibit I for the record. The written testimony explained his concern about provisions in S.B. 192 noting time-share resorts were a cross between hotels and condominiums. There were 50 times the number of owners as physical units, and owners lived all over the world. Attendance at board meetings was the exception rather than the rule. He would be thrilled if 1 percent of the members attended the meetings, and if proxy voting was prohibited, they would be "dead."

There being no further testimony or additional questions, Chairman Buckley closed the hearing on S.B. 192 and opened the hearing on S.B. 37.

Senate Bill 37: Makes various changes regarding industrial insurance. BDR 53-382)

Pete Ernaut, Chief of Staff, Office of the Governor, referenced the years 1992 and 1993 noting the period was a time when the worker's compensation system in the State of Nevada was losing \$1,000,000 per day. Because of the loss, hearings were established in an attempt to correct a system in crisis. The losses threatened the general fund, its stability, benefits for injured workers, and the fabric of a no fault system.

The system was \$2.2 billion in debt in long-term liability with no plan to correct the problem. Due to the diligence of many individuals, the system corrected some of the problems, but there were still difficulties. Through everyone's efforts, the Employers Insurance Company of Nevada (EICN) was established, which was formerly the State Industrial Insurance System (SIIS). Mr. Ernaut explained legally the company was one company, yet in essence was two companies.

In 1997, the fund was bifurcated into all claims prior to July 1, 1995, and all claims after July 1, 1995. The present company was a product of claims since 1995. Mr. Ernaut noted comments from individuals as to how well SIIS was doing and why the state would contemplate privatizing a system that was improving. He explained the new system had a \$423 million surplus as of December 31, 1998, but the old claims were still \$1.6 billion in long term liability debt. Six hundred and fifty million dollars in assets was dedicated towards the debt in 1997, but the system was still \$1 billion in debt. He further noted the system was still in the range of \$5 hundred million to \$6 hundred million range in long-term liability over and above the assets.

Mr. Ernaut explained the governor's plan to privatize the system came after careful analysis of where the system had been and where it currently was and

was the best case scenario for relieving the state of liability. The governor's motivation with S.B. 37 was to take the opportunity to remove a \$1.6 billion liability from the state's balance sheet and remove the state from long-term liability on a company facing competition for the first time in its history.

The privatization of the system allowed for removal of \$1.6 billion from the state's balance sheet and the state and taxpayers from being the ultimate guarantor for a new company that was facing competition for the very first time in its history. The bill provided a fair and equitable post employment package for displaced workers. When the bill was first discussed, there was a great deal of confusion as to whether there would be a great number of displaced employees. Many began to confuse the privatization of worker's compensation with "three-way." Three-way was set for competition in July of 1999.

Mr. Ernaut explained S.B. 37 did not set rates. The rates were set by a national firm and were set forth in 1995 and again ratified in 1997. The rates were standardized nationally and were not affected by S.B. 37. In addition, the bill did not increase or reduce a single injured worker benefit. S.B. 37 did not create three-way competition, such was already created. The bill simply shaped one of the participants in the competitive marketplace. The marketplace and rules was already defined, deliberated, and passed bipartisanly during the past two sessions of the Nevada Legislature. Lastly, the bill did not destroy the current no-fault system. The system was built on the fact that employers were bound to pay for work related injuries. In return, injured workers did not have the right to sue their employers.

The facts were three-way had already begun, and the loss of workers within EICN was going to happen regardless of whether the bill passed or not. The committee needed to ask themselves if they believed EICN could compete with greater success in a three-way market as a private or public entity. As a public entity, EICN would be sent into competition as the only company having to deal with its personnel through the State Personnel Act. In addition, EICN would be the only company having to consider the State Budget Act, which would require it to come before the state legislature and exhibit proprietary information to competitors.

Mr. Ernaut asked committee members if they were willing to gamble with \$1.6 billion, and if EICN failed, would they be willing to levy enormous surcharges, raise taxes, and have draconian cuts in benefits. If the system failed as a public entity, such would be backed by the general fund as the ultimate guarantor. If the system failed as a private entity, such would be covered by the insurance guarantee fund and would be distributed over all insurance policies as would

occur with other insurance companies. The bill was about removing the state from hundreds of millions of dollars of liability.

Mr. Ernaut referenced Exhibit J, a letter from Brenda J. Erdoes, Legislative Counsel, Legislative Counsel Bureau, regarding the constitutionality of S.B. 37. He referenced the second paragraph of the letter, which said, "We have also determined that the proposed amendment to Senate Bill No. 37 is constitutional."

Mr. Ernaut noted the state's assets would be given, and explained that every asset owned by EICN was owned by premium payers, not by the State of Nevada. Such assets included buildings and hard assets. The system currently was, in a sense, a privatized system funded and owned by premium payers not the general fund.

It was explained that small employers would be harmed by an increase in rates. Mr. Ernaut reiterated the bill had nothing to do with rates. In addition, small businesses would not be able to have insurance written for them because the insurance marketplace would not have a place for the small businessmen. He noted to what he was referring was the residual market, which was for those with high risk or who were so small that they were not the most desirable policy to write. The Division of Insurance already awarded two private companies for such.

Mr. Ernaut noted all the above could occur without privatization and then reiterated the bill was about the removal of liability rather than just premiums and benefits. If the system again went under, then the general fund would be left as the ultimate guarantor.

Mr. Ernaut referenced a comment by Danny Thompson, representative of the AFL-CIO, who noted the bill was "union busting." Mr. Ernaut disagreed with the comment stating three-way precipitated the downsizing of SIIS. An argument could be made that S.B. 37 might save jobs because they were competitive. A competitive company would lose fewer employees if they lost less business. He pointed out S.B. 37 was the only plan that allowed for a severance package for employees who would lose because of the downsizing of SIIS. The severance package lifted the hiring freeze, called for \$2 million in retaining, and purchased pensions for those who were within 5 years of retirement. He noted painstaking work done to ensure employees were supported, over and above what was statutorily required. With three-way coming about, if S.B. 37 did not pass and jobs were lost, employees would be fired in order of seniority. The bill added protection to labor.

Because of SIIS reforms in 1993, 1995, and 1997, there were certain injured worker benefits lost, and according to Mr. Ernaut, Governor Guinn believed there was a moral responsibility to discuss and restore the benefits. The benefits were a matter of negotiation, and Mr. Ernaut wanted it known that the governor extended his hand from the beginning of the bill's deliberation to negotiate benefits with injured workers. Governor Guinn's hand was still out and would always be out until the legislature informed the governor the deliberation was over. The purpose of the bill was to remove the state from liability; it was not about union busting, rates, or benefits for injured workers.

Mr. Goldwater noted the issue was complicated and Mr. Ernaut spoke on a debatable question, which was whether a quasi public company could compete with a private company. He thought such could happen even if the public company were subject to the personnel and budget act but not subject to corporate income taxes or other taxes. Such would make it an effective competitor. He noted SIIS had 50 years of experience and could compete.

The issue of liability was not discussed, and Mr. Goldwater asked to whom the liability belonged. He noted there was considerable debate on the issue in 1993, 1995, 1997, and the current insured who left the system were getting a free ride on the back of current premium/taxpayers.

Mr. Goldwater noted benefits to injured workers, and Mr. Ernaut's comment about the governor extending his hand. He stated there was a system in surplus, and noted premiums were cut amidst the surplus. Mr. Goldwater asked if the current time was right to create a private system and reward private citizens instead of those who suffered the burdens.

Mr. Goldwater noted his obligation was to offer the ultimate value for tax or premium dollars paid. Turning the system, its assets and liabilities, over to a private company was like any business transaction. He questioned what it was worth and what he was paying. He pointed out Mr. Ernaut never mentioned what the assets were worth and what was being paid to obtain them.

Mr. Goldwater inquired as to whether privatization was a good deal for the state and whether the state was ever relieved of its obligation. Mr. Goldwater did not believe so; the state would never be relieved of its liabilities and obligation to employers or injured workers. If the system was privatized, the reliance would be on the private sector or private insurer to take care of the liability for the state. In order to be supportive of the bill, Mr. Goldwater would need assurances that private companies being relied upon to alleviate the responsibility were sound and responsible enough to alleviate the liability.

Mr. Ernaut referenced Mr. Goldwater's question as to whether a quasi-public entity could compete with a private business. He believed it could, but noted the budget and personnel acts would be a serious competitive disadvantage for the company if they were not allowed to react to changes in a new competitive marketplace. Mr. Ernaut asked Mr. Goldwater if he was so sure the public company could compete would he be willing to risk the money. If the public company failed, the failure would come back on the legislature. The state had been fighting a battle to get back to even, and they finally were. The state was not relieved of any obligation to injured workers.

Mr. Ernaut explained in the midst of people leaving the system and the subsequent rate reduction in 1986, a snowball affect was started from which it took over 10 years to recover. From his standpoint, there was a current opportunity for balance in the bifurcated system.

Mr. Ernaut referenced the reinsurance issue and noted a \$2 billion umbrella insurance policy, which would cause a company to take all the old claims. The purchase price was \$775 million. The state was not paying the purchase price; it was the premium payers who paid the amount.

There was an obligation to injured workers, which Governor Guinn understood. He had been involved in many public and private labor issues considering such issues. Through the bill, the obligation could be upheld through the regulatory bodies without abandoning anyone.

Mr. Goldwater noted liability was not being removed; the state was simply relying on the private sector. States who privatized their industrial insurance system found that once there was no state fund to balance a one, two, or three-way environment, premium payers were begging the state to come back into the business. He asked why such would not happen in the State of Nevada and whether the question of privatization should be a question for another legislature years away.

Mr. Ernaut thought the commissioner of insurance should create an environment by which a private company would want to remain in the market and compete. Competition was coming regardless of the bill. He noted automobile insurance and how it was mandated, yet there were many carriers.

Mr. Goldwater referenced Mr. Ernaut's comment on car insurance and noted those who paid for it felt they were "over a barrel." He noted automobile insurance payers had no choice in the matter of their insurance as with worker's compensation. The commissioner of insurance could not make someone stay in the state.

Mr. Ernaut pointed out the commissioner of insurance could create a competitive environment where insurance companies wanted to stay.

Mr. Goldwater asked how the state was going to make an insurer offer the insurance and not cater to the higher insured. He noted he was aware of the assessment and the insured risk pools. If there were only a few insurance companies, businesses would have to pay too much for what they received. He noted concern over having to solve complex problems in the next week.

Mr. Ernaut thought there needed to be discussion as to a free marketplace. If a person believed in such, there would be a belief that the program would shape itself. He referenced Rhode Island which reverted back to a state system and pointed out their reversal had more to do with an overly onerous regulatory structure than statutes.

Mr. Beers referenced communications received by legislators who feared the abrupt change. He asked what Mr. Ernaut saw happening to employees if nothing was done with the system. He asked if the individuals would be laid off.

Mr. Ernaut said competition was coming regardless of S.B. 37. The passing of three-way precipitated the loss of jobs. There might be 400 to 600 jobs that were going to be lost regardless of what happened with S.B. 37. He pointed out if S.B. 37 did not pass, those employees had rights prescribed to them in the State Personnel Act, which was firing by seniority or priority on the list for rehiring. He noted there was a hiring freeze, which S.B. 37 lifted. S.B. 37 also provided \$2 million in severance pay that could purchase pensions for those close to retiring, retain employees, or lift the hiring freeze. The package was fair, and cases would be viewed individually. If the bill did not pass, there was little for employees who would lose their jobs.

Mr. Beers noted the issue of laying individuals off by seniority at 50 percent of the workforce and asked if the result would be managers doing clerical work.

Mr. Ernaut said losing 50 percent of a workforce would be a draconian measure. He pointed out there were businesses standing in line for the right to leave the system the day it became competitive. Less premium payers meant less revenue. Less revenue meant less ability to pay employees, and less ability to pay meant fewer employees. Such was going to happen. There was no way for the state to absorb 400 to 600 jobs.

Ms. Giunchigliani noted Mr. Ernaut's comment on the governor's desire to assist injured workers and referenced A.B. 326, which restored some benefits to

injured workers. She asked about restoration of benefits regardless of the outcome of S.B. 37.

Ms. Giunchigliani noted they would pick and choose when the benefits to injured workers would be restored, but they did not pick and choose when employers would be rebated.

Mr. Ernaut thought all was a matter of negotiation. Governor Guinn had nothing to do with the restoration. They were trying to fix what they inherited, and the governor thought there was a moral responsibility to restore some of the benefits. He could not say which benefits.

Ms. Giunchigliani noted there were only 4 days to work out the issues, and it would have been nice to have seen an initiative come forward separate from the issue of whether SIIS was privatized because of the commitment made to injured workers. She referenced the \$2.2 billion debt liability in 1993 and noted Governor Miller's 6-year plan. Over the years, the debt was reduced, SIIS was stabilized, committed benefits were never restored, and several rebates to employers for premium cuts were provided. She asked how the system ended up with the \$1.6 billion debt.

Mr. Ernaut explained the issue had as much to do with the management of claims as with the management of money.

Ms. Giunchigliani noted she never believed the \$2.2 billion amount and noted she understood the debt was no longer there. She asked why in 1999 there was a \$1.6 billion debt.

Mr. Ernaut explained many legislators believed the liability was no longer in existence. The liability never went away, but positive issues within the system received more publicity than negative.

Ms. Giunchigliani asked how much was rebated to employers.

Mr. Ernaut explained current premium rebates had little to do with past liabilities

Ms. Giunchigliani referenced the assets and the issue of the trust regarding the constitution. She asked what Mr. Ernaut interpreted to be the state's trust and inquired as to the definition of the assets.

Mr. Ernaut explained the trust came about nationally with the social security trust fund and was separated so the legislature could not appropriate the money.

Ms. Giunchigliani said if such was the case, it was in the same position as the Public Employees Retirement System (PERS) Board. She asked how the legislature could raid the PERS fund for up to \$20 million.

Mr. Ernaut said the legislature should not have been able to act in such a manner.

Ms. Giunchigliani noted the legislature did act in such a fashion and obviously there was some disagreement as to what a trust was. She noted conflicting interpretations of the issue and inquired as to the state's assets. Ms. Giunchigliani pointed out there was a commitment made to the working men and women in the state that they would be protected and they would have some assurances if they were injured on the job.

Douglas Dirks, Chief Executive Officer, Employers Insurance Company of Nevada, explained the governors proposal created a mutual insurance company, and a mutual insurance company was owned by the member policy holders. By virtue of purchasing a policy of insurance, an individual became a mutual member of the insurance company. He noted he would take the committee through the transaction of creating a mutual insurance company (Exhibit K).

The first step was the reinsurance transaction. Reinsurance was where one insurance company bought insurance from another insurance company. Under the transaction negotiated through reinsurance intermediaries with four different reinsurers, \$775 million in cash would be transferred into a trust. The trust fund would be used for the purpose of paying benefits to injured workers whose date of injury was prior to July 1, 1995. The trust fund would also be used to pay for the cost of administering those claims.

Simultaneous to the transfer of the \$775 million, EICN's financial statement would reflect a decrease of approximately \$1.6 billion in liabilities. Such was the estimated amount due to all injured workers with the date of injury prior July 1, 1995.

The reinsurers would assume \$2 billion in liabilities. He pointed to the transfer of \$1.6 billion and the purchase of an additional \$400 million in insurance over what the currently liability was believed to be. The additional insurance was designed to take into account any adverse development with the claims. If there was greater medical inflation in the future than currently assumed, the \$400 million was designed to be a cushion. They were buying more insurance than what they currently believed necessary.

The impact of the transaction was the \$600 million deficit reflected on the state insurance funds financial statement would go to zero. The State of Nevada would also be relieved of all future liability as a result of the transaction and would never have future liability for any claims with a date of injury prior to July 1, 1995. The State Industrial Insurance System and its ultimate successor, the private mutual insurance company, would have purchased \$2 billion in reinsurance. Upon passage and approval, EICN would enter into the reinsurance agreement.

S.B. 37 provided for the creation of a private domestic mutual insurance company, which meant EICN would go through the process of filling out applications and then submitting the company to the commissioner of insurance for evaluation and approval to create a domestic mutual insurance company. The company would be subject to NRS requirements and be able to write all lines of property and casualty insurance for which it was qualified.

As part of the creation of the domestic mutual insurance company, the governor would appoint an advisory panel that would assist in the development of the bylaws that would govern the initial private domestic company. Subsequent to such development, the policyholders, as the owner of the company, would have the ability to adopt bylaws, select the management, and elect the board of directors. Initially, an advisory panel selected by the governor would develop the bylaws, and the bill provided the panel should represent all businesses in the state.

Chairman Buckley inquired as to individuals who participated in the drafting of legislation attempting to be on the new company's board of directors and profit from mutualization. She asked if the issue was addressed in the bill, and if the proponents of the bill would be averse to putting language into it making it clear that those who participated in the process could not personally benefit.

Mr. Ernaut explained only premium payers could be on the board of directors. None who drafted the bill were premium payers, so they would not profit.

Chairman Buckley did not direct her comment to the governor's staff, and again asked if there was anything in the bill that governed the issue of profit.

Mr. Ernaut again noted the issue of the individuals being premium payers, and the board of directors could not personally profit. The state ethics laws would cover such an issue. There were significant safeguards.

Mr. Dirks added the board of directors would have a fiduciary duty to the trust fund and to the new mutual company as any private board of directors had a fiduciary duty to its policy or shareholders.

Chairman Buckley asked about employees of EICN and whether one could take over the company and pay themselves a large salary.

Mr. Ernaut explained if EICN became a private company, the salary of an individual like Mr. Dirks would be determined by the board of directors. He could not run the company as a sole proprietorship. It would be out of bounds to pay someone an inordinate amount of money with the fiduciary responsibility all board members had.

Mr. Dirks then explained the next step in the establishment of the private mutual insurance company was obtaining a private letter ruling from the Internal Revenue Service (IRS). Earlier in the year, EICN initiated the process of obtaining a formal written private letter ruling from the IRS as to the affect of the proposed transaction resulting in no tax ramifications. He did not expect to receive the private letter ruling from the IRS within the next 3 weeks.

The bill provided that the governor would "pull a trigger" at a later date, and a requirement for pulling the trigger was the receipt of a favorable letter ruling from the IRS. He expected to receive the letter ruling by mid to late summer.

Step four was a proclamation by the governor. EICN understood the process could not be completed in the next 3 weeks because there were a number of pieces not in place. The first "trigger item" was the consummation of the reinsurance transaction. Prior to the private company being created and the assets and liabilities being transferred, the reinsurance agreement must be in place, and the contracts must be signed. The \$1.6 billion in liabilities would be removed, as would the \$600 million deficit. Mr. Dirks noted in addition to the above mentioned "trigger items," the private company must be formed, the private letter ruling must be obtained from the IRS, and the commissioner of insurance must approve the creation of the new domestic mutual insurance company. When the four above-mentioned steps were accomplished, the governor, by proclamation, would authorize the transfer of the assets and the creation of the private mutual insurance company. Under the bill, such would occur on January 1, 2000. The private company by an endorsement to the policy would make all of policyholders as of January 1, 2000, the owners of the new mutual insurance company.

The final step was the creation of various protections of employees (Exhibit K). The protections included employee rehiring off of the reemployment list, an

extended period of time on the reemployment list, a minimum of 60 days written notice prior to a layoff, the purchase of not more than 5 years of credit for those employees who would be eligible for an unreduced benefit, which amounted to approximately 150 employees, the setting aside of up to \$2 million for retraining employees who might have difficulty obtaining other employment either in the public or private sector, the lifting of the hiring freeze, and priority rehiring of EICN employees who would be laid off.

Mr. Dirks noted the above mentioned were the basic steps of the transaction that would ultimately eliminate the liability for the state, transfer the ownership and assets to the policyholders, and protect the interest of EICN employees.

Mr. Ernaut explained the \$775 million in assets that would be transferred were almost entirely market driven. A 10 percent correction in the market would render the transaction impossible. The state was in a position where they could "sell high," but the window was limited.

Chairman Buckley asked if the state could not sell high regardless of whether there was a mutualization.

Mr. Ernaut affirmed Chairman Buckley's question noting the issue of getting rid of long-term liability. He noted the \$1.6 billion was a greater problem today but was created by under management for a great many years, and if such was to happen again, the state could find themselves repeating past experiences.

Chairman Buckley referenced concern over how quickly the bill came about. She explained the system was moving towards a three-way system and then in January of 1999, privatization came about. She asked why the state was creating a company that would compete with private insurers. Such was not privatization; it was more like subsidization.

Mr. Ernaut explained the governor's single motivation was to remove the state from liability, and the privatization was his means of doing such. The reason the issue was presented in January was because the governor was elected in November. The presentation of the issue in the middle of the session was at Mr. Ernaut's direction. Until there was a preliminary indication on the IRS ruling, the issue would not move forward as it would have been an effort in futility and a waste of everyone's time if the IRS ruling was adverse. If there was an inordinate tax liability, the governor would not support the legislation. Mr. Ernaut also explained a new governor could not request new legislation until February 1.

If the state was not going to privatize the system, they should consider bringing back the industrial insurance monopoly. EICN would fail if it was sent into three-way as currently structured. He guaranteed that by the next session the state would be attempting to bailout the company, and the crisis would be greater than the current situation.

Mr. Goldwater noted the liabilities outweighed the assets and there was a reinsurance transaction. If anything was liquidated, a liability would still be left. There was insurance up to the level of the estimated liability plus an additional \$400 million. He asked if disaster occurred, was the state "off the hook."

Mr. Dirks stated that under the current proposal, the state was off the hook. He offered a hypothetical situation whereby claims amounted to \$2 billion and \$1. The private mutual insurance company would pay the first dollar after the \$2 billion amount. If claims amounted to \$3 billion and the private company only had \$2.5 billion, at such a point, the guarantee fund took over. The private insurance company participated in the guarantee association, and the State of Nevada did not have the liability. The liability became one of the entire insurance industry. If it appeared there was going to be an insolvency, the commissioner of insurance stepped in prior to the insolvency occurring and took action.

Mr. Ernaut noted if the same scenario occurred and the system was not privatized; he guaranteed the general fund and taxpayers would pay the costs.

Mr. Goldwater had no problem living up to the obligation made to workers and noted difficulty with the concept of the state wiping their hands clean of the obligation, which was what seemed to be implied. The state was "on the hook" regardless.

Mr. Ernaut was not implying the state was washing their hands of anything. He was implying that with a \$3.3 billion biannual budget, a \$1 billion dollar hit to the state budget was impossible. Such would mean 30 percent tax increases, draconian surcharges for every business in the state, and a sizeable reduction in benefits. He would rather have someone else pay for the problem.

Mr. Goldwater understood what Mr. Ernaut said and may well support the design. He noted the complicated issues involved in S.B. 37 and also noted the bill going through the session in a very brief period of time. Such placed an incredible amount of trust in the governor and his staff. He noted difficulty in obtaining information as to liabilities and the issue of a huge reinsurance contract that could be written. Mr. Goldwater asked if there was anticipation that the state would in the future be involved in litigation, arguments, or

disagreement and inquired as to what was covered and what was not covered. He asked if it was possible to write a large comprehensive contract.

Mr. Dirks stated the transaction was large, but not difficult. Negotiating and pricing the transaction was difficult. He noted a provision in the agreement where reinsurers were not responsible for retroactive increases in benefits because they could not anticipate what would happen in the legislature years down the road. The liability did not come back to the state but went forward to the new company.

Mr. Goldwater asked when retroactivity would begin. Would it begin on commencement of the contract.

Mr. Dirks noted retroactivity would begin on July 1, 1999.

Ms. Giunchigliani referenced Exhibit K pointing out language which said, "claims incurred prior to July 1, 1995." She asked what happened to the claims after the period of time.

Mr. Dirks explained the claims transferred to the new mutual company. There was a full transfer of remaining assets and liabilities to the mutual company.

Ms. Giunchigliani asked what assets were intended to be transferred and would they cover costs.

Mr. Dirks said there would be assets in excess of liabilities transferred.

Ms. Giunchigliani asked about the dollar amount. Based on the pricing, Mr. Dirks estimated the amount to be about \$300 million

Ms. Giunchigliani noted according to Mr. Ernaut's testimony, the \$775 million was the only asset that would be transferred. She asked if the buildings would still belong to the state.

Mr. Ernaut said \$775 million went into the reinsurance transaction. The assets of the new company included the hard assets, which included the buildings and other items such as computers and desks. The state did not own those assets; premium payers owned them.

Ms. Giunchigliani disagreed with Mr. Ernaut and then referenced comments as to coinsurance. Mr. Ernaut said there were about four companies in the midst of negotiation, and the companies did not care as much as from whom they

were buying the assets and liabilities, their concern was whether they could manage the claims and invest the assets better and make money.

Ms. Giunchigliani asked who the four companies were.

Mr. Ernaut said they should not disclose who the companies were because of current negotiations.

Mr. Dirks said he was reluctant to provide the names of third parties because of the negotiations.

Ms. Giunchigliani wanted assurance that none of the companies would benefit. She did not want them to be lobbying on behalf of the bill. She wanted assurance that no deal had been cut regarding what sort of monetary gain would come about.

Chairman Buckley asked if any of the insurers were involved in the current political process.

Mr. Ernaut said he was not sure a single entity vying for the business had a registered lobbyist in the building. He had to check it out.

Ms. Giunchigliani asked what would happen if the commissioner of insurance did not certify EICN as a mutual insurance company.

Mr. Ernaut said there would be a three-way system. The situation would remain as it was currently. He assured the committee that the Governor's Office was ready to answer any questions and reiterated the fact that benefits would be discussed.

Senator Joe Neal, Senatorial District 4, spoke in opposition to S.B. 37 (Exhibit L). He noted his presence in the legislature as the State Industrial Insurance System went through major changes. Senator Neal pointed out the years spent attempting to put SIIS into such a condition so as to compete with private insurers and provide a viable alternative for employers of the state. With the passage of S.B. 37, the very program the state had been working so hard to build up would be sold leaving injured workers without a vestige of the system originally designed to assure proper and fair coverage for injured employees.

Senator Neal discussed aspects of the bill and then presented his concerns regarding S.B. 37 (Exhibit L). He noted the only thing S.B. 37 did, which was not a part of existing law, was transfer approximately \$800 million to a

reinsurance company. He believed such was wrong, unconstitutional, and a bad use of money.

Danny Thompson, representing the Nevada State AFL-CIO, introduced Bob Gagnier, Executive Director, State of Nevada Employees Association (SNEA). Mr. Thompson stated in 1993, the system was faced, all of a sudden, with a \$2.1 billion debt. Governor Miller and his Chief of Staff, Scott Craigie proposed a plan that began in the Senate Committee on Commerce and Labor. Mr. Thompson referenced Exhibit M page 11, which were the minutes of the Senate Committee on Commerce and Labor of March 8, 1993. He noted the minutes contained a plan submitted to consider the \$2.1 billion debt. During the hearing, the committee assigned a dollar value to every benefit reduction made. Injured workers' benefits were reduced 23 percent. Premium paying employers were forced to pay deductibles of \$200 per incident, and if the employer had a bad rating, they were forced to pay a \$1,000 deductible. The money was supposed to go into a 6-year solvency plan, and after 6-years, the plan was to be solvent. He noted the system was currently \$1.4 billion dollars in debt. There were many injured workers who suffered because of reduced benefits in order to get the system solvent.

In 1997, the legislature enacted A.B. 609, which bifurcated the fund separating pre 1993 claims into an account for extended claims and post 1993 claims into another account. The accounts were in the budget. According to the combined financial statement issued on June 30, 1998, total assets of EICN were at \$2.88 billion and total liabilities were at \$6.2 million.

Mr. Thompson read from the notes of the combined financial statement given to EICN, which said, "as required by A.B. 609, the fund transferred \$1.73 million in liabilities for incurred but unpaid claims and claims adjusted expenses through the account for extended claims on July 1, 1997. Assets totaling \$650 million consisting of \$610 million in investment assets and \$40 million of cash equivalents were transferred to the account of extended claims. (the pre 1993 claims) The fund payment to the transferred claims liabilities such assets transferred have been estimated by management to be amounts sufficient to meet the present value of the payment streams to be incurred in the payment of the claims liabilities."

Mr. Thompson pointed out enough money was put aside to take care of claims. Benefits were cut and stripped from injured workers, which amounted to millions of dollars and were reflected in the new financial statement showing the new fund with assets of \$1.3 billion and total liabilities of \$975 million. There were more unanswered questions than answered questions in the bill.

Mr. Thompson referenced Exhibit M pages 8 to 10 from Paul Brown who was the Assistant General Counsel to American International Group, Inc. (AIG). Mr. Thompson pointed out AIG was the largest insurance company in America and noted the letter said "the scheme to make this become our liability isn't a new one, it has happened in other states and in states where it has happened, the insurance company just left."

Mr. Thompson noted the constitutional question and stated if the bill went forward and the money was allowed to be taken and set aside, the committee was gambling. They did not have the power to change the state constitution.

S.B. 37 failed to pass on its merit in the Senate Committee on Commerce and Labor. After it failed, it was passed out with no recommendation. The bill went to the Senate floor and it passed on a partisan vote with abstentions.

In addition, the bill was dependent on the IRS saying the state could take \$800 million and make such a tax-free transaction. He also referenced the Insurance Guarantee Fund noting there was \$8 million in the account. He noted the fund would pass costs along to employers.

Mr. Gagnier, read from Exhibit M, page 2, noting the state should not eliminate the option of a state system. Once eliminated, the system would be difficult to reenact. He referenced the constitutional issues pointing out article 9, section 2 (Exhibit M, page 5). His concern was the legislation might not be constitutional. If the assets of the worker's compensation fund could be taken and turned over to a private company, then the same could happen with the Public Employees Retirement System (PERS). He encouraged Chairman Buckley to ask for the opinion of the attorney general; he did not believe the attorney general's opinion had been requested.

Mr. Gagnier read from Exhibit M, page 2, noting the provisions of the amendment had some desirable points for employees who wished to leave the system but would be devastating for those who desired to stay. He commented on Senator Neal's testimony (Exhibit L) which he thought was incorrect. Mr. Gagnier pointed out there was no debate on the bill on final passage but there was on the adoption of the 140 page amendment.

Mr. Gagnier referenced section 20 and stated on July 1, 1999, regardless of anything else, all SIIS employees were out of the state personnel system and no longer eligible for state benefits. Section 20 stayed in effect regardless of what the IRS or Governor did.

Mr. Gagnier continued with Exhibit M noting the bill would be good for older employees who wished to "bailout" of the system. The bill was also good for those who desired to move into another state position because they would get the rights of reemployment. There were extensive questions regarding provisions as they pertained to the reemployment list. The administration was convening a special meeting of the personnel commission on Friday in order to adopt changes to the job descriptions of worker's compensation specialists. The changes being proposed had only one purpose, which was to make it easier to pick and choose employees to be laid off. There was a layoff rule that had been in affect for over 25 years. Mr. Gagnier explained there were currently about 17 classifications within the worker's compensation series, and the personnel commission would be asked to expand the classifications to over 50 so the system could be more selective in laying off employees. The personnel commission was holding a regularly scheduled meeting in less than a month. The special meeting was so rare that he could not remember the last time such occurred.

Mr. Gagnier referenced Exhibit M noting employees who had many years vested in the retirement system, but were not yet able to retire would lose the value of their retirement. He explained PERS was a defined benefit plan. An employee could have 20 years of employment service and not be able to take advantage of the buyout provision because they could not retire. Twenty years in the system would give an employee a sizable benefit based on their current salary. The employee could draw a benefit when they were 60 years old. The value would not grow even though PERS had the employee's money for many years. The employee would be losing their value.

The bill was also not a good deal for employees of other state agencies who might be laid off. They would have EICN employees taking precedence over another employee in their own agencies.

Employees who chose to stay or could not find a position with another agency would go from a structure with guaranteed benefits to an at-will system where much would be promised but nothing guaranteed.

He noted comments as to the governor lifting the hiring freeze for those employees. Mr. Gagnier said there was nothing in the bill stating the hiring freeze would be lifted.

If there was a big reduction warranted, he asked where those individuals would go to work and how many vacancies would be available. There was no problem filling low level clerical positions because with them there was a high turnover.

Beyond that, the worker's compensation classification was peculiar to the system and there were few calls for employees in those areas.

There were many employees who elected to work for EICN, who liked their job, and did not want to leave. The employees were good at their jobs and did not feel that they should have to give up what they had taken years to earn. Those employees were being asked to give up a great deal.

Mr. Gagnier referenced Exhibit M, pages 4 and 5, which were the guaranteed benefits EICN employees would give up. He noted comments in the Senate Committee on Commerce and Labor where a pension plan of the PERS quality would be offered to employees. The director of PERS testified before a committee considering a resolution on Social Security and said an employee could not be covered by Social Security and be offered the same benefits PERS offered, for the same money. Such would cost a lot more money.

Ms. Giunchigliani referenced the state personnel rules and asked when an employee changed from one department to another, did they always start out as probationary employee.

Mr. Gagnier explained under the current regulations if a permanent employee transferred from one agency to another, the employee would not have to serve a new probationary period. Under S.B. 37, as it was amended, the right of reemployment, contrary to current law and regulations, would apply to probationary employees.

Ms. Giunchigliani asked if probationary employees would be treated the same as long-term employees, with the same benefits. Mr. Gagnier affirmed her question.

Mr. Beers asked what would happen if the bill did not pass. Would half of the latest workforce be laid off.

Mr. Gagnier understood there would be layoffs, but it would be less than the amount referenced, which was half to two-thirds the workforce. He thought there would be at least one-third of the workforce laid off. Such would amount to about 300 employees. There was a clearly defined layoff regulation based on a combination of factors, not just seniority. Management had to decide in which classification and in which geographical area they could sustain cuts and have the least detrimental effect on their operation. Within those classifications, the computer determined seniority. Just as important, the employee went on the reemployment list in inverse order, which was a failure in the bill. Everyone would go on the reemployment list with equal status. In

addition, there was a clearly defined law on purchasing retirement credit if an employee was affected by a layoff. The bill had a benefit that was better than NRS 286.3007. NRS 286.3007 provided for an employee who was affected by a layoff. The agency must participate with the employee in the purchase of service, up to 5 years, based on a formula on the employee's years of service. The benefits in S.B. 37 would provide more for employees. Even newer employees could get 5 years of service if they were eligible to retire. The employee would have to be 60 years old or older or have 25 or more years of service to benefit from the provision.

Mr. Thompson read into the record notes from the combined financial statement entitled Liquidity and Ability to Sustain Operations, which said, "through the 1993 fiscal year, the fund experienced several years of continuing severe operating losses and cash flow deficiencies that resulted in accumulated deficit of over \$2 billion at June 30, 1993. In reaction, the governor, the state legislature, and the funds management undertook a sweeping plan of legislation and management reforms to address the issues affecting the funds operational profitability. Beginning with the 1994 fiscal year, the fund began a sustained record of profitability and positive cash flow. These changes resulted in improvements that reduced the accumulated deficit from over \$2 billion to \$602,000,552 at June 30, 1998." Mr. Thompson said the amount was about a \$225 million a year savings.

In addition, his concern over the constitutional question as it related to EICN was not just about EICN. The reason the constitution was changed was to prevent a raiding of PERS. He currently represented almost all of the employees in PERS and noted if the transaction took place, he believed a precedent was being established that would allow for the raiding of PERS. He was very concerned about the issue.

Holly Waddell, EICN employee, offered written testimony in favor of S.B. 37 (Exhibit N). She noted as a private company, EICN would be better able to compete in the three-way competitive market by being placed on a level playing field with all other private companies. She saw the passage of S.B. 37 as a win win situation and noted SNEA and AFL-CIO representatives did not represent the point of view of all EICN employees. The employees were not polled in order to find out how they viewed the passage of S.B. 37.

Chairman Buckley recessed the hearing until the following Wednesday and noted there would be a short presentation on the legal aspects of the bill as well as the question of assets. Chairman Buckley adjourned the meeting at 8:10 p.m.

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April 20, 1999

Senator Randolph J. Townsend
Senate Chambers

Dear Senator Townsend:

We have concluded that the State Industrial Insurance System would be permitted under the Nevada Constitution to own all of the stock or other equity ownership interests in a statutorily created Mutual Insurance Company.

We have also determined that the proposed amendment to Senate Bill No. 37 is constitutional.

Sincerely,

Brenda J. Erdoes
Legislative Counsel

BJE

cc: Lenard T. Ormsby, General Counsel

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Summary of SB 37

Senate Bill 37 provides for the mutualization of the State Industrial Insurance System. A mutual insurance company is one which is owned by its policyholder members. The amendment would permit a recapitalization of the System in which the State would transfer its equity interest in the System to the policyholders of the System in a tax-free recapitalization. The System would enter into a reinsurance transaction to eliminate the current accounting deficit and to provide for future payment of claims incurred prior to July 1, 1995 up to \$2 billion. The amendment also provides for separation benefits in addition to those provided for under current law for employees of the System as it reduces its staff as a result of loss of market share after July 1, 1999.

STEP ONE:

Reinsurance Transaction

Upon passage and approval of the bill, the State Industrial Insurance System would consummate a loss portfolio transfer reinsurance agreement substantially as follows:

Structure of Transaction

- Transfer of \$775 million to several reinsurers, to be held in trust solely for the purpose of paying claims and claims adjustment expenses for claims incurred prior to July 1, 1995.
- Transfer of approximately \$1.6 billion in currently booked liabilities for claims and claims adjustment expenses for all claims incurred prior to July 1, 1995.
- Assumption of \$2 billion in future claims and claims adjustment expense liabilities for all claims incurred prior to July 1, 1995.

Impact of Reinsurance Transaction:

- State Insurance Fund accumulated deficit on a statutory basis decreases from approximately \$(600) million as of July 1, 1998 to \$0.
- State of Nevada is relieved of ALL future claims liability for claims and claims adjustment expenses for claims incurred prior to July 1, 1995.
- The State Industrial Insurance System is relieved of future claims liability for claims and claims adjustment expenses up to \$2 billion.

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EMPLOYERS INSURANCE COMPANY

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EXHIBIT K

Submitted to the Committee on Commerce and

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STEP TWO:

Establishment of a domestic mutual insurance company

On or before August 1, 1999, the manager of the System will take all actions necessary to establish a domestic mutual insurance company in Nevada to transact all kinds of property and casualty insurance for which the Company is qualified under Title 57 of NRS. The Governor will appoint an advisory committee to adopt the initial bylaws of the company, consisting of employers insured by the fund and to the extent practicable, will include representatives of small, medium and large employers whose places of employment are located in the various regions of the state.

The new private domestic mutual insurance company will be qualified by the Insurance Commissioner in the same manner as all other private insurance companies licensed to do business Nevada.

STEP THREE:

Private Letter Ruling

The System has requested a private letter ruling from the Internal Revenue Service to establish that the recapitalization provided for in amendment 730 to SB 37 would be a nontaxable event. The System expects to receive a formal response to the letter ruling request mid to late summer of 1999.

STEP FOUR:

Governor's Proclamation

Upon consummation of the reinsurance agreement, formation of a domestic mutual insurance company, receipt of a favorable private letter ruling from the Internal Revenue Service and issuance of a certificate of authority by the Commissioner of Insurance to the new domestic mutual, the governor will proclaim that the State of Nevada transfers its equitable interest in the Fund to the policyholders of the fund as of January 1, 2000 to include the premiums and other money paid to the state industrial insurance system, including contributions and penalties, all property and securities acquired through the use of money in the state insurance fund, all interest and dividends earned upon money from the state insurance fund that were deposited or invested, and all other properties received, collected or acquired by the state industrial insurance system before January 1, 2000. The new mutual insurance company will assume all debts and liabilities, known and unknown, of the state industrial insurance system and the system shall issue an endorsement to each outstanding policy evidencing the equity ownership of the policyholders in the domestic mutual insurance company.

STEP FIVE:

Employee Protections

Employees of the System will receive the following benefits in addition to those provided in existing law:

- Employees shall have the right to be placed on the reemployment list maintained by the department of personnel and be allowed a preference on that list for at least 24 months after the effective date of the layoff or until reemployed by the executive branch of state government, whichever occurs earlier. Such preferential treatment will apply to all existing employees as of June 30, 1999 for layoffs made prior to January 1, 2003.
- Employees will be given at least 60 days' written notice before the effective date of the layoff.
- The new mutual insurance company will purchase credit of not more than five years of service for employees who are eligible to purchase credit and who will be made eligible to receive an unreduced service retirement allowance and who agree to retire upon completion of the purchase or on or before July 1, 2001, whichever occurs earlier.
- The new mutual insurance company will provide up to \$2 million for retraining of State Industrial Insurance System employees as of June 30, 1999 who receive layoff notices prior to January 1, 2002.



INDEX OF SECTIONS IN PROPOSED AMENDMENT TO SB 37

Section	NRS	Subject
1.	612.265	Aligns SIIS or system with Private Carrier for unemployment consideration
2.	New	Adds sections 3 and 4 of this act
3.	New	Conflict between Title 57 and Chapters 616 and 616 controlled by Chapters 616 and 617
4.	New	Definition of State Industrial Insurance System (1981)
5.	616A.015	Assignment and delegation language from System to successor organizations
6.	616A.025	Words mean as intended
7.	616A.045	Aligns SIIS or system with Private Carrier for advisory organization
8.	616A.127	Aligns SIIS or system with Private Carrier for school to career program
9.	616A.270	Deletes State Industrial Insurance System from definition of insurer
10.	616A.290	Deletes State Industrial Insurance System from definition of private carrier
11.	616A.400	Aligns SIIS or system with Private Carrier for Administrator's oversight on the delivery of workers' compensation benefits
12.	616A.465	Transfers responsibility over employee leasing to DIR
13.	616A.470	Aligns SIIS or system with Private Carrier for the collection of revenue for NAIW, Department of Administration, etc.
14.	616A.475	Aligns SIIS or system with Private Carrier for the production of data to DIR
15.	616A.485	Aligns SIIS or system with Private Carrier concerning access to employer's information by DIR

Section	NRS	Subject
16.	New	Identifies that Sections 17, 18, 19 and 20 are new
17.	New	Chief Executive Officer of successor organization shall use the money paid for the purpose of providing compensation for industrial insurance and occupational diseases and the administrative expenses incidental thereto. If successor ceases providing workers compensation, monies go to Insurance Commissioner for administration
18.	New	Creates the state insurance fund in the state treasury to fulfill requirements of section 17
19.	New	Successor organization may discount reserves for accounting periods before July 1, 1995 in an amount of not more than 6%
20.	New	Removes employees from Personnel Act; provides re-employment Rights for 24 months; identifies benefits to employees; requires 60 day notice for lay offs
21.	616B.027	Aligns SIIS or system with Private Carrier for retention of copy of claim file in the state
22.	616B.030	Aligns SIIS or system with Private Carrier for issuance of insurance policy
23.	616B.036	Aligns SIIS or system with Private Carrier for providing coverage for small groups
24.	616B.050	Removes designation of employees as being in the classified service of the state
25.	616B.065	Removes fact that assistant managers are in the unclassified service
26.	616B.068	Removes fact that the manager is in the unclassified service
27.	616B.083	Removes accounting separation into two accounts (current claims and extended claims)
28.	616B.086	Removes requirement that all monies received go into the state fund
29.	616B.167	Removes reference of classified service for managers

Section	NRS	Subject
30.	616B.185	Aligns System with private carriers for providing coverage for prison industries and transfers regulatory responsibility to DIR
31.	616B.194	Aligns SIIS or system with Private Carrier with the production of information to Insurance Commissioner
32.	616B.224	Remove's system's ability to charge a penalty for non-payment to align it is private carriers
33.	616B.227	Aligns SIIS or system with Private Carrier with employer's requirement reports and payment of premium
34.	616B.230	Aligns SIIS or system with Private Carrier for requirement of state or county to budget for workers compensation coverage
35.	616B.386	Changes System to NCCI for calculation of minimum premium for employer to qualify in a self insured group
36.	616B.386	Removes requirement that former self insured group member return to the System
37.	616B.460	Aligns SIIS or system with Private Carrier for requirement to notify DIR within 24 hours after change of insurer
38.	616B.500	Aligns SIIS or system with Private Carrier with selection of managed care organization as its third-party administrator
39.	616B.527	Aligns SIIS or system with Private Carrier with use of managed care organization
40.	616B.554	Redacts the exception to system participating in the self insured employer subsequent injury fund
41.	616B.575	Redacts the exception to system participating in the self insured association subsequent injury fund
42.	616B.584	Redacts the exception to system participating in the private carrier subsequent injury fund
43.	616B.659	Aligns SIIS or system with Private Carrier with election of coverage by sole proprietors
44.	616B.670	Transfers responsibility for employee leasing to DIR

Section	NRS	Subject
45.	616B.673	Transfers responsibility for employee leasing to DIR
46.	616B.676	Transfers responsibility for employee leasing to DIR
47.	616B.679	Transfers responsibility for employee leasing to DIR, removes National Staff Leasing Association to National Association of Professional Employer Organization or its successor
48.	616B.694	Changes manager to administrator to cooperate with ESD
49	616B.697	Changes certificate of insurance to certificate of registration
50.	616C.015	Aligns SIIS or system with Private Carrier with the rule that notices of injuries do not have to be filed with the insurer
51.	616C.055	Removes reference to NRS 616B.515 which is being repealed
52.	616C.090	Removes reference to NRS 616B.515 which is being repealed and replaced with 616B.527
53.	616C.110	Removes NRS 616B.540 which is being repealed
54.	616C.190	Aligns SIIS or system with Private Carrier for out of state employment for not more than 6 months
55.	616C.200	Aligns SIIS or system with Private Carrier for out of state injuries
56.	616C.215	Aligns SIIS or system with Private Carrier with insurer's right to subrogation
57.	616C.220	Transfers responsibility for the uninsured fund to the administrator
58.	616C.255	Aligns SIIS or system with Private Carrier for collection of premium and liability for accident benefits
59.	616C.260	Removes NRS 616B.515 which is being repealed and replaced with NRS 616B.257
60.	616C.275	Aligns SIIS or system with Private Carrier for causes of action by insurer against employer who violates this section
61.	616C.355	Removes manager's ability to hold employer hearings

Section	NRS	Subject
62.	616C.385	Removes appeal to District Court of manager's hearing decisions
63.	616C.475	Removes NRS616B.515 which is repealed
64.	616C.535	Aligns SIIS or system with Private Carrier for voluntarily executing agreements for vocational rehabilitation services
65.	616D.050	Removes rules for manager's appeals which have been removed
66.	616D.070	Removes sanctions by manager against party in manager's appeal
67.	616D.080	Removes mileage for witnesses at manager's appeal
68.	616D.100	Removes official record requirements for manager's appeal
69.	616D.200	Changes benefit penalty standard from premium of system to premium established by rates adopted by Insurance Commissioner; removes penalty of actual cost to system to reopen the account
70.	616D.210	Aligns SIIS or system with Private Carrier with prohibition of business opening a new workers' compensation policy if employer owes other insurer money
71.	616D.250	Aligns SIIS or system with Private Carrier with penalty for employer who refuses to produce its books and records to administrator or taxation
72.	616D.260	Aligns SIIS or system with Private Carrier with right of administrator to issue a subpoena to require an employer to produce a document
73.	616D.400	Removes criminal penalty for failure of a person who fails to make records available to the manager
74.	616D.430	Removes requirement that monies recovered from restitution on behalf of system be deposited with state treasurer
75.	617.1665	Aligns SIIS or system with Private Carrier with requirement that employers pay premiums for coverage under NRS 617
76.	617.1675	Aligns SIIS or system with Private Carrier for fund for silicosis
77.	617.168	Aligns SIIS or system with Private Carrier for fund for asbestos

Section	NRS	Subject
78.	617.225	Aligns SIIS or system with Private Carrier with sole proprietor's election of coverage under NRS 617
79.	617.342	Aligns SIIS or system with Private Carrier for notice of an occupational disease
80.	617.401	Transfers responsibility for the uninsured fund to the administrator
81.	617.430	Aligns SIIS or system with Private Carrier with benefits to employees for diseases under NRS 617
82.	209.189	Aligns SIIS or system with Private Carrier with the fund for prison industries for the purchase of workers' compensation insurance
83.	218.2754	Removes system from requirement for fiscal notes
84.	218.5377	Removes system from requirements for the workers' compensation interim committee duties
85.	218.610	Removes system from the definition of agency of the state
86.	218.737	Removes system from the definition of agency of the state
87.	228.420	Aligns SIIS or system with Private Carrier for cooperation with the AGFU
88.	232.550	Removes system from definition of insurer
89.	232.680	Establishes DIR assessment based upon annual expenditures for claims for injuries on or after July 1, 1999
90.	242.131	Removes DOIT services from use by system
91.	244.33505	Aligns SIIS or system with Private Carrier for requirement for business license at county level
92.	268.0955	Aligns SIIS or system with Private Carrier for requirement for business license at city level
93.	277.185	Removes system from requirement to cooperate in the collection of information for tax, ESD, workers' compensation, etc.

Section	NRS	Subject
94.	281.125	Removes exclusion that salaries of employees of system be funded by specific legislative appropriation
95.	281.390	Aligns SIIS or system with Private Carrier with requirement that state agency notify insurer of fact that employee is eligible for sick leave and temporary total disability at the same time
96.	284.013	Adds System to exclusions to personnel act
97.	284.173	Removes exclusion from requirement that contracts of system be approved by the Board of Examiners
98.	333.020	Removes exclusion of system from purchasing rules
99.	333.470	Removes ability of system from obtaining supplies, material and equipment from state purchasing
100.	338.1905	Removes system from requirement to appoint an energy retrofit coordinator
101.	353.210	Removes system from the state budget process
102.	353.246	Removes system from the state budget process
103.	353.335	Removes system from exception from rules concerning gifts or grants
104.	353A.010	Removes system from definition of agency
105.	355.140	Three LCB clean up provisions; removes prohibition or reverse-repurchase agreements for monies invested pursuant to NRS 616
106.	355.150	Removes system from requirements for investments pursuant to NRS 355.140
107.	355.160	Removes system from requirements for investments pursuant to NRS 335.140 and 150
108.	396.591	Aligns SIIS or system with Private Carrier for providing workers' compensation coverage for athletes of the University of Nevada

Section	NRS	Subject
109.	433A.430	Changes standard for administrator reimbursing physicians for examination of mentally ill person to be reasonable rather than set by system
110.	475.110	Aligns SIIS or system with Private Carrier with providing workers' compensation coverage for conscripted fire fighters
111.	475.230	Aligns SIIS or system with Private Carrier for reimbursement of fire department for cost of workers' compensation for fires on property owned by the state
112.	538.101	Aligns SIIS or system with Private Carrier with providing workers' compensation coverage for commissions appointed by Governor
113.	624.328	Aligns SIIS or system with Private Carrier with disclosure by ESD of subcontractors who are delinquent in payment by subcontractor
114.	668.045	Removes authority for bank giving security for public money of the system
115.	680B.027	Removes exclusion of System from premium tax
116.	680B.050	Provides home office credit to System until 1/1/2000
117.	680B.060	Aligns credit of premium tax from workers compensation carriers to recombining of the two accounts
118.	680B.060	Removes credit of premium tax to state fund
119.	681B.020	Limitation on the successor's use of the transferred assets
120.	682A.020	Any investment of the System is valid for the successor
121.	682B.055	Insurance Commissioner shall allow successor organization to use as a deposit without delivering same to Insurance Commissioner
122.	683A.100	Grandfathering of employees of System from licensure for 3 years
123.	686B.1759	Removes System from definition of insurer
124.	687A.020	Removes exclusion of System

Section	NRS	Subject
125.	695C.120	Removes contracting with manager of system from definition of powers of a health maintenance organization
126.	696B.360	If the Insurance Commissioner initiates a receiver action against the successor, the funds must be used to pay workers compensation benefits
127.	New	Repealer list
128.	TL ¹	Manager to take necessary steps to create a domestic mutual insurance company; file the necessary papers with the Insurance Commissioner ; Governor to appoint an advisory committee (geographic and size representation) to adopt the first bylaws of the company; Insurance Commissioner to review company for financial solvency; Insurance Commissioner to issue certificate of authority
129	TL	<p>Criteria for Governor to proclaim existence of the company:</p> <ol style="list-style-type: none"> 1) Consummation of reinsurance transaction 2) Establishment of the domestic mutual insurance company 3) Favorable ruling from the IRS 4) Insurance Commissioner has issued a certificate of authority <p>If Governor makes proclamation on January 1, 2000:</p> <ol style="list-style-type: none"> 1) System transfers all System assets to the DMIC 2) DMIC shall assume all debts and liabilities of System 3) Division of lands shall transfer real property to DMIC 4) State archives shall release all records to DMIC 5) Insurance Commissioner shall issue certificate of authority
130	TL	Classified employee of the system entitled to re-employment rights
131	TL	Classified employee of the system entitled to re-employment rights
132	TL	Classified employee of the system entitled to re-employment rights
133	TL	\$2 million in fund for DETR for retraining of layed off employees
134	TL	Company entitled to purchase up to five years service credit for employees who could then retire at an unreduced amount

¹ TL stands for transition language which will not be codified

Section	NRS	Subject
135	TL	System retrospective rating agreements survive until expiration, renewal, reissuance, amendment or December 31, 2000.
136.	TL	Certificates of insurance for employee leasing companies before January 1, 2000 effective as a certificate of registration
137	TL	Enforcement rights of the system assigned to the DMIC
138	TL	Any employee of the system on December 31, 1999 shall transfer into the DMIC
139	TL	Regulations adopted by the system are repealed unless the responsibilities are to be transferred to DIR
140	New	Effective dates
141	New	Administrative corrections authorized

Timeline of events for transition of Employers Insurance Company of Nevada

Upon Passage and Approval

- * EICON will finalize the reinsurance transaction to satisfy the debt on claims arising on or before July 1, 1995

On July 1, 1999

- * EICON employee are removed from the Personnel Act with the exception of retirement and leave rights
- * EICON employees are automatically entitled to voluntarily place themselves on the re-employment list with State Personnel and may remain on the list until December 31, 2002
- * The hiring freeze will be lifted for EICON employees to transfer to other state positions
- * EMICON may have to commence laying off personnel and EMICON will deposit 2 million dollars with DETR which will be used to retrain appropriate employees for future employment

January 1, 2000

- * Upon the consummation of the reinsurance transaction and receipt of a favorable ruling form the IRS, the Governor will issue a proclamation and EMICON will be transformed into a fully licensed workers compensation mutual insurance company owned and operated by its policyholders
- * Insurance Commissioner will rule on the financial strength of EMICON and shall issue EMICON a certificate of authority to operate as a fully licensed, property and casualty insurer in Nevada
- * EMICON will operate under and comply with the rules and regulations associated with a mutual insurer in Nevada and must qualify to write other lines of insurance

COMPARISON OF RIGHTS OF EICON/EMICON
EMPLOYEES WITH PERSONNEL ACT

Downsizing of employees

	<u>Rights from Company</u>	<u>Rights under Personnel Act</u>
Layoff rules	Downsize by need and merit	Downsize by seniority
	Purchase of up to five years of retirement credit for 100+ employees	No purchase of retirement credit
	Removal from hiring freeze for priority rehiring	Hiring freeze remains
	Eligibility for re-employment upon passage and approval	Not eligible until laid off
	Re-employment rights for over two-years	Re-employment rights one-year
	Retraining for layed off employees	No retraining
	Leave and vacation time will roll with employee to new job in EMICON	Leave and vacation time will roll with employee to new job in state government
	Re-employment rights for all system employees	Probationary employees receive no protection

EFFECT OF AMENDMENTS TO SB 37¹ ON THE WORKERS COMPENSATION PROGRAM IN NEVADA

	Current Law	7/1/1999 law	1/1/2000 if SB 37 passes
Premium Rates	Set by EICON	Set by NCCI ²	Set by NCCI
Classifications	Set by EICON	Set by NCCI	Set by NCCI
E-Modification Factor	Set by EICON	Set by NCCI	Set by NCCI
Selection of Insurer	Monopoly	Competitive	Competitive
Non-selection of Employer/Insured	Monopoly	Underwritten	Underwritten
Residual Market Assigned Risk	Monopoly N/A	Set by NCCI 25% surcharge	Set by NCCI 25% surcharge
Insurance Policy	N/A	NCCI Policy	NCCI Policy
Insurance Policy Rules/ Requirements	N/A	NCCI Manual	NCCI Manual
Benefits to Injured Workers	NRS 616-617	NRS 616-617	NRS 616-617
Injured Worker Appeals	NRS 616 DOA	NRS 616 DOA	NRS 616 DOA
Benefit Penalty Enforcement	NRS 616 DIR	NRS 616 DIR	NRS 616 DIR
Cancellation Rules for Insurers	NRS 616	NRS 687	NRS 687

¹ Presented to the Senate Commerce and Labor Committee 4-21-99 by Employers Insurance Company of Nevada

² The current rating advisory organization selected by the Insurance Commissioner is the National Council on Compensation Insurance.

A STATEMENT REGARDING
SENATE BILL 37
TO BE PRESENTED TO THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

MAY 10, 1999

GOOD AFTERNOON. MADAME CHAIR AND MEMBERS OF THE COMMITTEE, I AM SENATOR JOSEPH M. NEAL, JR., CLARK COUNTY SENATORIAL DISTRICT NO. 4.

AS YOU KNOW, IT IS A RARE THING FOR A MEMBER OF ONE HOUSE OF THE LEGISLATURE TO TESTIFY IN OPPOSITION TO A BILL THAT IS BEING CONSIDERED BY THE OTHER HOUSE. WE OFTEN APPEAR TO TESTIFY IN FAVOR OF BILLS, BUT ALMOST NEVER IN OPPOSITION. HOWEVER, DUE TO THE EXTRAORDINARY EVENTS SURROUNDING THE PASSAGE OF THIS MEASURE IN THE OTHER HOUSE, AND DUE TO THE FACT THAT THERE WAS ONLY LIMITED OPPORTUNITY FOR DEBATE ON THIS BILL, I AM APPEARING HERE TODAY TO SHARE SOME INFORMATION THAT WILL BE USEFUL TO THIS COMMITTEE.

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EXHIBIT L

Submitted to the Committee on Commerce and

I HAVE BEEN A PROUD MEMBER OF THE NEVADA LEGISLATURE FOR OVER 25 YEARS. MY TIME AS A LEGISLATOR HAS AFFORDED ME THE OPPORTUNITY TO LEARN A GREAT DEAL ABOUT WORKERS' COMPENSATION, IN PARTICULAR ABOUT OUR STATE FUND FOR INDUSTRIAL INSURANCE.

I WAS HERE IN 1981 WHEN THE NEVADA INDUSTRIAL COMMISSION WAS CHANGED TO THE STATE INDUSTRIAL INSURANCE SYSTEM. I WAS HERE EARLIER IN 1979 WHEN WE ALLOWED LARGE EMPLOYERS TO SELF-INSURE. AND, I WILL GUARANTEE YOU THAT THE EMPLOYEES IN THE STATE OF NEVADA HAVE NOT BENEFITTED FROM ALLOWING LARGE CORPORATIONS TO SELF-INSURE. I WAS ALSO A MEMBER OF THE LEGISLATURE THROUGHOUT THE 1980s WHEN WE DEBATED THE PROS AND CONS OF ALLOWING PRIVATE CARRIERS TO OFFER INDUSTRIAL INSURANCE IN NEVADA, THUS GOING TO A THREE-WAY SYSTEM.

I WAS HERE IN 1992 WHEN THE STATE INDUSTRIAL INSURANCE SYSTEM ANNOUNCED IT WAS HAVING FINANCIAL DIFFICULTIES TO THE TUNE OF A \$2.2 BILLION

UNFUNDED LIABILITY. I WAS HERE IN 1993, WHEN S.B. 316 WAS ENACTED WHICH PROVIDED REFORMS TO HELP SIIS GET BACK ON ITS FEET AGAIN. I WAS ALSO HERE IN 1995 WHEN A.B. 552 WAS PASSED ALLOWING PRIVATE CARRIERS TO ENTER NEVADA'S MARKET FOR INDUSTRIAL INSURANCE BEGINNING JULY 1, 1999 — AGAIN SO-CALLED THREE-WAY INSURANCE.

THE DECISION TO GO THREE-WAY WAS MADE FOUR YEARS AGO. AS MANY OF YOU WILL RECALL, THE FOUR-YEAR DELAY IN ESTABLISHING THREE-WAY WAS INTENTIONAL. THE DELAY WAS INTENDED TO GIVE THE STATE FUND AN OPPORTUNITY TO IMPROVE ITS FINANCIAL CONDITION SO THAT IT COULD EFFECTIVELY COMPETE IN A MARKET CONSISTING OF WELL-FINANCED PRIVATE CARRIERS ALONG WITH A GROWING NUMBER OF SELF-INSURED GROUPS.

HINDSIGHT IS 20/20 VISION — BUT TODAY IT APPEARS THAT DELAY WAS IN VAIN. I AM HERE TODAY — JUST SEVEN WEEKS SHORT OF THREE-WAY INSURANCE — TO TELL YOU THAT IF S.B. 37 PASSES, THERE WILL NOT

BE A THREE-WAY SYSTEM. BY PRIVATIZING SIIS, WE WILL BE LEFT WITH A TWO-WAY SYSTEM.

WE SPENT THE LAST SEVERAL YEARS TRYING TO GET SIIS INTO SHAPE SO THAT IT CAN COMPETE WITH PRIVATE INSURERS AND PROVIDE A VIABLE ALTERNATIVE TO EMPLOYERS OF THIS STATE. NOW S.B. 37 WOULD LET THEM SELL OFF THE VERY PROGRAM THAT WE HAVE BEEN WORKING SO HARD TO BUILD UP, LEAVING OUR INJURED WORKERS WITHOUT EVEN A VESTIGE OF THE SYSTEM THAT WAS ORIGINALLY DESIGNED TO ENSURE THEY RECEIVED PROPER AND FAIR COVERAGE FOR THEIR INJURIES.

IF YOU WILL NOW INDULGE ME, I WOULD LIKE TO TAKE JUST A MOMENT TO DO TWO THINGS: FIRST, I WOULD LIKE TO DISCUSS CERTAIN ASPECTS OF THE BILL; SECOND, I WOULD LIKE TO PRESENT TO YOU MY CONCERNS REGARDING S.B. 37.

LET ME BRIEFLY REVIEW HOW THE BILL PROVIDES FOR THE PRIVATIZATION OF THE STATE INDUSTRIAL INSURANCE SYSTEM. THE BILL REQUIRES THE GOVERNOR TO

PROCLAIM THAT FOUR EVENTS HAVE OCCURRED BEFORE THE MANAGER OF SIIS MAY TRANSFER THE ASSETS OF THAT STATE AGENCY TO THE PRIVATE SUCCESSOR ORGANIZATION (SECTION 129).

1. SIIS MUST PURCHASE A SUFFICIENT AMOUNT OF REINSURANCE TO OPERATE IN A FINANCIALLY RESPONSIBLE MANNER;
2. THE MANAGER OF SIIS MUST HAVE TAKEN THE STEPS NECESSARY TO ESTABLISH A DOMESTIC MUTUAL INSURANCE COMPANY;
3. SIIS MUST HAVE RECEIVED A FAVORABLE RULING FROM THE INTERNAL REVENUE SERVICE SUCH THAT ESTABLISHING THE DOMESTIC MUTUAL INSURANCE COMPANY IS NOT CONSIDERED A TAXABLE EVENT;
AND
4. THE COMMISSIONER OF INSURANCE MUST HAVE DETERMINED THAT THE DOMESTIC MUTUAL INSURANCE COMPANY QUALIFIES TO TRANSACT INDUSTRIAL INSURANCE IN NEVADA.

IF THE GOVERNOR ISSUES SUCH A PROCLAMATION, THE
MANAGER OF SIIS MAY THEN TRANSFER TO THE
ESTABLISHED DOMESTIC MUTUAL INSURANCE COMPANY
THE PREMIUMS AND OTHER MONEY PAID TO SIIS
INCLUDING ALL RECORDS, REAL PROPERTY, AND
SECURITIES ACQUIRED WITH MONEY IN THE STATE
INSURANCE FUND (SECTION 129).

ALL OF US KNOW THAT, IN A BILL OF THIS KIND, WE
NEED TO PAY SPECIAL ATTENTION TO THE DETAILS. THE
DETAILS IN A BILL OF THIS SIZE CAN BE EASILY
OVERLOOKED. UNFORTUNATELY, AT THIS LATE STAGE OF
THE GAME WE CANNOT AFFORD ANY OVERSIGHTS.
THERE ARE SEVERAL DETAILS OF S.B. 37 THAT I WOULD
LIKE TO BRING TO YOUR ATTENTION.

FIRST, THE BILL PROVIDES THAT SIIS MUST REINSURE ITS
OLD DEBT BEFORE THE ASSETS OF SIIS MAY BE
TRANSFERRED TO THE NEW COMPANY. SIIS WILL ENTER
INTO A LOSS PORTFOLIO TRANSACTION, TRANSFERRING
\$800 MILLION IN CASH TO, MOST LIKELY, SEVERAL
REINSURERS. IN EXCHANGE, THE REINSURERS WILL
ASSUME LIABILITIES UP TO \$2 BILLION FOR ALL OF THE

SYSTEM'S CLAIMS THAT HAVE OCCURRED PRIOR TO JULY 1, 1995.

AS REASONABLE AS THAT MAY SOUND, I QUESTION THE NEED FOR LEGISLATION TO ENTER INTO SUCH A TRANSACTION. IF THE SUPPORTERS OF THE BILL ARE THAT CONCERNED WITH ENSURING THE SYSTEM'S ABILITY TO OPERATE SOUNDLY, THE SAME STEPS CAN BE TAKEN WITHOUT LEGISLATION. I AM NOT AWARE OF ANYTHING PREVENTING SIIS FROM GOING AHEAD WITH SUCH A TRANSACTION EVEN IF THIS BILL FAILS. VIABLE INSURERS AND INSURERS SEEKING SURPLUS RELIEF ENTER INTO PORTFOLIO REINSURANCE TRANSACTIONS ALL THE TIME. SIIS ALREADY HAS REINSURANCE AGREEMENTS TO COVER CATASTROPHIC CLAIMS AND TO DIVERSIFY ITS RISK. SO WHY ARE THEY SEEKING THESE LEGISLATIVE PROVISIONS IF NOT TO COVER UP THEIR REAL GOAL?

A SECOND DETAIL I WOULD LIKE TO BRING TO THE COMMITTEE'S ATTENTION IS THE PROVISION OF SENATE BILL 37 THAT ALLOWS SIIS TO TRANSFER REAL ESTATE TO THE SUCCESSOR ORGANIZATION. BEAR IN MIND, THIS REAL ESTATE WAS PURCHASED WITH MONEY FROM THE

STATE INSURANCE FUND. REAL ESTATE THAT IS HELD IN THE NAME OF THE STATE OF NEVADA. I AM CONCERNED ABOUT TRANSFERRING ANY SUCH PROPERTY OF THE STATE TO A PRIVATE COMPANY.

LET'S PUT THAT IN TERMS THAT ARE UNDERSTANDABLE TO OUR CONSTITUENTS — THE WORKING PEOPLE OF THIS STATE WHO IF INJURED ON THE JOB MAY VERY WELL BE INSURED BY THE STATE INDUSTRIAL INSURANCE SYSTEM. THE MONEY USED TO PURCHASE THE PROPERTY THE STATE WILL TURN OVER TO A PRIVATE COMPANY, IF THIS BILL PASSES, CAME FROM THE STATE INSURANCE FUND. THE MONEY IN THE STATE INSURANCE FUND INCLUDES THE PREMIUMS EMPLOYERS IN THIS STATE PAID TO INSURE THEIR EMPLOYEES.

A WHOLE GROUP OF KNOWLEDGEABLE PEOPLE HAVE POINTED OUT THAT THE *NEVADA CONSTITUTION* CLEARLY STATES THOSE FUNDS ARE TO BE HELD IN TRUST FOR INJURED WORKERS. I WOULD LIKE TO READ TO THE COMMITTEE ARTICLE 9, SECTION 2, OF THE *CONSTITUTION* WHICH LEAVES LITTLE ROOM FOR DEBATING THE INTENT

BEHIND HOLDING THE ASSETS OF THE STATE FUND IN TRUST.

ANY MONEY PAID FOR THE PURPOSE OF PROVIDING COMPENSATION FOR INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES, AND FOR ADMINISTRATIVE EXPENSES INCIDENTAL THERETO, . . . MUST BE SEGREGATED IN PROPER ACCOUNTS IN THE STATE TREASURY, AND SUCH MONEY MUST NEVER BE USED FOR ANY OTHER PURPOSES, AND THEY ARE HEREBY DECLARED TO BE TRUST FUNDS FOR THE USES AND PURPOSES HEREIN SPECIFIED.

MY CONCERNS ARE SIMPLE. TRANSFERRING ASSETS THAT ARE EXPLICITLY PROTECTED BY THE *CONSTITUTION* OF THIS GREAT STATE TO A PRIVATE COMPANY IS DEPLORABLE. IN GOOD CONSCIENCE, I CANNOT IDLY STAND BY AND WATCH A PRIVATE COMPANY BENEFIT FROM THE EFFORTS OF THIS STATE TO PROTECT INJURED WORKERS.

NOW TO A SECOND POINT, TRANSFERRING ASSETS TO THE SUCCESSOR ORGANIZATION IS ONE ISSUE; PROTECTING THE RIGHTS OF EMPLOYEES IS ANOTHER. I JUST WANT TO POINT OUT THE FLAWS OF S.B. 37 AS THEY RELATE TO SIIS EMPLOYEES. I AM NOT HERE TO DISPUTE THE NEED TO PROTECT SIIS EMPLOYEES FROM THE LAYOFFS THAT WILL INEVITABLY OCCUR WHEN SIIS, PRIVATE OR NOT, ENTERS A COMPETITIVE MARKET. HOWEVER, I DO HARDILY QUESTION THE MOTIVES BEHIND THE EMPLOYEE PROVISIONS OF THE BILL THAT COULD EASILY BE ADDRESSED WITHOUT LEGISLATION.

FOR EXAMPLE, THE BILL PROVIDES THAT EMPLOYEES LAID OFF BEFORE JANUARY 1, 2000, WILL RETAIN THEIR RIGHTS TO REEMPLOYMENT WITH THE STATE, INCLUDING THE RIGHT TO BE PLACED ON AN APPROPRIATE HIRING LIST MAINTAINED BY THE DEPARTMENT OF PERSONNEL FOR AT LEAST 24 MONTHS (SECTION 130). I ALSO UNDERSTAND THE GOVERNOR HAS AGREED TO LIFT THE HIRING FREEZE, BUT ONLY FOR SIIS EMPLOYEES.

ON THE SURFACE SUCH PROVISIONS APPEAR TO PROTECT EMPLOYEES. I BEG TO DIFFER. THE EMPLOYEE

PROVISIONS OF THIS BILL ARE A POLITICAL PLOY TO GET YOU TO VOTE "YES" ON THIS BILL.

THE PROPONENTS OF THE BILL ARE ASKING WHO COULD POSSIBLY VOTE AGAINST A BILL THAT GOES TO SUCH LENGTHS TO PROTECT STATE EMPLOYEES WHEN NO BETTER ALTERNATIVE EXISTS.

LIFTING THE HIRING FREEZE IN AND OF ITSELF SHOULD RAISE SOME EYEBROWS. WHAT IS THE POINT OF LIFTING THE HIRING FREEZE IF THE AVAILABLE JOB OPENINGS ARE NOT A GOOD FIT FOR THE LAID OFF EMPLOYEES? SECTION 130 OF THE BILL STATES THAT LAID OFF EMPLOYEES WILL BE GIVEN PREFERENCE ON THE HIRING LIST. PREFERENCE TO WHOM? THE ONLY INDIVIDUALS ELIGIBLE TO APPLY FOR THE JOB WILL BE SIIS EMPLOYEES.

FURTHERMORE, THIS BILL ATTEMPTS TO COVER UP THE UNPLEASANT REALITY THAT REGARDLESS OF WHETHER OR NOT SIIS IS PRIVATIZED, EMPLOYEES WILL BE LAID OFF. THAT WAS A REALITY THE LEGISLATURE CREATED IN 1995. SENATE BILL 37 TAKES WHAT APPEAR TO BE

VIABLE EMPLOYEE PROTECTIONS AND TIES THEM TO PRIVATIZATION IN A DECEPTIVE EFFORT TO IMMUNIZE THE BILL FROM ATTACK. THAT DECEPTION HAS NOW BEEN REVEALED.

IN ADDITION, THE BILL PROVIDES THAT UP TO \$2 MILLION SHALL BE PAID TO TRAIN CERTAIN LAID OFF EMPLOYEES. AGAIN, I REMIND YOU OF THE PROVISIONS OF THE STATE *CONSTITUTION*. MONEY IN THE STATE INSURANCE FUND IS TO BE USED FOR THE BENEFIT OF INSURED WORKERS, NOT TO TRAIN LAID OFF STATE EMPLOYEES.

THIS IS JUST ANOTHER EXTREME TACTIC TO GAIN YOUR VOTE. THE SUPPORTERS OF THIS BILL ARE ASKING YOU TO IGNORE THE LAWS OF THIS STATE THAT WERE ESTABLISHED TO PROTECT INJURED WORKERS IN EXCHANGE FOR SECURING THE RIGHTS OF CERTAIN EMPLOYEES. I SIMPLY CANNOT CONDONE SUCH METHODS THAT UNDERMINE THE PURPOSES FOR WHICH THE FUND WAS ESTABLISHED.

PERSONALLY, I AM NOT AGAINST PROVIDING NEEDED TRAINING TO LAID OFF EMPLOYEES. HOWEVER, I AM ADAMANTLY AGAINST USING FUNDS THAT HAVE BEEN EARMARKED FOR INJURED WORKERS TO TRAIN SIIS EMPLOYEES FOR JOBS THAT HAVE NOTHING TO DO WITH WORKERS' COMPENSATION. IT IS SIMPLY NOT RIGHT. IF THE PROPONENTS OF THIS BILL ARE SINCERELY CONCERNED ABOUT PROVIDING SUCH TRAINING, THEN I AM SURE THE ADMINISTRATION CAN ADD THIS ITEM TO ITS LIST OF PRIORITIES FOR FUNDING. IN THIS CONTEXT, I DISAGREE WITH THE NOTION THAT IT IS ALRIGHT TO TAKE MONEY FROM PETER TO PAY PAUL.

ON A RELATED NOTE, I AM EQUALLY CONCERNED ABOUT THE PROVISION FOR PENSION BUYOUTS (SECTION 134). THE BILL PROVIDES THAT FOR CERTAIN ELIGIBLE EMPLOYEES, THE SUCCESSOR ORGANIZATION MAY PURCHASE CREDIT FOR UP TO FIVE YEARS OF SERVICE, IN LIEU OF LAYING THEM OFF. AS I HAVE PREVIOUSLY STATED, I DISAGREE WITH USING FUNDS RESERVED FOR INJURED WORKERS FOR PURPOSES NOT RELATED TO PROVIDING WORKERS' COMPENSATION INSURANCE.

THE ISSUE OF PENSION BUYOUTS BRINGS UP ANOTHER QUESTION IN MY MIND. WHAT ABOUT THE SIIS EMPLOYEES WHO HAVE 10 TO 20 YEARS OF SERVICE WITH THE STATE? THOSE INDIVIDUALS HAVE BEEN PLACED IN AN UNFORTUNATE POSITION OF MAKING AN EXTREMELY DIFFICULT CHOICE:

1. STAY WITH THE NEW COMPANY AND START OVER IN A NEW PENSION SYSTEM TO BE ESTABLISHED BY THE NEW COMPANY; OR
2. BE PLACED ON A HIRING LIST WITH THE HOPES OF FINDING ANOTHER STATE POSITION THAT THEY ARE QUALIFIED FOR.

I WONDER HOW THE EMPLOYEES OF SIIS REALLY FEEL ABOUT THIS PIECE OF PENDING LEGISLATION. IN TRUTH, I WOULD IMAGINE SOME WILL BE BETTER OFF, PARTICULARLY IF THEY ARE ELIGIBLE FOR A PENSION BUYOUT. ON THE OTHER HAND, I AM SURE THAT AN EQUAL NUMBER ARE CONCERNED THEY WON'T BE ABLE TO FIND ANOTHER STATE JOB AND WILL BE FORCED TO REMAIN WITH THE NEW COMPANY OR SEEK ANOTHER

POSITION IN THE PRIVATE SECTOR, STARTING A NEW PENSION PROGRAM AND BEGIN PAYING INTO SOCIAL SECURITY.

I AM SURE THE PROPONENTS OF THIS BILL HAVE TOLD YOU THAT THE EMPLOYEES OF SIIS SUPPORT THIS BILL. BUT REALISTICALLY, HOW MANY EMPLOYEES ARE WILLINGLY GOING TO STAND UP, IN FRONT OF MANAGEMENT, AND EXPRESS OPPOSITION TO THE BILL?

NOW, LET'S TAKE A MOMENT TO STEP BACK AND REEVALUATE S.B. 37 BY ASKING OURSELVES WHAT PROVISIONS OF THE BILL REMAIN IF WE STRIP OUT THE PIECES OF THE BILL THAT CAN BE ACCOMPLISHED WITHOUT LEGISLATION. WE CAN THEN SEE SENATE BILL 37 IN ITS TRUE FORM.

THE REINSURANCE PROVISIONS CAN BE ACCOMPLISHED WITHOUT LEGISLATION. THE EMPLOYEE PROVISIONS CAN BE ADDRESSED WITHOUT LEGISLATION. NOW — WHAT'S LEFT?

PRIVATIZATION AND TRANSFERRING THE ASSETS THAT ARE HELD IN TRUST FOR INJURED WORKERS TO A PRIVATE COMPANY ARE THE ONLY PROVISIONS THAT REMAIN.

IN CONCLUSION, MADAME CHAIR, THIS BILL REPRESENTS AN UNWARRANTED CONFISCATION OF STATE PROPERTY THAT OTHERWISE SHOULD BE USED FOR THE BENEFIT OF INJURED WORKERS. DISGUISED WITH THE RHETORIC OF EMPLOYEE RIGHTS AND THE FINANCIAL SOLVENCY OF SIIS, SENATE BILL 37 EFFECTIVELY GIVES AWAY THE ASSETS THAT THE STATE OF NEVADA HAS CLEARLY DECLARED ARE FOR INJURED WORKERS. MADAME CHAIR, MEMBERS OF THE COMMITTEE — THIS IS A BAD BILL AND I URGE YOU TO REJECT IT.

THANK YOU.

ATTORNEY GENERAL'S OPINIONS.

Property exempt from taxation. Property held in name of Nevada industrial commission (now state industrial insurance system) is exempt

from taxation. Commission is state agency existing for public purpose, whose property is held in trust for state. AGO 86 (7-20-1955)

NRS 616B.176 Acquisition of real property in name of State of Nevada; system's power to sell or exchange property.

1. Any real property acquired by the system must be held by the division of state lands of the state department of conservation and natural resources in the name of the State of Nevada.

2. The system has the sole power to sell or exchange such property and any money received therefrom must be deposited in the state insurance fund.

(Added to NRS by 1983, 283)—(Substituted in revision for NRS 616.1805)

NRS 616B.179 Power of system to insure and reinsure. The system may:

1. Insure an employer against liability for workers' compensation and other liability that the employer may have because of bodily injury or occupational disease to his employee arising out of and in the course of employment, to the same degree as any other insurer;

2. Insure employers against their liability for compensation or damages under the Longshoremen's and Harbor Workers' Act or any extension of that Act, to the same degree as any other insurer;

3. Furnish advice, services and excess insurance for workers' compensation; and

4. Reinsure any risk or any part thereof.

(Added to NRS by 1981, 1452)—(Substituted in revision for NRS 616.1727)

NRS 616B.182 System to provide separate program of medical coverage for members of athletic teams of University and Community College System of Nevada. The system shall offer a program of unlimited medical coverage of freshman and varsity athletic teams of the University and Community College System of Nevada for injuries incurred while the members of the teams are engaged in organized practice or actual competition or any activity related thereto. The program must be funded separately from the state insurance fund and for this purpose the system shall establish premium rates on the basis of man months of athletic participation by members of the athletic teams. Any participation by the member of an athletic team during a calendar month must be counted as 1 man month for purposes of premium calculation. A team member so covered is not entitled to any other benefit under chapters 616A to 616D, inclusive, of NRS.

(Added to NRS by 1973, 288; A 1981, 1463; 1993, 417)—(Substituted in revision for NRS 616.251)

NRS CROSS REFERENCES.

Universities, election to accept program, NRS 396.591

NRS 616B.185 Modified program of industrial insurance for offenders in prison industry or work program.

1. Any offender confined at the state prison, while engaged in work in a prison industry or work program, whether the program is operated by an institution of the department of prisons, by contract with a public entity or by a private employer, is entitled to coverage under the modified program of industrial insurance established by regulations adopted by the system when the director of the

616.680 Claims for services not rendered; fraudulent acts of medical provider; liability of medical provider.

617.180 Applicability to interstate commerce and certain plans for benefits in effect before July 1, 1947.

617.330 Proceedings on claims for disease or death; limitation.

617.350 Application or claim: Contents; service on insurer.

617.360 Physician's certificate to support claim."

Amend the title of the bill by deleting the seventh through the tenth lines and inserting: "which those benefits are calculated; prohibiting, under certain circumstances, a provider of health care from referring an injured employee to a health facility or service in which he or certain other persons have a financial interest; revising the management of the".

Senator Townsend moved that the Senate concur in the Assembly amendment to Senate Bill No. 316.

Remarks by Senators Townsend, Brown, Neal, Coffin, Raggio, Adler and Titus.

Senator Brown requested that the following remarks be entered in the Journal.

SENATOR TOWNSEND:

Thank you, Madam President. I would like to yield my time, at this point, for any questions or comments from the floor and then reserve the right to offer a concluding statement.

SENATOR BROWN:

Thank you, Madam President. I would like to offer the following comments. It is extremely difficult to vote on whether to concur or not concur with a bill this inclusive, since some of it is wonderful and some of it awful. I believe that what the two houses developed in terms of health care providers is excellent. It can save the system a tremendous amount of money while also giving injured workers a good choice of doctors and allowing the bidding process to open up to all interested providers. It prohibits a monopoly situation and includes strict utilization review to weed out over users as well as under users.

I am also extremely proud of our new fraud unit section of the bill which hits hard on all three legs of fraud; the providers, the employees and the employers. It has strong enforcement capability, with a separate attorney general's unit, and strong fines and criminal sanctions. On the other hand, there are two items which were changed in the other house which seems to me costs the system money. Language which may be a technical wording error, but as written, limits the system's right to save money on vocational rehabilitation programs which do not meet arbitrary time limitations. I have been informed that this is likely to be changed in a later bill, but we are being asked to vote before the technical amendments are made.

The second section, which appears to have the result of increasing costs, is requiring that utilization review be contracted to, what I presume are for profit, private companies even if such review could be done more cheaply, more effectively or more efficiently within the SIIS system. This too will be reviewed in a later bill, but there is no way to know in advance how this will or will not be changed.

The portion of Senate Bill No. 316 which most concerns me is still section 19. I hope our overturning of the Nevada Supreme Court in the appellate case does not bankrupt employers or the system or leave legitimately injured workers uncovered. I do foresee three possible devastating consequences to this change in our law. First, primary pre-existing injuries may be claimed in all accidents. If that determination is upheld, workers will not receive coverage. The second scenario is that every Kelly type of claim would be excessively litigated as to whether the pre-existing condition was primary and thus employers as well as employees and the system would simply be spending tremendous

amounts of resources in litigation. The third scenario involves injured workers who are completely excluded from SIIS to enter the tort system and hold employers liable for pain and suffering, future wage losses, quality of life changes as well as scarring and other physical changes. This could cost employers tremendous amounts of money.

All that said, the SIIS system is not currently working. The heart of this bill is a wonderful mechanism to try to correct the problems of the system. Despite my reservations regarding some of the provisions, I will be supporting this compromise version of S.B. 316 and I plan to review how section 19, and the other areas of concern, actually play out over the next 18 months. If my fears are realized, I will be proposing changes at that time, assuming of course that I am back.

SENATOR NEAL:

Thank you, Madam President, to you and to the members of the Senate. I have spent a considerable amount of time in reading the amendment to the bill which was presented to us yesterday. I would assume this was the same as the yellow portion which was delivered to us today. I have some problems because I not only read the language and the changes that were made to the bill, but tried to determine what affect those changes would have in terms of the winners and the losers under this proposition we call S.B. 316. In my judgment, the workers are clearly the losers in this bill. Next to the workers, would be those individuals we call providers. I have problems with the bill in terms of the position which the Governor takes on this issue. We are allowing him four years in which to operate the SIIS program, as a board of directors, in which he can do just about anything in terms of selecting the MCOs and being able to control the appeal process of the injured worker. As far as the MCOs, we are putting into this measure that the system can select no more than seven. Those seven can divide, among them, those claims of the injured worker under the provisions of this bill. We have said that there is a bidding process, but the bill clearly omits the selection of a low bidder. It does not permit the selection of a low bidder. So, once I saw that, I have to ask the question "why?". Why would we have a bidding process and yet not apply the statutes which require that a low bidder be selected? Who selects the low bidder? The administrator of the system who reports and will work, for the next four years, at the pleasure of the Governor. Who would he select? He would choose anyone who the Governor tells him to. That is what this bill would allow.

As far as the appeal process, we left in the state attorney, but he only has authority in terms of section 12 of this piece of legislation. It somewhat limits the right to deal with the injured worker. We have provided for a hearing officer to hear the claims of the injured worker. The hearing officer is appointed by and works at the pleasure of the administration division director. Who appoints the administration division director? The Governor does. What happens if the caseload is such that the Governor feels that it is going to make the numbers at the end of his four year term less than what he proposed them to be. What happens to the appeals officer? He can be terminated from his job under the provisions stated in this bill.

We have also said, in this bill, that the insurance commissioner would accomplish the audit of the SIIS system. He will be auditing a program which the Governor controls. Who does the commissioner work for? The Governor. And, if the commissioner does not come back with a favorable audit, what is going to happen to the commissioner? Good question, because the Governor for the next four years, is the person who has taken it upon himself and consistently fought to become a part of this particular process. I have to question why? Before, in the bill, we had a board of directors, but now, for four years, we are going to allow the Governor to make the decisions to get SIIS straight within the next four years. Can he do that? I think he can utilizing some accounting procedures. Why I say that is because I took a look at the SIIS program, starting from FY88, asked a couple of questions of our research people, which were based upon the fact that the system is a tri-part program. This program consists of the injured worker, the provider and those who pay the premium who we now call the insurer. We asked them all three questions. One, what was the total claim expense beginning in FY88 through FY92? It was \$188 million in FY88, \$216.2 million in FY89, \$285.1 million in FY90, \$329.2 million in FY91 and \$434.1 million for FY92. The question was then asked as to what the premium payments were for those same years. They were \$187,883,000 in FY88, \$249,818,000 in FY89,

\$310,688,000 for FY90, \$321,906,000 for FY91 and \$338,682,000 for FY92. Why are those figures important? If you take the premium figures and add them to the marketable equity securities, bonds and mortgage totals for those same periods, you would find that the system was solvent up until the year of 1992. The change came about in FY92 because change was made in the reporting of investment securities. Prior to FY92, investment securities were reported at book value, whereas in FY92 and future years, investment securities were reported at market value. That caused a severe drop in the income of SIIS in FY92. That, ladies and gentlemen, was an accounting transaction which was based upon the change of the marketable equity securities from the book value. So, I have a question as to whether or not the system is as insolvent as we have been told. I have a question that if the system is as insolvent as we have been told, why would the Governor expose himself? Would we have to come back two or three years from now and have another accounting transaction which includes the market value of these stocks and also see the rise in the income of SIIS?

I have those questions and I don't think that any political individual would deliberately set him or herself up for failure if he or she knew that failure would be evident in the future.

One other question concerning a problem I have. I have a problem with the winners and the losers. We already know that the SIIS organization, workers compensation area, is going to undergo a drastic change. This is nothing new. One of the things you learn by being here for 20 years is that you have a frame of reference to draw upon. There have been people trying to get control of this system for the 20 years that I have been here. They had not succeeded up until this point. We now have allowed the fox into the hen house. We call them insurers and say that those who pay the premiums should be those who make the determination as to who should receive the benefits. I am telling you that once we have taken this giant step, the SIIS will never be the same in this state again. I don't think the Governor is going to make this system whole. I don't think those employers who would become the board of directors, in the four years after the Governor has left this system, would make this system whole. What we have done here is that we have sown the seed to destroy one of the best workers compensation programs west of the Mississippi. We have allowed those who are self-insured, under this bill, to take advantage of millions of dollars. Millions will now be going to the self-insured under the provisions of this bill. We have written a great deal, in which we call protection, but we have left the injured worker naked as far as that person being able to adequately address his or her particular needs under this piece of legislation. I would say to you, ladies and gentlemen, once we come back in 1995, I will be willing to tell you that we are going to have SIIS making a little money, not because the investments have changed and surely not because of the ingenuity of Governor Miller, but because of creative accounting. This is the same method which got us into this particular situation.

I don't know if any of you have thought this problem through as deeply as I, but I do know that we are confronted with a decision to have or not have an insurance program for the workers of this state. This has pointed us down the road to where that entire program would be placed in jeopardy because we are not now allowed to make the necessary decisions, at the state level, to ensure the security of the individuals coming under this program. We are leaving it to the managed care organizations, the self-insured organizations and the state is virtually wiping its' hands of all of this. You can say that we have the Governor who is going to be there for four years. The Governor is a conduit to allow all of these programs to flow to people who have been trying to get their hands on this program for the last 20 years. That is all it is going to be. Take note of the fact that, under managed care organizations, you have no bidding system. The director writes the rules and regulations and states who he wants to handle the managed care program for the SIIS system. As I indicated, he works for the Governor for the next four years. Just think of who is going to get those managed care contracts. Is it going to be the individual who contributes the most to the next election? It could very well be because the Governor has full control. That is one of the weaknesses of this entire system. We placed in the bill the language that if a self-insured organization does not pay its' premium, we do not kick them out. No, we give them 10 days. If at that time they do not pay the premium, they are

kicked out. If that is done, what happens to the employees who work under the self-insured? Who will be insuring them? That is one of the outs of this particular program. You say that they put up the money. Of course, they put up all of this money, but they get it back in a matter of time. They lose nothing, but they gain millions.

For the record, Madam President and members of the Senate, after having spent considerable amount of time reading and re-reading this, and having the understanding I now have, I would say that S.B. 316 is not the solution for the SIIS program nor which I am willing to vote for.

SENATOR COFFIN:

Thank you, Madam President. I would like to ask the Majority Leader if we could have a little more time to study this measure. I asked yesterday and he indicated he did not think that would be possible. Let me ask again with a few prefatory remarks. I tried, but I could not finish reading the amendment last night. As you will recall, we only received copies of this amendment yesterday afternoon and, in order to understand the amendment, you must compare it to the old bill. I voted for the original S.B. 316. The nice thing about the new version is that a lot of the things we strived for are now in the measure, but I am not sure in what volume. To try to read two bills, side by side, is the only way you can truly understand the changes. We did not just get an amendment, we received a new bill. Since the entire bill is new, it was difficult to understand unless you compared it paragraph by paragraph with the old bill. I could not finish reading it all. How I vote today hinges on whether or not we have more time to understand the changes. I think also it hinges on whether there are adequate answers to the questions posed by Senator Neal and others. I certainly hope to hear answers to all of his questions. I do have pessimistic feelings about an affirmative answer from the Majority Leader to my request for extended time, but I will ask anyway since I have heard that the Governor is having a signing ceremony at 3:00 P.M. today and that we are all invited. I wouldn't want to spoil that, but I would like to ask once again that we be given another day to read and understand this bill so that I may make an intelligent vote on this important issue.

SENATOR RAGGIO:

Thank you, Madam President. As the Senator knows, we announced yesterday that we would allow until today. Because of the press of much other business in the legislature, it was announced that we would conclude this matter today. I know that I spent the evening looking over the bill. We had caucuses of both parties in both houses in order to go over the bill and respond to the questions. I think everyone came here today with advance warning and notice. This bill has been with us since almost the first day of the session. Every nuance, every change has been addressed in the public arena on a daily basis. I don't think one more day of agony is going to help anyone resolve the issues. I suggest that we take all the time necessary, this afternoon, to resolve the questions and that we get on with our business. We do have a lot of other business to attend to.

SENATOR COFFIN:

Thank you, Madam President. I appreciate the answer in the negative from the distinguished Majority Leader. I do not have the ability to ask all the questions I would like to ask. I would like to say that I have heard that, if you have questions and they can't be resolved, that we could put them in a trailer bill of some kind. I don't know what that is or where it is, when it is going to be processed or who has control of it. Are hearings scheduled on it? Has it been requested? What are the problems that have been recognized already that will go into a trailer bill? What can go into a trailer bill? I have heard that only technical changes to this bill are going to be allowed in the trailer bill. Who decides what a technical change is? For instance, a substantive change to some may be a technical change and vice versa. I hesitate to vote to concur in this amendment unless I have answers to some of those questions. Frankly, if there even has been discussion of a trailer bill, I would maintain why not put all the right moves into this bill. Why rush this thing out and then come back to fix our mistakes while we are still in session? We know we are going to be in session for another 10 days, so what is the reason for the bum's rush on this bill today? I know the Governor needs to leave town for a couple of days, but he will probably be back on Tuesday. We could most likely complete any changes to it by then. I am not

trying to be dilatory, I am trying to be constructive and defensive of our institution. This institution, for over 130 years, has been a thoughtful institution. The Senate is theoretically a body which has more time to debate, less political pressure on it so you have some stability which needs to be inserted into the process. That is the whole purpose of a bicameral legislature. I am not ignorant of many of the provisions of the original bill because I was here for that debate. I did not get a chance to serve on the committee, but I listened and asked questions. Three months ago, we voted the bill out of this house after having it here for two and one-half months. I believe the other house had it for approximately three months. At least, seven out of 21 of our members were intimately familiar with every aspect of this bill. The other 14 of us were not and admittedly have to say we were not because we were not on the committee. Now, when the other body received the bill, 11 or 12 out of 42 people held hearings in the open as the Senate did. They held hearings on our bill, but they really didn't cover much new ground in the public hearings. It was only until the bill went underground that the major changes took place. I think it is a big question as to who really has drafted this bill. I understand three weeks of private negotiations took place. This new bill was then drafted and passed out of the other house without a public hearing on the finished version. Informal caucuses were held for a short time after which the vote occurred. I've been told several times by the Majority Leader that I should be happy with this process. I attended a caucus and heard someone talk about the bill, but I did not receive answers to most of my questions at that time. Nor, were all the questions able to be asked by those attending the caucus. I started reading the new version of the bill last night, tried, but could not finish it. I attended the Committee on Commerce and Labor meeting for the first 20 minutes this morning. The committee deliberated approximately an hour on this new bill. I had to leave to take care of other business. I am not sure that the committee members understand each and every new condition which you are going to vote on today. There are hundreds of new provisions. Who can honestly say, here in this house, that they read this entire new bill last night?

I know we have been told that we can concur by labor. They have said that we tried to help them in the Senate, but now it is okay to vote for it. Labor represents 20 to 25 percent of the work force. Is their suggestion that we concur in this amendment valid for the entire work force in Nevada? Big business is here in force with its lobbyists. They tell us to concur on the amendment because it is good for us. Do the big business lobbyists represent everybody in the business community? Is their judgment going to help me understand whether to concur or not? Frankly, at this point, I cannot support concurring on this measure. My only decision now is whether to vote against concurring or to abstain from voting. We have not been given enough information to enable us to vote on this. If I hear the wrong answers to questions which have been asked by others, I will vote to not concur.

SENATOR ADLER:

Thank you, Madam President. I rise in support of this amendment. I wasn't going to speak, but I now feel compelled to. We have heard speakers impugn the integrity of the Governor, the committee chairman and everyone involved in the process. I think that is rather unfortunate. I disagree with many of the things in this bill, but the people who put it together did not do it in bad faith. They were not trying to injure anyone. They were not trying to do it for political gain. They recognized a serious problem had occurred in the State of Nevada, which is that the workman's compensation system needed to be changed. We needed to get a control on our costs and needed to move forward. This has a serious impact upon future industries locating in this state and the prospect of other industries continuing to operate within the State of Nevada. From that standpoint, we could not continue on the way we were or we would have suffered as a state and our employees would have suffered because they would not have had the jobs they should have had. I don't think there was a giant conspiracy to put this bill or this amendment before this body for our concurrence. In fact, in my observation of how this bill developed for all these months, I would find it fantastic that all those people who were disagreeing so vociferously with one another, were engaged in some sort of giant conspiracy to deny people their rights. I do not think that is what occurred here at all. I don't think that occurred with the Governor's office, with the chairman of the labor committee on the Assembly side, the

chairman of the committee on commerce in the Senate or with anyone in particular. All these people were engaged in a process in good faith to put forth their best efforts to try and cure a problem. They may not have cured the entire problem. They may have made some mistakes along the way, but if they made those mistakes they occurred in good faith.

In terms of our ability to digest and analyze this bill, I received this draft at the same time as everyone else. I had questions about what was changed on the Assembly side from the Senate draft. I can assure you that, when I went to the committee chairman and other persons on the committee for that information, they gave me the information freely. They indicated which sections had been changed and what those changes were and why they occurred. I was even afforded the opportunity, this morning, to testify on a certain section with which I particularly disagreed. I thought it had been incorrectly changed and the committee received and fairly considered my testimony. We have had an adequate opportunity to go through this measure and to comment upon it. It is my understanding that there is a trailer bill and I would hope that many of these disputed items will be considered in that measure.

The portions which I indicated earlier that I did not agree with are contained in section 116 which has to do with the bidding process for vocational rehabilitation. I think that was changed in such a fashion that someone with the highest bid could actually receive the contract. I have already expressed my displeasure with that change. I think that, in the portion on what has been referred to as the "unfortunate 500" employers with the \$1000 deductible, the \$1000 is too high. The provision could put employers out of business and needs to be looked at again. The portion concerning pre-existing injuries may cause a future problem, as alluded to by my colleague from the south. It may create litigation and needs to be re-examined.

This bill is not everything to everyone and there are parts to which everyone can disagree. I would hope that they do disagree, but I think this does represent the best efforts of both houses. Everyone needs to realize that both houses worked extremely long and hard along with the Governor's office in putting this together. I don't think that anyone engaged in this process for political advantage or to promote their own interests. Of course, there were a number of lobbyists who were trying to promote their particular industries. That is always a part of the process. There are some very good things in this bill and there are some things which some of us do not support, but we should stand up on this floor and impugn the process. It has not been a bad process. Everyone has done their best to be fair and this is the result of their efforts.

SENATOR TOWNSEND:

Thank you, Madam President. No one is more pleased than I that I stand to finally bring this issue to conclusion. In front of you today on your desks is the FY94 fiscal impact of the original S.B. 316. The Assembly Labor and Management changes, are in this amendment No. 924, in which we are asking you to concur. I would like to briefly mention some of the changes.

You will notice that the total savings under S.B. 316 is approximately \$258 plus million. The recommendation by the Assembly Labor and Management committee was approximately \$107 million. What is essentially in this bill is \$241 million. This gives us an approximate difference between the original S.B. 316 and the current amendment in which we are asked to concur, of approximately \$17 million in reductions. Let's address one or two of those.

We had an increase in the ability to use deductibles. Small employers benefitted from that. Those who are not doing well in terms of their safety and exposure are going to pay a bigger price. The TTD limitation has been restored. It is a \$5 million restoration. The PPD factor, the original S.B. 316 took the original .6 percent down to .5. That has been returned to .54 percent. There has been a restoration in that area of approximately \$9 million. There has been an increase in widow's benefits for those injured prior to July 1, 1980. As you can see, that has been made up by enforcing the concept of using the next person in the rotation off the physicians list. Those are just the highlights of that particular piece of the measure.

The second portion, handed out today which addresses this amendment, has to do with four pages. It talks about from where the dollars are coming. As you can see by the first

age, the rate increases of the last five years total approximately \$60 million. The next age talks about the outright reform and its savings of \$116 million. Business costs increase under this bill consist of approximately another \$113 million. Lastly, are the benefit reductions of approximately \$89 million. Let me address that specifically because question about that was asked on the floor. I want to make it crystal clear that nothing in this bill, neither the bill we sent out of here nor the amendment we have in front of us today, affects persons who are currently in the system. Absolutely nothing. When there is talk about benefit reductions, we can't possibly reduce benefits to those who currently have not only a legal contract, but also a social contract with the system. If, as is in this bill, we have an improvement in safety, you don't have a reduction in benefits because you don't in fact get injured. It was asked on this floor if someone who was self-insured would be able to walk away from their responsibilities. The answer is no. We have an uninsured employers fund which picks up those responsibilities. It always has done that and it remains intact. That is an extremely important question and I am glad it was asked today.

I am going to make some remarks that have to do with responses to things which were said on this amendment on the floor of the Assembly in order to answer the questions which were brought up in this house today. I will not make mention of the name of the persons who made these remarks because there were multiple speakers and it is not necessary. "A closed panel MCO is going to create a two-tiered medical society. You are going to have cheap care for injured workers and everyone else can go to their own doctor." That in fact isn't the case. The language which has been sent to us and which we are reviewing today does not state that the panel will be closed or open. It states that there are four requirements for becoming an MCO. Under that, you become certified and then you may bid. What they are saying is, that not only would that have closed the system more, under our original bill, but this amendment says you are going to have a cap on your market share and you are going to have a requirement on how many people may bid. For those persons who are worried about a close selection of physicians, this new language broadens that selection of physicians.

During the deliberations held, we faced two wholly separate issues; one chronic and one acute. Firstly, the chronic problem was to adopt substantial management policy for a system, which was \$2.2 million in debt, in such a way that the environment did not continue to exist which would allow this problem to happen again and again. Secondly, the acute problem was the emergency situation we were presented with. This was a system hemorrhaging at a rate of \$1 million per day. That is what this continued effort on this bill has tried to address, the cash flow shortfall and the unfunded liability. Granted, we are not going to be able to cover that unfunded liability as quickly, under this amendment, as in our original bill, but they felt it was in the best interests of doing that in order to provide a few more benefits.

Again I quote from the Assembly comments. "I want to make it very, very clear that there is no one more courageous in standing for injured workers than the distinguished chairman of the labor and management committee." I respectfully disagree with that. There are, at the very least, three people on our committee who not only stood up in committee on behalf of injured workers, fought diligently, but continued that fight on the floor of this Senate. I would beg that statement to be corrected.

In addition, I quote, "the deductibles for the employers in the high risk pool, while a good idea, is set too high at \$1000 and may put some of the similar businesses out of business." Let me make something very clear on this issue, because I am trying to answer a question asked on the floor earlier today. There are currently one percent of our accounts at SIIS, approximately 500 out of 39,000 plus accounts, that drive 22 percent of our total expense! You wonder why we have a problem? You need to grab those 500 by the necks, slap them around, get their attention and say you can't do that anymore. Not only can we not afford you, more importantly the humane side of this is that we don't want people injured to that frequency and intensity. Now, if you meet all the standards, you have a safety committee, a safety program then, you can in effect, opt out of the \$1000 deductible. The important thing is to get their attention. If you are not going to have a safe work place for people, we don't want you in business. People deserve to work in a safe environment.

Again I am quoting "governor control. I have fought along with many to oppose this position. It's not in opposition to the governor, but rather further politicalization of the system. The governor will control in this bill with no board of directors. I do believe, for public access, you will absolutely agree to report to interim finance and the legislative commission during the interim." Two things are important here. Number one, as you remember, we sent a board of directors over which consisted of 100 percent premium payers. During the debates, we offered, in the spirit of compromise when they didn't agree to that board of directors, that they make it up in a different manner. They chose to have no board of directors. Number two, pre-existing conditions. Again I quote, "with this language we have begun to change the common law of 'you hire me as I am'. The existing language will force us into the courts, but I believe the courts will and shall rule in favor of the injured worker." Again in the spirit of compromise, that was offered to be removed in exchange for the discount rate. That was turned down.

I will close by saying that there are many people to be thanked for getting us to this position today. I will start by thanking, on behalf of this committee and this body, our secretaries for not only putting up with the tremendous amount of work, but also putting up with me, which was twice as hard. Second of all, I want to thank the two staff members who worked so diligently on this, Brian Davey and Dr. Frank Krajuski. They are the majority of the reason why we have the kind of knowledge of this subject that we do. I would certainly like to thank those who represent groups or individuals who testified before our committee. You did so with an intensity I have never before seen in the 11 years I have been here. That is good. We believe that your presence and your testimony gave us the kind of insight we needed to make the decisions necessary to reform this system. I would also like to thank all the members of the press because without them the public would not have known what we were doing. The press is our conduit to the people who pay the rent here and whose ownership in this process they have. Lastly, and I can tell you certainly not the least, I want to thank this committee. With the president's permission, I will use their names. I have worked for 11 years on this committee and worked with three of these individuals for nine of those years. I can tell you each of them fought for everything in which they believed, but they did so in a professional, non-partisan manner. I would certainly like to thank my colleague from Sparks with whom I have served these many years; my colleague from North Las Vegas, who is the senior member of the committee. I hope he decides to continue serving on that committee whether or not I am still here. My fellow P.E. major, Senator O'Connell, who reads every word of every single bill every day. I would also like to thank the new members, the freshmen. I will start with Senator Brown who constantly reminded me that there are other perspectives than my own. I appreciate not only the homework she did, jumping into a committee with such senior members as we have, but also the intensity with which she fought for those issues in which she believed. Senator McGinness, who of course is not a freshman in this building, but in the Senate. We call him the "rural gatekeeper," who protects the interest of those who live outside the two major urban areas. Of course, there is our last freshmen, Senator Lowden, who has experience in this area of workers compensation because of her background in business. I appreciate her not only for bringing us that perspective, but also the homework she did on this measure. Without those six individuals, this measure would not be here. They have provided the basis on which this bill has been built. The Assembly has made a better bill out of this by taking a good foundation and making it better.

I'll close by saying that we are in a substantial problem and only action will help to fix it. Is everything in here going to be perfect? No! But, we are going to try to improve it and that is why we are here. We will give this a try and we will have a trailer bill which deals with some of the problems which have already been found to exist. Once we finish trying, we must remember that this isn't a product, it is a process. During the interim, working with this administration, we will find problems and will address them in the 1995 session. I appreciate your understanding, your indulgence through this entire six-month process and I would encourage your concurrence.

SENATOR TITUS:

Thank you, Madam President. I also rise in support of concurring with this amendment. As my colleague from Carson City pointed out, there is something in this bill for

anyone to hate; however, those who were involved in the final compromise are to be commended for their gallant efforts. I am also pleased that almost all of the amendments which we Democrats introduced on the floor, when we first considered the bill, have now been added, returning many of the benefits to workers which we were concerned about. On a more personal level, I fought very hard over the last several months to keep in the ban on self-referral. It has not been an easy task and I would like to personally thank the chairman of the commerce and labor committee for helping me in that effort.

SENATOR COFFIN:

Thank you, Madam President. I am hoping Senator Townsend can now answer the questions I asked earlier regarding the trailer bill and what the definition of technical versus significant would be so that we can tell what we will be able to get in and what we won't.

SENATOR TOWNSEND:

Thank you, Madam President. In my discussion with leadership on the other side, who deserve a great deal of credit for making sure this amendment got here, not only the speaker and the majority leader, but also the distinguished chairman of the judiciary committee in the Assembly, have agreed and given us their commitment, along with the Governor's office, that a technical trailer bill will be started immediately. We will be having hearings on that as soon as we adjourn tomorrow. Our committee will be in session dealing with that bill. Anyone who feels their issue has either been ignored or was removed has the right to come to us and we will have a bill put together on those issues. Those issues will be different from the technical issues. I can't answer your question as to who is going to decide what is technical and what is substantive until you get to the committee hearing where we will have debate at that time.

SENATOR COFFIN:

Thank you, Madam President. Would the amount of money involved have to do with whether it is substantive or technical?

SENATOR TOWNSEND:

Thank you, Madam President. I believe money will not be an issue with regard to the technicalities of this measure.

SENATOR NEAL:

Thank you, Madam President. Let me ask a question on the amendment, page 35, section 47, sub-section 2 which reads "at the expiration of the 36 month period, or such period as the commissioner deems appropriate, the commissioner may accept in lieu of any security so deposited a policy of paid-up insurance in a form approved by the commissioner." Does that language then allow the self-insured to take out their money?

SENATOR TOWNSEND:

Thank you, Madam President. I am trying to understand if my colleague's question goes to the fact that you place in security a bond in order to get a certificate of self-insurance. Then, after 36 months of proving yourself capable of providing that insurance to those persons who have been injured within your employ, you are allowed to take that bond back and replace it with a paid up insurance form. If so, the answer is "yes," they may take their bond back and provide other security in the form of a paid up insurance policy.

SENATOR NEAL:

Thank you, Madam President. The question I now have is "why?"

SENATOR TOWNSEND:

Thank you, Madam President. The answer is that after 36 months, you have to demonstrate that you are capable of providing the benefits that we require in the law. This is a shift in order to provide the same security in a different manner. It is a cash position the first 36 months, it is an insurance position after that period, but you have to earn that right.

SENATOR NEAL:

Thank you, Madam President. I have another question. On page 47, of the amendment it states "the selection of such an organization must be made from bids received in accordance with the provisions of NRS 333.300 to 333.335, inclusive, 333.350 and 333.370." What is distinctly left out of that bidding process is NRS 333.440 which is a low bid. Why?

SENATOR TOWNSEND:

Thank you, Madam President. It was argued, on this side of the building as well as in the other side, that perhaps restricting the manager to a low bid only may preclude he or she from choosing a managed care organization whose quality is substantially better than another bid which could be lower. It was felt, on both sides, that the flexibility of quality versus cost be allowed to remain in this proposed language.

SENATOR NEAL:

Thank you, Madam President. Under the section we just mentioned, we are talking about bids which must be submitted to the manager in a form which the manager may prescribe. In that, they list various things in sections (a) through (h) which those organizations are supposed to meet. If the organization met all of those, is what you are saying that the manager still would not be able to select that organization if it was the low bidder? So, why have the requirements?

SENATOR TOWNSEND:

Thank you, Madam President. No, I did not say that. The manager is allowed to chose the lowest bidder, but in fact, he or she would be allowed the flexibility, if the lowest bidder could not provide the quality that is inherent in a no-fault system, that they had the right to turn down the lowest bidder. It does not require you to take a higher bidder. It does not require you to take the lowest bidder, but you must meet at least these criteria to enter into the bid process.

SENATOR NEAL:

Thank you, Madam President. My question then is, why call it a bid if it is not a bid?

SENATOR TOWNSEND:

Thank you, Madam President. My colleague can call it whatever he likes. The point is, one must submit a plan based on the request for proposal. At that point, the manager will have the flexibility to compare all bids using a multiple of criteria in order to find out what is in the best interests of the system.

Senators Raggio, Jacobsen and O'Donnell requested a roll call on Senator Townsend's motion.

Roll call on Senator Townsend's motion:

YEAS—18.

NAYS—Neal.

Not voting—Callister, Coffin—2.

The motion having received a majority, Madam President declared it carried.

Bill ordered enrolled.

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 309, 311, 316, 363, 441, 442; Assembly Bills Nos. 115, 124, 202, 486, 582, 586, 601, 621, 626; Assembly Concurrent Resolution No. 4; Assembly Joint Resolution No. 9.



State of Nevada Employees Association

709 East Robinson Street/P.O. Box 1016
Carson City, Nevada 89701

OFFICE: (702) 882-3910
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When considering this matter, we believe the worst...and we have reason to do so.

The Administration is convening a special meeting of the Personnel Commission for this Friday in order to adopt changes to the job descriptions for Worker's Compensation Specialists. The changes that are being proposed have only one purpose...to make it easier to pick and choose employees to be laid off. We have a layoff rule that has been in effect for over 25 years. It has been evaluated after every sizeable layoff to make sure that it is working properly.

There are currently about 17 classifications within the Worker's Compensation Series, but the Personnel Commission will be asked to expand that into over 50 so that the system can be more selective in laying off employees.

You can understand this a little better if you know that the Personnel Commission is holding a regularly scheduled meeting in less than a month. Such a special Personnel Commission meeting is extremely rare. I cannot remember more than one other.

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1. The State should not eliminate the option of a State System. Once eliminated, it will be difficult to re-enact, even though several states have recently re-instituted state systems. Please remember that the workers' compensation law requires that the employee give something up in return for guaranteed coverage. Keep your options open.

2. What about the constitutional provision for a trust fund for industrial insurance. (Art 9, Sect 2[2])

3. The provisions of the amendment have some desirable points for those employees who wish to leave the system, but will be devastating for those who wish to stay.

A. For the older employees who wish to simply bailout, it's a good deal, because the system will apparently agree to buy five years of retirement time at a cost of between \$7 million and \$10 million. (If the mgt figure of 150 employees is correct.)

B. It is also a good deal for those who wish to move into another state position.

4. But it is not a good deal in the following ways:

A. For employees who have many years vested in the retirement system but are not yet able to retire, they will lose the value of their retirement.

B. It is not a good deal for the employees of other State agencies who may be laid off. They will have EICON employees take precedence over them in their own agency.

C. Employees who choose to stay, or cannot find a position with another agency, they will go from a structure with guaranteed benefits to an at-will system where much will be promised but nothing will be guaranteed.

D. Much is being said about the fact that the governor has said he will lift the hiring freeze for these employees...he could do that without this bill. If, as the EICON management has predicted, there is a big reduction warranted, the hiring freeze could be lifted.

E. Much is also being said about the proposed \$2 million training pot, is that too, predicated upon passage of this bill.

F. In the same vein, lifting the hiring freeze and retraining the employees for other state jobs sounds great...but what kind of jobs. Most of the growth in the

number of state positions during the biennium will be for correctional officers. There should be no problem with lower level clerical positions, the turnover is high. Beyond that, the worker's compensation classifications are peculiar to the system and there are few calls for employees of those areas.

G. Finally in this area, there are many employees who elected to work at NIC, SIIS or EICON. They may like the work. They don't want to leave. They are good at their job but they do not feel that they should give up what they have taken years to earn. And they will give up a great deal.

These then are the things the employees will be forced to give up with the passage of this proposal:

CURRENT RIGHTS, GUARANTEED BY LAW - ELIMINATED UNDER SB 37

(Management, in its effort to diminish employee opposition, may promise to provide equal or better benefits, but it will not be guaranteed by law or contract. They will do as they wish. The following are not necessarily in order of importance.)

* Dismissal for cause. Currently employees have the right to an impartial hearing if they are fired. The employees of the new company will be at-will employees with no such legal rights.

* ALL leave rights...annual leave, sick leave, catastrophic leave, pay for unused sick leave at retirement, etc.

* Longevity Pay

* A layoff regulation based upon merit and seniority that does not allow the playing of favorites.

* Cash or comp time for overtime. Overtime is time worked in excess of 8 hours per day. As a private employee, overtime will only be time worked over 40 hours per week and there can be NO comp time accumulation.

* A uniform classification and pay system that requires equal pay for equal work and a method for requesting reclassification.

* One of the best retirement plans in the country. SB37 will end coverage under the Public Employees Retirement System. Company employees will be covered by Social Security. Social Security costs the employer and employee 6.2% each. PERS is 19.5%. The difference of 7.1% is not enough to buy a pension as good as PERS, even when combined with Social Security.

* Employer required to pay a specified amount for health, life, dental, vision, disability and job related death.

* A legally binding grievance procedure and a progressive discipline law.

* The right to transfer and/or promote to other state agencies. The right to be restored to your former job if your promotion does not work out.

* The right to participate in the Deferred Compensation Plan and the right to pay for some benefits with pre-taxed dollars.

* The right to return to work after a leave of absence due to on-the-job-injury and the right to have your employer pay your health insurance while on such leave for up to nine months.

* Protection afforded by the State Whistleblower law.

* The right to take examinations and interviews for state jobs without use of leave time.

* All personnel actions to be based upon merit and fitness. Discrimination based upon race, creed, color, national origin, sex, age, political affiliation or disability prohibited.

CONSTITUTIONAL DEBATES.

Nevada Constitutional Debates and Proceedings, pp. 219, 450, 499, 807, 844.

Sec. 2. Annual tax for state expenses; trust funds for industrial accidents, occupational diseases and public employees' retirement system; administration of public employees' retirement system.

1. The legislature shall provide by law for an annual tax sufficient to defray the estimated expenses of the state for each fiscal year; and whenever the expenses of any year exceed the income, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

2. Any money paid for the purpose of providing compensation for industrial accidents and occupational diseases, and for administrative expenses incidental thereto, and for the purpose of funding and administering a public employees' retirement system, must be segregated in proper accounts in the state treasury, and such money must never be used for any other purposes, and they are hereby declared to be trust funds for the uses and purposes herein specified.

3. Any money paid for the purpose of funding and administering a public employees' retirement system must not be loaned to the state or invested to purchase any obligations of the state.

4. The public employees' retirement system must be governed by a public employees' retirement board. The board shall employ an executive officer who serves at the pleasure of the board. In addition to any other employees authorized by the board, the board shall employ an independent actuary. The board shall adopt actuarial assumptions based upon the recommendations made by the independent actuary it employs.

[Amended in 1956, 1974 and 1996. The first amendment was proposed and passed by the 1953 legislature; agreed to and passed by the 1955 legislature; and approved and ratified by the people at the 1956 general election. See: Statutes of Nevada 1953, p. 729; Statutes of Nevada 1955, p. 927. The second amendment was proposed and passed by the 1971 legislature; agreed to and passed by the 1973 legislature; and approved and ratified by the people at the 1974 general election. See: Statutes of Nevada 1971, p. 2267; Statutes of Nevada 1973, p. 1948. The third amendment was proposed and passed by the 1993 legislature; agreed to and passed by the 1995 legislature; and approved and ratified by the people at the 1996 general election. See: Statutes of Nevada 1993, p. 3064; Statutes of Nevada 1995, p. 2899.]

CONSTITUTIONAL DEBATES.

Nevada Constitutional Debates and Proceedings, pp. 219, 220, 450, 499, 792, 807, 844.

WEST PUBLISHING CO.

Taxation ¶ 4.

WESTLAW Topic No. 371.

C.J.S. Indians §§ 88, 89.

C.J.S. Taxation §§ 4, 5, 19.

ATTORNEY GENERAL'S OPINIONS.

State insurance fund is trust fund and fact all disbursements must be authorized does not limit legislature's power to review and control agency budgets. Budget for office of state industrial attorney (now Nevada attorney for injured workers) must be submitted to chief of budget division of department of administration pursuant to NRS 353.210 and, since salaries and other expenses of office are paid from state insurance fund (see NRS 616A.445), budget must be included in executive budget for submission to

legislature. Although state insurance fund is trust fund (see Nev. Art. 9, § 2) and Nevada industrial commission (now state industrial insurance system) must authorize all disbursements under former NRS 616.435 (cf. NRS 616B.089), this does not limit authority of legislature to review and control budgets of agencies operating thereunder. AGO 79-7 (3-23-1979)

Money used to pay workmen's compensation benefits by self-insured employer need not be held in trust account in state treasury. Under provisions of NRS chs. 616A, 616B, 616C, 616D, and 617 permitting employers to be self-insured for workmen's compensation purposes, money used to pay workmen's compensation benefits by self-insured employer need not be held in trust account in state treasury pursuant to Nev. Art. 9, § 2. Statutes provide certain other requirements for protection of employees, and these are enforced by commissioner of insurance. AGO 80-27 (8-6-1980)



THE CONSTITUTION OF THE STATE OF NEVADA

ARTICLE 9 SECTION 2

SUB SECTION 2

Any money paid for the purpose of providing compensation for industrial accidents and occupational diseases, and for administrative expenses incidental thereto, and for the purpose of funding and administering a public employees' retirement system, must be segregated in proper accounts in the state treasury, and such money must never be used for any other purposes, and they are hereby declared to be trust funds for the uses and purposes herein specified."

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April 13, 1999

Senator Randolph J. Townsend
Chairman, Committee on Commerce and Labor
Nevada State Senate
401 S. Carson Street
Carson City, NV 89701

Re: Senate Amendment to Senate Bill No. 37

Dear Chairman Townsend:

I am writing on behalf of the American International Group, Inc. (AIG), one of the largest property and casualty insurers, as well as one of the largest writers of workers' compensation insurance, in the country. We appreciate the opportunity to comment on this very important legislation and wish our comments could be more positive. Unfortunately, we do not think the proposed amendment to the bill will achieve what we believe are the goals of the Governor and this Committee. We, therefore, urge you and the other members of the Commerce and Labor Committee to reconsider the above-referenced proposal and not to adopt it in its current form.

The current workers' compensation law in Nevada was enacted in 1997 with the goal of opening up the workers' compensation market to private insurers and moving away from the previous monopolistic State Industrial Insurance System (SIIS). We, like many other companies, have taken all the necessary licensing steps to enable us to enter the market as of July 1, 1999. As that date approaches, however, we are concerned about potentially problematic provisions in the law.

The current law calls for the division of the old SIIS into two accounts in a new State Insurance Fund: the Account for Administration of Extended Claims and the Account for Administration of Current Claims. Included in Section 616B.087, the section dealing with the extended claims, was a provision that allowed the legislature to approve an assessment on insurers to fund the account. Recent estimates have indicated that the account for extended claims is under funded somewhere in the range of \$600 million to \$1 billion. Private insurers will be entering a new market where, on the very first day, they will potentially face enormous assessments. Any company that wrote insurance in Maine in the mid-1980's and faced huge residual market loads, and survived to tell about it, would almost certainly pause now before entering a similar market situation. Only now are insurers slowly starting to reenter the Maine insurance market. We

Senator Randolph J. Townsend
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appreciate that the amendment to Senate Bill 37 attempts to deal with this deficit situation but, unfortunately, it fails to adequately address our concerns.

The proposed amendment calls for the formation of the Employers' Mutual Insurance Company of Nevada (Employers' Mutual), a mutual insurer that will provide workers compensation and employer liability insurance to employers in the state, as an ongoing concern. This entity will assume all the debts and liabilities of the SIIS and State Insurance Fund. The proposal provides Employers' Mutual with several competitive advantages over private carriers coming into the market. We can only assume that the purpose of this is to enable the entity to write itself out from under the liabilities of the SIIS. While that purpose is laudable, the effect on the market will be the same as that of the current law; private carriers may be reluctant to enter the market. It is not a fear of competition, but a reaction to anti-competitive forces in the marketplace that may cause companies to rethink their business strategies. A level playing field is essential to competition and the advantages granted to Employers' Mutual, such as the reserve discounts available to it, render the playing field uneven and all but guarantees that Employers' Mutual will retain its market share. This may provide a disincentive for insurers and may make the workers' compensation market in Nevada less attractive.

We have recently been dealing with anti-competitive state funds in several states, including Texas, New York and Oregon. The difference is that in those states the tide is shifting and they are moving away from some of the unfair advantages that those funds have enjoyed. In Texas, legislation has been introduced to eliminate the fund's financial advantages and change it from a competitive fund to a market-stabilizing fund. In New York there have been discussions between industry and the Governor's office to eliminate the advantages enjoyed by that state fund, including being able to write workers' compensation policies at discounts of 30 or 40 percent. Lastly, efforts are currently underway to rein in the activities of the Oregon state fund, which is now seeking to compete extremely aggressively with the private carriers. The enactment of Senate Bill 37, with the proposed amendment, would be directionally incorrect for the State of Nevada.

In addition to the anti-competitive aspects of the new entity, the issue of future assessments remains a concern. The proposal does not address what will happen in the event the Governor does not sign the proclamation discussed in Section 151 of the amendment, an indication that Employers' Mutual is not financially stable and not able to reorganize as a private mutual insurer. We fear that the legislature will at that time assess the industry for any remaining liabilities of the SIIS. Also, if the Governor does sign the proclamation and the entity fails after becoming a private company, its outstanding liabilities become a burden for the guaranty fund and, ultimately, industry.

For these reasons, we are skeptical that the proposed amendment to Senate Bill 37 will bring the state any closer to the competitive, private workers' compensation insurance market it seeks.

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Page Three

We, therefore, respectfully recommend that the Committee on Commerce and Labor not adopt the amendment to Senate Bill 37, in its current form.

Sincerely,

A handwritten signature in cursive script that reads "Paul S. Brown". The signature is written in dark ink and includes a long, horizontal flourish extending to the right.

Paul S. Brown

MINUTES OF THE SENATE COMMITTEE ON COMMERCE AND LABOR

Sixty-seventh Session March 8, 1993
The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:30 a.m., on Monday, March 8, 1993,

"Mr. Craigie went on with a discussion of reserve levels needed for the reserve fund to protect against long-term unfunded liability. He stated that right now we would be at a level of about \$566 million at the end of this fiscal year, and that as FY 1994 was entered the figure would be about \$441 million. The actuarial group for SIIS stated they felt the figure should be \$725 million, while Terri Rankin, Commissioner of Insurance, felt the figures should be \$900 million to \$1.4 billion. At Senator Nevin's and Senator Brown's request, Commissioner Rankin gave an explanation on her figures.

Commissioner Rankin stated that the figures she was using were based on the presumption that if an insurance company were to close down today, there would be resources enough to pay all of the incurred obligations from when they were in business. A smaller number could be used if monies were being accrued in a sufficient manner; the larger number if investments were not going so well. Mr.

Craigie stated that the Governor proposed this target as a 6- year

plan. It was felt that you cannot rebuild in a 2-year period; a 6-year cycle was felt to be needed. Mr. Craigie stated the Governor believes the first way to attack this is by dramatically reducing costs. If we take tough steps in cost cutting, we would dramatically reduce the debt level as we go along. The Governor's target for this reserve level would be \$950 million. Mr. Craigie presented (Exhibit F) Projection of Accumulation of Invested Assets, and went on with an explanation. Senator Brown posed the question of reduction for employers, stating that she did not notice any. Mr. Craigie replied that there probably would not be any reduction in payments until the end of 1997. At this time, Mr. Craigie offered, with an explanation (Exhibit G) Projection of Cash Flows, and (Exhibit H) Six Year Plan To Solvency. Senator Townsend, Senator O'Connell and Mr. Craigie proceeded to discuss these exhibits. Marc Hechter, Assistant General Manager, Administrative Services, State Industrial Insurance System, stated that SIIS agreed with the projection presented by Mr. Craigie."

CONSTITUTIONAL DEBATES.

Nevada Constitutional Debates and Proceedings, pp. 219, 450, 499, 807, 844.

Sec. 2. Annual tax for state expenses; trust funds for industrial accidents, occupational diseases and public employees' retirement system; administration of public employees' retirement system.

1. The legislature shall provide by law for an annual tax sufficient to defray the estimated expenses of the state for each fiscal year; and whenever the expenses of any year exceed the income, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

2. Any money paid for the purpose of providing compensation for industrial accidents and occupational diseases, and for administrative expenses incidental thereto, and for the purpose of funding and administering a public employees' retirement system, must be segregated in proper accounts in the state treasury, and such money must never be used for any other purposes, and they are hereby declared to be trust funds for the uses and purposes herein specified.

3. Any money paid for the purpose of funding and administering a public employees' retirement system must not be loaned to the state or invested to purchase any obligations of the state.

4. The public employees' retirement system must be governed by a public employees' retirement board. The board shall employ an executive officer who serves at the pleasure of the board. In addition to any other employees authorized by the board, the board shall employ an independent actuary. The board shall adopt actuarial assumptions based upon the recommendations made by the independent actuary it employs.

[Amended in 1956, 1974 and 1996. The first amendment was proposed and passed by the 1953 legislature; agreed to and passed by the 1955 legislature; and approved and ratified by the people at the 1956 general election. See: Statutes of Nevada 1953, p. 729; Statutes of Nevada 1955, p. 927. The second amendment was proposed and passed by the 1971 legislature; agreed to and passed by the 1973 legislature; and approved and ratified by the people at the 1974 general election. See: Statutes of Nevada 1971, p. 2267; Statutes of Nevada 1973, p. 1948. The third amendment was proposed and passed by the 1993 legislature; agreed to and passed by the 1995 legislature; and approved and ratified by the people at the 1996 general election. See: Statutes of Nevada 1993, p. 3064; Statutes of Nevada 1995, p. 2899.]

CONSTITUTIONAL DEBATES.

Nevada Constitutional Debates and Proceedings, pp. 219, 220, 450, 499, 792, 807, 844.

WEST PUBLISHING CO.

Taxation ¶ 4.
WESTLAW Topic No. 371.
C.J.S. Indians §§ 88, 89.
C.J.S. Taxation §§ 4, 5, 19.

ATTORNEY GENERAL'S OPINIONS.

State insurance fund is trust fund and fact all disbursements must be authorized does not limit legislature's power to review and control agency budgets. Budget for office of state industrial attorney (now Nevada attorney for injured workers) must be submitted to chief of budget division of department of administration pursuant to NRS 353.210 and, since salaries and other expenses of office are paid from state insurance fund (see NRS 616A.445), budget must be included in executive budget for submission to

legislature. Although state insurance fund is trust fund (see Nev. Art. 9, § 2) and Nevada industrial commission (now state industrial insurance system) must authorize all disbursements under former NRS 616.435 (cf. NRS 616B.089), this does not limit authority of legislature to review and control budgets of agencies operating thereunder. AGO 79-7 (3-23-1979)

Money used to pay workmen's compensation benefits by self-insured employer need not be held in trust account in state treasury. Under provisions of NRS chs. 616A, 616B, 616C, 616D, and 617 permitting employers to be self-insured for workmen's compensation purposes, money used to pay workmen's compensation benefits by self-insured employer need not be held in trust account in state treasury pursuant to Nev. Art. 9, § 2. Statutes provide certain other requirements for protection of employees, and these are enforced by commissioner of insurance. AGO 80-27 (8-6-1980)

State Industrial Insurance System **Projection of Accumulation of Invested Assets**

(IN THOUSANDS)

	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
Total Invested Assets, Beginning of Year	440,992	515,217	596,640	685,960	783,943	859,974
Investment Income Reinvested	44,225	51,423	59,320	67,983	76,031	83,405
Additional Funding	30,000	30,000	30,000	30,000		
Total Invested Assets, End of Year	515,217	596,640	685,960	783,943	859,974	943,379

Average Invested Assets ((A+B)/2))	478,105	555,929	641,300	734,952	821,959	901,677
Assumed Rate of Return	9.25%	9.25%	9.25%	9.25%	9.25%	9.25%
Investment Income	44,225	51,423	59,320	67,983	76,031	83,405

Note (1) The above projection assumes that the System is able to reinvest funds over the six year projection period at an average rate of return of 9.25%. This average return is inclusive of interest, dividends and capital gains and approximates the System's current return on invested assets.

Note (2) Additional funding is the approximate amount of savings or revenues necessary to accumulate assets to the desired level at the end of the projection period.

2619
1761 195

SIX YEAR PLAN TO SOLVENCY

(In Thousands)

	<u>FAY 94</u>		<u>FAY 95</u>
SIIS PROJECTED		SIIS PROJECTED	
CASHFLOW SHORTFALL	200,945	CASHFLOW SHORTFALL	297,404
INTEREST & DIVIDENDS	31,694	INTEREST & DIVIDENDS	21,243
ADDITIONAL FUNDING TO		ADDITIONAL FUNDING TO	
INVESTED ASSETS	<u>30,000</u>	INVESTED ASSETS	<u>30,000</u>
	262,639 *		348,647 *

* This would be the target assuming all reforms (deductible, TTD & TPD, managed care rehabilitation, pension grants, PPD and appeals reform) are fully in place & saving at 100 percent of their potential as of July 1, 1993.

** This would be the target assuming none of the reforms are in place before July 1994, yet are in place saving at 100 percent on July 1, 1994.
Also, assumes no additional funding to invested assets during FAY 93 or FAY 94

196
2620

**Within the last six (6) years, five (5) states have reinstated a state fund.
They are as follows:**

**New Mexico
Maine
Kentucky
Louisiana
Rhode Island**

**These states had private insurers and self insured employers. The biggest reason
for reinstating a state fund was to assist small business in getting Worker
Compensation coverage.**

Reno Gazette Journal

12/17/98

Rate cut for employers

ASSOCIATED PRESS

An average rate cut of nearly 14 percent has been approved for Nevada businesses that have state insurance policies to cover injured workers.

The cut is the third from what's now known as the Employers Insurance Company of Nevada in the past three years. It follows a 22 percent cut last April and a nearly 8 percent cut in early 1996.

Insurance Commissioner Alice Molasky-Arman said the latest decrease includes discounts for big employers plus a nearly 7 percent decrease in the overall standard premium that employers pay for worker compensation policies.

The actual premium change for an employer will vary depending on the business of the employer. Typically, a clerical business will get a better rate than, say, a mining company.

I AM HERE TO URGE THIS COMMITTEE TO VOTE YES ON SB 37 BASED ON IT'S MERITS AND NOT ACCORDING TO POLITICAL PARTY AFFILIATION.

AS I SEE IT, THE ISSUES ARE THE ABILITY OF THE WORKERS COMPENSATION SYSTEM TO CONTINUE TO PROVIDE BENEFITS TO INJURED WORKERS AND THE FATE OF THE EMPLOYEES.

AS A PRIVATE COMPANY, EMICON WOULD BE BETTER ABLE TO COMPETE IN THE 3-WAY COMPETITIVE MARKET BY BEING PLACED ON A LEVEL PLAYING FIELD WITH ALL THE OTHER PRIVATE COMPANIES COMING IN ON 7/1/99. THE STATE SHOULDN'T HAVE ANY MORE CONTROL OVER ONE COMPANY THAN ALL THE OTHERS. EMICON SHOULD BE ALLOWED TO RECRUIT, HIRE, PAY INCENTIVES, LAY-OFF AND OTHERWISE ADJUST TO FLUCUATIONS IN THE MARKET PLACE LIKE THE COMPANIES IT WILL BE COMPETING AGAINST.

I SEE PASSAGE OF SB 37 AS A WIN WIN SITUATION. THERE ARE EMPLOYEES WHO WANT TO REMAIN STATE EMPLOYEES AND THE CHANCE OF THAT WILL BE INCREASED WITH PASSAGE OF SB 37 IN THAT THE "SAFETY NET" CALLS FOR THE LIFTING OF THE HIRING FREEZE, THE OPTION OF PUTTING OUR NAMES ON A REEMPLOYMENT LIST THAT WILL BE GOOD FOR 2 YRS EVEN IF WE DON'T ACTUALLY GET A LAY-OFF NOTICE, PREFERENCE ON THAT LIST, 60 DAYS WRITTEN NOTICE OF A LAY-OFF, AND \$2 MILLION FOR RETRAINING THROUGH DETR.

FOR THOSE WHO WANT TO RETIRE, THE BUY OUT OF UP TO 5 YEARS OF SERVICE CREDIT IS MOST GENEROUS.

WITHOUT PASSAGE OF SB 37, YES, EMPLOYEES WILL STILL HAVE THEIR STATE RIGHTS, BUT WHAT GOOD WILL THEY DO THEM IF THERE ARE NO JOBS AVAILABLE IN THE STATE SYSTEM.

THE BENEFITS OFFERED BY EMICON WILL BE DIFFERENT, BUT IT SOUNDS LIKE A GOOD PACKAGE IS BEING PUT TOGETHER. A FOCUS GROUP ON PENSION AND PERSONNEL ISSUES WAS HELD LAST WEEK WITH INPUT FROM EMPLOYESS FROM ALL DEPARTMENTS AND LEVELS OF SENIORITY.

PLEASE BE AWARE THAT SNEA AND AFL-CIO DO NOT REPRESENT THE VIEW POINT OF THE EMPLOYEES OF EICN. THEY DIDN'T EVEN POLL THE EMPLOYEES TO SEE HOW MANY WERE IN FAVOR OF SB 37. THEY ARE OPPOSED TO ITS PASSAGE WHETHER WE ARE OR NOT.

RESPECTFULLY,

Holly Waddell

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

**Seventieth Session
May 12, 1999**

The Committee on Commerce and Labor was called to order at 2:15 p.m., on Wednesday, May 12, 1999. Chairman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All Exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Chairman Buckley, Chairman
Mr. Richard Perkins, Vice Chairman
Mr. Morse Arberry, Jr.
Mr. Bob Beers
Ms. Merle Berman
Mr. Joe Dini, Jr.
Ms. Ms. Giunchigliani
Mr. David Goldwater
Mr. Lynn Hettrick
Mr. David Humke
Mr. Dennis Nolan
Mr. David Parks
Mrs. Gene Segerblom

COMMITTEE MEMBERS EXCUSED:

Mrs. Jan Evans

GUEST LEGISLATORS PRESENT:

Senator Randolph Townsend, Senatorial District 4
Senator Schneider, Senatorial District 8
Assemblyman Bernie Anderson, Assembly District 31

STAFF MEMBERS PRESENT:

Jan Needham, Committee Counsel

Ms. Giunchigliani asked for clarification regarding the proposed amendment. Chairman Buckley confirmed the amendment proposed by Mr. Nolan originated in the letter from Mr. Robb, which would amend section 18, subsection 3. She asked if there were additional questions or comments and there were none. She called for a motion.

ASSEMBLYMAN BEERS MOVED TO AMEND AND DO PASS
S.B. 103.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED.

The Chairman closed the hearing on S.B. 103 and opened the hearing on S.B. 37.

Senate Bill 37: Makes various changes regarding industrial insurance.
(BDR 53-382)

The Chairman explained the committee had heard descriptions of the measure in an overview presented in a previous hearing and suggested the proposed legislation be reviewed in a section-by-section analysis.

Leonard Ormsby, General Counsel for Employer's Insurance Company of Nevada (EICN) presented the committee with an index of sections for a proposed amendment to the measure (Exhibit E). He said it was important to recognize the majority of the sections aligned what used to be the State Industrial Insurance System with private carriers. Upon passage of the proposed legislation and providing all conditions were satisfactory, Mr. Ormsby pointed out, EICN would be a private insurance carrier just as the other 240 private carriers seeking business in the State of Nevada would be. Section 1 aligned the system with a private carrier for unemployment consideration. He provided the committee with a detailed explanation of the measure (Exhibit F).

Chairman Buckley stated that six sections of the measure reflected the system would no longer be a state agency. Mr. Ormsby said the current language stated the insurance carrier would be from the private sector. Section 3 stated NRS Chapter 616 would control any conflict with Title 57 that might arise. Section 5 was significant because that language stated the successor organization must honor and perform the contractual duties, which currently existed in the system. Section 12 removed the responsibility for licensing

employer's leasing companies and transferred it to the administrator of the Department of Industrial Relations. A lengthy discussion was expected to occur on the constitutionality of various provisions in section 17 as contained in article 9, section 2, of the constitution, because section 17 dealt with monies already paid into the state fund. Also, section 17 required the Chief Executive Officer of the successor organization to use those monies to pay for providing compensation for industrial insurance claims and occupational diseases, as well as administrative costs. Therefore, the constitutional obligation for the use of those funds would continue to the successor. If the successor organization ceased to provide workers compensation insurance, those monies would be taken over by the insurance commissioner who would be the receiver of the action. The insurance commissioner would take possession of the monies, would deposit them in the state treasury, and would be responsible for their administration for the purpose as provided for in the constitution. Section 18 created the state insurance fund and required the state treasury to fulfill the requirements of section 17.

Mr. Ormsby pointed out section 19 was a provision that caused some confusion. It authorized the successor organization to discount reserves for those monies associated with claims prior to July 1, 1995, which could only be discounted 6 percent; however, that issue had nothing to do with claims going forward. Section 20 removed employees of the system from the Personnel Act and expanded the re-employment rates of employees currently under existing rules. All state employees had 12-months tenure on the re-employment list, which, under the provision, would be expanded to 24 months and require a 60-day minimum notice to any employee laid off either by the system or the successor organization. Sections 24, 25, & 26 dealt with removing the requirement, and all reference to, classified service for employees. Sections 27 and 28, as stated in A.B. 609, were the provisions that transferred \$650 million for claims that pre-dated July 1, 1995. The measure removed the accounting separation and put all funds together. Section 32 provided for the removal of the penalty charge for non-payment of premiums. Section 44 through 49 transferred those specific statutory requirements that were associated with employer leasing companies.

Sections 61 through 69, Mr. Ormsby continued, provided for the authorization of the manager of the system to hold hearings, issue subpoenas, and pay witness fees that arose out of the manager's hearings. Section 70 provided that private carriers to be treated the same as public insurance carriers. Section 80 transferred responsibility because it removed the mandate that the system be the administrator of the uninsured fund. It also authorized Division of Industrial Relations (DIR) to bid on the selection of an administrator who would administer the uninsured claims fund. Section 82 removed the mandate that the system

was required to provide workers compensation for prison industries. Section 89 changed the rules for DIR assessment by basing it upon annual expenditures on claims for injuries that occurred on or after July 1, 1999. After that time, rather than employers being self-insured, there would be private carriers as well as self-insured families. Therefore, the assessment mechanism established by DIR would be changed. The system would provide home office credit, which benefits all insurance companies as long as they qualified and provided they benefited from the system until January 1, 2000. At that time, provided all conditions were satisfied, the new company would qualify as a carrier. Section 122 was a provision for employees who were working at front desk jobs, or who were working at jobs they held for many years, that would provide a three-year window to allow them to fit into the new organization while down sizing occurred. The provision would amount to a three-year grandfather provision and would exempt them from the licensing requirement. Upon the expiration of the three-year window, licensure would be required.

Continuing on, Mr. Ormsby explained section 128 was the most important part of the measure. It provided the transitory language and would not be codified. It would, instead, be reflected in statute as either a reviser note or an insert that followed related chapters. Under the provision stated within section 128, the manager must take the necessary steps to create a Domestic Mutual Insurance Company (DMIC). Necessary papers must be filed with the insurance commissioner in order to receive a certificate of authority. The Governor would appoint an advisory committee based upon geographic locations of employers and the size of the company, which would assist in the preparation and adoption of the first bylaws of the DMIC. Prior to January 1, 2000, the insurance commissioner must conduct a financial solvency examination of the proposed DMIC, which would be similar to any routine examination conducted on new insurance companies that might file for a certificate of authority. Upon the satisfaction of all conditions, the commissioner would issue a certificate of authority to be effective January 1, 2000. Section 129 identified the precedent described above. All outstanding issues must be resolved prior to the new company coming into effect on January 1, 2000. The conditions that must be satisfied before the insurance carrier could be installed were as follows:

- The contracts must be in place and in effect;
- It must be established that the DMIC was formed properly under the laws of the State of Nevada.;
- All conditions must be satisfied before the Governor proclaimed the DMIC was in existence on January 1, 2000. That would amount to a favorable

ruling from the Internal Revenue Service, which had been requested and whose decision was currently pending; and

- The certificate of authority must be issued by the insurance commissioner.

After all conditions were satisfied, the Governor could issue a proclamation in December of 1999 stating that on January 1, 2000, the following events would occur:

- The system would transfer all system assets to the newly formed DMIC;
- The new mutual insurance company would assume all debts and liabilities of the system;
- Division of State Lands would transfer title to the real property, which was currently held in the name of the state, pursuant to state law, and the titles would be transferred to the new DMIC; and
- State Archives would release all business records for the system that were currently being held in archives. The certificate of authority from the insurance commissioner would be effective on January 1, 2000.

Mr. Ormsby continued by pointing out sections 130, 131, and 132 addressed the reemployment rights of classified personnel. All employees would go on the re-employment list for a maximum of 24 months. The provision would apply not only to permanent state employees, but probationary employees as well. Section 133 provided for the establishment of a fund in an amount not to exceed \$2 million to be used for retraining of employees who had been laid off. Section 134 was a provision to provide for the purchase of five years of service credit for any employee who would be eligible to retire at an unreduced rate with the purchase of 5-years. Currently, law provided for an employer to contribute toward retirement payments for the purchase of five years service credit for an employee who was laid off. The legislation proposed providing 5-years of service credit and payment of the entire amount for those people that qualified. Section 135 dealt with contracts that were entered into within the last year or two, specifically if they dealt with retrospective rating agreements. Those were contracts that were entered into in the early part of 1999 and which were 2-year agreements based upon the current rating schedules.

Section 135 stated contracts were enforceable without modification until they were either renewed, reissued, or amended. It honored those contracts that were entered into with policyholders effective June 30, 1999. Section 136 was a clean-up provision that stated a certified employee-leasing company would survive the July 1, 1999 date even though the responsibility had been transferred to DIR. Section 138 provided that all employees still in the system on December 31, 1999 would automatically transfer as an employee of the new company effective January 1, 2000.

Mr. Hettrick asked Mr. Ormsby if the agency were privatized and property casualty policies were being written, would there be any questions in the future that these were going to be commingled assets, or would they be accounted for separately. Douglas Dirks, representing EICN explained the proposed legislation by stating the measure was structured in a manner to maximize its ability to write other lines of insurance in the future that required another source of surplus other than the surplus derived from assets transferred and held in trust.

Assemblyman Goldwater stated privatization amounted to an employee buyout. Regarding policy holders purchasing the assets that were held in title of the state, he asked Mr. Ormsby if the assets were actually owned by policyholders. He said he had seen similar employee buyouts. It was more a question of establishing the value of the assets and what people were willing to pay for them. Through the benefit of the state, those employees received a substantial discount for the purchase of those assets. If they had received the discount, the taxpayers should get the benefit of it on the back end.

Leonard Ormsby said Pamela Wilcox, Administrator of Division of State Lands was prepared to answer the question. He added she was prepared to testify before the committee later in the hearing.

Ann Nelson, representing Employers Insurance Company of Nevada, was called upon to testify. She said the Musser Street buildings were purchased by the Nevada Industrial Commission (NIC). NIC purchased the land, built the buildings, and pursuant to the legislation passed in 1983, the title to the land and the buildings was transferred from the NIC to the State of Nevada, Division of State Lands (Exhibit G).

Chairman Buckley called upon Legislative Counsel Bureau Counsel, Brenda Erdoes. She asked for a legal opinion to review the constitutionality of S.B. 37. Ms. Erdoes provided the committee with a document explaining the main issues she discovered through her research while drafting S.B. 37 (Exhibit H). She explained the handout was the needed for an IRS opinion and gave a good idea of what was looked at and why an opinion was not issued stating the proposed

legislation was unconstitutional. She said in legislature if a measure was drafted and it was possibly unconstitutional, a letter of unconstitutionality would be sent. Exhibit H was that letter, in which six major issues were identified. The first one was the issue that had been raised whether subsection 2 of section 2 of Article 9 of the Constitution of Nevada, which regulated money paid for purpose of providing workers compensation, was violated by S.B. 37. To understand the issue, a brief analysis of how the section came about was provided. One of the major things courts looked at was what happened at that time and what the statute was trying to accomplish. In regards to the proposed legislation, the stage was set for section 2 of Article 9. The money for worker compensation payments was already held in the state treasury. The money needed to be segregated into proper accounts in the state treasury and it could not be used by the state. The question needed to be asked if the money had to remain in the state treasury or must it be segregated into proper accounts and not be used for anything other than its intended purpose. Historically, since 1989, it was apparent that it was intended for the money to be segregated and held in trust for the benefit of injured workers. The proposed legislation shifted the trustee from State Industrial Insurance System (SIIS) to the new company. That was the theory, she explained, and it should be upheld.

Ms. Erdoes pointed out there were other issues related to holding that money and cases that might appear to go the other way; however, Legislative Counsel Bureau found no case that actually lead the agency to believe the measure would be considered unconstitutional. Another issue Legislative Counsel Bureau reviewed was if state and federal constitutions forbade the passing of laws that might impair obligations of contracts. There were two cases, one in Oregon and one in Oklahoma, where the issue was raised and the court overturned the actions of the legislature. The cases were clearly distinguishable because both cases occurred because the legislature used funds being held in trust for injured workers for another use. The money was put into their General Fund and used for things other than providing benefits to injured workers. Ms. Erdoes said there was an impairment of contracts, which was a good thing, because the impairment of contracts would have been an issue concerning policyholders, particularly the people who paid money into the fund. Nevada's constitution required that money be held in trust for injured workers, which concerned a different group of people.

The third issue Legislative Counsel Bureau reviewed was whether the state and federal constitutional provisions forbade the taking of private property for public purposes without due process. The payment of just compensation was violated by S.B. 37. There was a case in the State of Utah in which the legislature put workers compensation funds in its General Fund and used the money for

something other than that purpose. She did not believe that would be considered taking property because the Nevada Constitution said the state could hold that money in trust for injured workers. Another issue Legislative Counsel Bureau researched was section 1 of Article 8 of the Nevada Constitution, which, under certain circumstance, prohibited the state from creating a corporation by special act. The reason that law came into play was because of an old case, called the Toll Road Case from 1875, in which legislation similar to S.B. 37 allowed a manager to take whatever action he considered to be necessary to create a corporation. The legislation was struck down under section 1 of Article 8. The case hung on the point that the legislature allowed the company to incorporate for the purpose of providing toll roads and that was not something that could be incorporated in the state at that time. That was not the case here, she continued, because there were many other mutual insurance companies and authority granted under S.B. 37 was intended to incorporate under the general law of the state, therefore there were no special benefits provided in terms of incorporation.

The fifth issue Legislative Counsel Bureau reviewed was section 9 of Article 8 of the Nevada Constitution, which stated under certain circumstances the state was prohibited from donating money to a company, association, or corporation. There were differences of opinion regarding the transfer of assets and liabilities in the current system to the new company relative to its worth, if anything. Legislative Counsel Bureau, she pointed out, was concerned as to whether there would be a violation of section 9 of Article 8 regarding the proposed legislation. It was determined the section did not apply to money that was not state money. The money in the fund was treated as if it belonged to policyholders, from the beginning. The money was placed in investments that were not intended for state money, such as corporation stocks.

The last issue Ms. Erdoes said she reviewed was the constitutionality of the doctrine that prohibited a legislative body from unlawfully delegating pledge authority, which was called into play by what was referred to as the trigger mechanism in S.B. 37. That provision required the Governor to make a proclamation to make many sections of the measure effective if a series of circumstances were met. Legislative Counsel Bureau wanted to ensure there was nothing there that would cause an unlawful delegation. The Governor had very little discretion regarding that provision. She said the reason Legislative Counsel Bureau believed it was constitutional was that those funds remained in trust. The trustee was what was changing, the money would come out of trust, which remained in place, and only the trustee was moving.

Chairman Buckley asked how the Attorney General's opinion applied to the current issue because it was issued in 1980. Ms. Erdoes said the Attorney General's Office made a determination regarding NIC, particularly if funds from the state treasury could be used to pay workers compensation benefits to self-insurers. The issue was reviewed to determine if existing or additional authority was allowed to do what S.B. 37 was intended to do. Ms. Erdoes explained changes were made in 1989 to stipulate money could not be held in that trust fund nor in the state treasury.

Blackie Evans, Executive Secretary and Treasurer of the Nevada State AFL-CIO, was called as the next witness to testify on the proposed legislation. He explained he had been the commissioner of NIC from 1971 to 1978, after which time he became the executive secretary and treasurer of the Nevada AFL-CIO and chairman of the advisory board to the old insurance commission. Legislation was passed, which allowed self-insurers to self-insure rather than permit a monopoly of the state fund. Mr. Evans pointed out there was concern money was not being placed into the trust fund. A letter was drafted requesting an opinion from Richard Bryan, the Attorney General of Nevada in 1980. The Attorney General's opinion stated self-insurance monies did not have to be put into the trust fund. Throughout the years he served as a commissioner and as a member of the advisory board, Mr. Evans explained, he was told the workers' compensation system was provided for in the state constitution, and money intended for that purpose could not be taken out of the fund for any function other than its intended purpose unless the issue went to a vote of the people and the constitution was changed, which agreed with the Attorney General's opinion of 1980. Mr. Evans said that by enacting the constitutional trust in 1955, the voters of Nevada ensured NIC monies would not be subject to any variations for any other purpose except by subsequent vote of the people. By stating NIC monies were to be segregated into proper accounts in the state treasury, the legislature intended for those monies to be considered part of the state treasury in a restricted capacity for a particular use or purpose.

Mr. Evans explained that legislation established that the state treasurer was not empowered to disperse NIC monies. The same discussions were routinely held whenever NIC buildings were considered for sale. Regarding Jean Hannah Clark Rehabilitation Center, he said, those monies were not employers' money, the funds belonged to injured workers. Governor O'Callahan, in 1973 felt strongly that there was no rehabilitation offered for workers' compensation. An arrangement was made to provide injured workers with approximately 20 percent of a person's partial disability. A significant amount of money went to injured workers, which was forfeited for full rehabilitation. Rehabilitation funds were used to build the Jean Hannah Clark Rehabilitation Center. It was not entirely accurate to say that money belonged to employers. It was employers'

money that had been paid for the benefit of injured workers. Part of that money was used to build the rehabilitation center. He said that since the workers' compensation system was reformed in 1990 the system had declined. He said one more reform of the system and injured workers would be in a great deal of trouble. He suggested putting the issue to the voters by placing it on the ballot.

Chairman Buckley asked Attorney General Frankie Sue Del Papa to share her opinion on the matter.

Attorney General Frankie Sue Del Papa introduced Tom Patton, Special First Assistant Attorney General and John Hanson, Claims Administrator for the Office of the Attorney General. She explained the Nevada Constitution, Article 9, section 2, required that any money paid for the purpose of compensating industrial accidents and occupational diseases, as well as for associated administrative expenses, must be segregated in proper accounts in the state treasury, and must not be used for any other purpose. The money was to be declared held in trust for such purposes. Also, the Nevada Constitution Article 8, section 9, prohibited donations, loans, or the issuance of credit by the state to any company, association, or corporation, except corporations formed for educational and charitable purposes. Furthermore, the purposed transfer of assets, cash, stocks, bonds, and property to a private for-profit corporation would raise serious constitutional concerns in light of provisions previously mentioned. The Attorney General stated her research into the matter had not resulted in a conclusion that the transfer of assets as proposed in S.B. 37 would pass constitutional scrutiny. Ultimately, the constitutionality of the proposed legislation would be a matter for the judicial system to decide.

The passage of S.B. 37 would result in immediate litigation that would challenge the legality of the legislation, Attorney General Del Papa continued. Most notable was the fact the Office of the Attorney General was not the official legal representative of the Employers Insurance Corporation of Nevada (EICN) and no provision had been made in S.B. 37 to address potential litigation, which would most certainly result upon passage of the measure. Rather than see such litigation arise, it would be advantageous to fully examine the proposed legislation and thoroughly analyze both the legal and financial ramifications of the measure. She recommended a more careful and exhaustive study be done, which should be undertaken by the legislature in cooperation with the Governor's Office as well as her office. The Attorney General said the matter was of enormous financial importance to all Nevadans, particularly because there were approximately \$1.5 billion at stake. It was an issue of great magnitude that deserved to be approached with the utmost caution, planning,

and expertise. Unfortunately, she continued, the current climate was one of urgency and the perceived need to act with urgency was not conducive to careful, thoughtful, and accurate analysis of the complex problem.

Chairman Buckley asked if it was the opinion of the Attorney General that thorough research was needed to avoid unnecessary litigation stemming from concern regarding Article 9, section 2 of the Nevada Constitution, particularly the issue relating to money that had been accepted toward premiums. There was also the issue regarding the constitutionality of transferring funds outside the state treasury system. The Attorney General said there was a question regarding Article 9, section 2, which required funds in the trust account to be maintained in state accounts. By enacting the constitutional trust, the voters of Nevada ensured that NIC money would not be subject to diversion for any other purpose except by subsequent vote of the people. Up until the present time, there had not been any vehicle available to the Office of the Attorney General to consider many important issues. The most important question was should the constitution be amended to allow transfer of money to a private insurer from the trust fund established through SIRS accounts. The other question was if trust funds were established for the benefit of employers and employees, what safeguards were in place to protect claimants if funds became insolvent. The old claims vested the rights of claimants. Attorney General Del Papa asked if the transfer of the trust fund would affect those rights.

Mr. Hettrick said he was not an attorney and would not presume to tell the Attorney General whether she was right or wrong. He pointed out the argument he heard a moment ago was that money was not being diverted for other uses. It was being diverted to continue a trust fund for the benefit of injured workers. He said the question was what would happen if there was insolvency in the fund. Insolvency would be handled for a private insurer the same way it would be handled for any company operating within the state, which would be through the establishment of a state reserve set up by other insurance companies who would pay benefits in order to minimize loss to injured workers. He explained he wanted to find answers to questions that remained unanswered. He said the State of Nevada needed to move quickly, and input from those who had been working on the issue was needed to try to come to some quick resolutions in order to move forward.

Attorney General Del Papa said her office stood ready and committed to that end and she had communicated that to the Governor's office, and to Legislative Counsel Bureau. She said there were very real concerns still remaining along with unknowns that no one could predict. If there was anything her office

could do to assist the process she would be willing to accommodate. Until the Supreme Court ruled on an issue of this magnitude, real concerns were looming at every turn.

Chairman Buckley asked the Attorney General if she would comment on Mr. Hettrick's first point, which was also made by Ms. Erdoes regarding the fact the money was still going to be held in trust for the same purpose with only the trustee changing. Attorney General Del Papa pointed out she was hampered by the fact her office was not acting as counsel. It might take a constitutional amendment to effect the desired changes, she added.

Tom Patton, First Assistant Attorney General, was called upon to address the issue. He explained there were many difficult issues involved in the matter. It was important to understand the argument revolved around the issue that the trust concepts of Article 9, Section 2 of the Nevada Constitution would not be violated, which concerned the use to which those funds would continue to be applied. There was the added question of how the funds would be managed if they were no longer in the custody of the state treasurer, which was a protection placed into Article 9, section 2. The funds would come under the administration of the private company. The question remained if that action would require a constitutional amendment to implement. He said no one knew the answer to that question for certain. Article 9, section 2 had been interpreted as meaning that so long as the state remained in the business of industrial insurance, all funds collected must remain in segregated accounts in the state treasury. However, the Office of the Attorney General had not had a chance to determine if it agreed with that interpretation. Also, there was a myriad of other issues involved, such as the \$ 2 million dedicated in one section to be used for retraining SIFS employees. The fact was, Mr. Patton concluded, was the responsibility for defending against all possible issues as well as the constitutionality of the measure would fall on the Attorney General's Office.

Chairman Buckley asked Mr. Patton if that was because he expected the state to be sued as opposed to the new company being sued. He said he predicted there would be an action to enjoin application of the law and the constitutionality of the law would be called into question. It would be his job then to step in on behalf of the legislative body because that was the entity that enacted the law.

Mr. Scott Scherer, General Counsel for the Office of the Governor, pointed out the Governor's intention was to privatize the old state industrial insurance system as he announced in January at the State of the State speech over four months ago. The major amendment to the measure that constituted that action was the proposed legislation as introduced approximately two months ago. Mr.

Hansen from the Attorney General's Office had sat through virtually every hearing on the measure, including all the hearings on the Senate side. Jim Smith from the Attorney General's Office had been in contact with Ann Nelson two months ago to discuss the measure. Obviously, the measure had been reviewed. Ms. Nelson and Legislative Counsel Bureau researched all of related issues when the measure was being drafted and there were extensive discussions regarding all controversial issues.

Regarding the constitutionality of the proposed legislation and related legal issues, Mr. Scherer continued, the language stated that any money paid for the purpose of providing compensation and for the purpose of funding the public employees retirement system must be segregated in proper accounts in the state treasury. That money must never be used for any other purposes. The entire focus of the section was to determine the purpose for which the money was to be used. Ms. Erdoes pointed out the fund was to be placed in the state treasury. There were no private insurers in the State of Nevada offering workers compensation insurance. There were no self-insured employers. Regarding the 1980 opinion issued by then Attorney General, Richard Bryan, Mr. Scherer said, he agreed with Mr. Evans that the money was to be held in trust for the benefit of injured workers. That was money paid by employers, but held for the benefit of injured workers; therefore, it was essentially the employees' money, intended for their use only.

Mr. Scherer agreed with the observation of Mr. Hettrick who pointed out the language stated money could not be diverted for any other purpose except by subsequent vote of the people. On page 126, Attorney General Bryan referred to the only legislative history available on the provision, which was in 1953 and 1955, before it was put to a vote of the people in 1956. In a publication issued by the state printing office referring to the amendments, the amendment would prevent any monies collected by the Nevada Industrial Commission from being used in any other manner or for any other purpose then those specified. Again, the focus was on the purpose for which the monies were being used. Turning to page 127 of that opinion, a discussion ensued regarding self-insured employers and the fact money needed to continue to be held in trust even with self-insured employers. While this scheme allowed self-insurance, there were a number of regulatory controls that required self-insured employers to meet certain minimum financial thresholds to deposit money into an account and to insure that the claims would be paid. Through the regulation imposed by the State of Nevada, those self-insured employers were creating a form of trust.

Mr. Scherer pointed out another important aspect of the proposed legislation

was the issue of the re-training dollars that had been raised. He said his office did not want the measure to go forward without that provision. He said the issue was an administrative expense incidental to the measure. Just as the payment of salaries and benefits to employees of the system had to be considered in order to process claims, there was an incidental expense, or administrative expense, attached. Payment of severance benefits to employees who were laid off was also a proper administrative expense. The question had been raised in regard to Public Employees Retirement System (PERS). An amendment was passed in 1956 by the voters, which was the beginning of the program and by 1974, PERS was added. In 1996 a resolution was passed that included additional provisions for PERS. Provisions in subsections 3 and 4 specifically prohibited PERS from loaning money to the state. It was already clear from the 1974 amendment the state could not just take money, but in 1996 a provision was added that said PERS could not lend money either, nor could it buy state bonds. PERS, in subsection 4 of the constitutional provision, mandated the system must be governed by a public employees' retirement board and there must be an executive officer to administer the board. There were additional provisions in place for PERS that were specifically added in 1996.

Mr. Scherer concluded by explaining if the constitutionality of an act passed by the legislature was called into question, the Attorney General would be involved in defending the lawsuit. It would not be any different in the present situation.

Chairman Buckley asked if Mr. Scherer thought anyone requested the Attorney General do an opinion, to which he responded in the negative. He added the Attorney General's Office was working with the Legislative Counsel Bureau, which was the counsel for legislature, to ensure the measure was constitutional. Chairman Buckley said she intended take a committee vote for a waiver of the deadline to provide an additional week for further hearings, discussions, and to allow the committee enough time to review the proposed legislation. Mr. Scherer stated his office was concerned about the gamble mentioned previously by Mr. Ernaunt regarding July 1, which was when the three-way system was scheduled to begin. He said it was not an issue that could be studied in the interim for consideration next session.

Ms. Nelson, of EICN, stated she wanted to reiterate several points Mr. Scherer made. She said she understand the committee's concern regarding the constitutionality of the issue as well as the legality of the measure. She explained she wanted to assure the committee that as the agency proceeded to review the proposed legislation the same legal questions were being asked from the beginning. She said the Attorney General's Office did not represent EICN, which was why a legal opinion from Steve Wather and Rick Shoe of the law

firm of Wather Key had been presented to the committee. Discussions with that office had been ongoing since late January 1999 regarding various legal aspects of the measure. She said she also worked very closely with Brenda Erdoes, and the Legislative Counsel Bureau staff to ensure all legal and constitutional issues had been addressed. The only other point she made was a correction regarding the custodian of the trust fund currently, which had been stated earlier to be the state treasurer. That was not correct. The custodian of the trust fund currently, pursuant to Nevada Revised Statute (NRS) 616, was Doug Dirks, the manager of the system.

Chairman Buckley said time was limited and there was less time to dismantle a system that had been in existence for a longer time than the committee had to study the issue involved. She said she had received various correspondences, e-mails, and phone calls regarding the issue. Some were concerned NRS 284.636 stated individuals who would become unemployed from dismantling the state workers compensation system would be placed in a different class or department and would have to serve a new probationary period. She asked Mr. Ormsby to address the issue.

Mr. Ormsby said the measure did not address that issue. He considered it to be a state personnel matter that would apply to employees who were laid off within the system. Currently, if an employee were laid off through downsizing, that employee would receive no re-employment rights under the state personnel rules. Under the proposed legislation, those re-employment rights would be provided and extended to probationary employees as well as permanent employees. A probationary employee of the system, laid off on July 1, 1999 would not become permanent until July 14, under the measure, at which time they would be given the same re-employment rights as a permanent employee.

Chairman Buckley said her next question pertained to buyouts and retirements. NRS 286.3007 did not require state workers to be 60 years old to retire. Some individuals had retirement eligibility papers from PERS, but they were not 60 years old yet though eligible to retire. S.B. 37 would only allow those state employees who were 60 years old or who had 25-years of service with the state to receive the benefit. She called upon Ms. Nelson for comments.

Ms. Nelson said S.B. 37 stated individuals could purchase up to 5-years of retirement if they were eligible to retire through that purchase even if they were not yet 60 years of age because they would qualify under PERS.

Mrs. Segerblom stated a state worker had to have 20-years of service with the state and be 60 years of age to retire. She said she quit at an earlier age and had to wait until she was 60, but she had worked for the state for 20-years.

Chairman Buckley said part of the proposed legislation dealt with a benefits' package for the long-time, loyal state employees. She wanted to see what could be done for them. There were estimates that hundreds of employees would be laid off if the system was privatized. The question from her constituent had been that she had been in the agency a long time and under current law she was protected. If the program was mutualized, that worker would have no protection under the law. The Chairman said a balance had to be struck.

The Chairman asked what type of re-training was to be expected under the new system. Ms. Nelson said she had numerous discussions on that issue. Re-training would be individualized for each individual employee. Needs, skills, and interests would all be personally assessed.

Ms. Nelson said downsizing would be done by need and merit under personnel rules according to seniority. Five-years of retirement credit could be acquired by a purchase of retirement credits, but it was only 5 percent plus 5 percent per year the employee had worked. Under S.B. 37 employees would be removed from the hiring freeze for priority re-hiring. Under the Personnel Act the hiring freeze would remain in tact. Under S.B. 37, employees were eligible to place their names on the re-hire list upon passage and approval. Under the Personnel Act they were not eligible to be placed on the priority rehire list until they had been laid off.

Mr. Ormsby said re-employment rights would be effective July 1, 1999 because of the budget.

Pamela Wilcox, Administrator of the Division of State Lands, was the next witness to testify on the proposed legislation. She said she had been asked to present the committee with an amendment to the legislation, which was a technical amendment that had received the concurrence of all concerned parties (Exhibit I). Since some questions had been raised about the land assets the measure affected, Ms. Wilcox explained, it would be appropriate to discuss land assets. The land assets of the Industrial Insurance System were all acquired by the system in the distant past. The earliest was acquired in 1949 and the most recent in 1986. Prior to 1977, state agencies all did their own land work. In 1977, the legislature amended state law to provide that title to all state land would be held in the Division of State Lands. Clearly they did this both in order to provide both professional quality services to state agencies as well as to avoid the possibility of abuse. SIIS at that time was the Nevada Industrial Commission and that agency resisted transferring title to the Division of State Lands. A measure was passed by the legislature in 1983, which was codified

as NRS 616B.176, providing real property acquired by the system would be held by the Division of State Lands. The system would retain sole power to sell or exchange those properties, the proceeds from which had to be deposited in the state insurance fund. Although title was held in the Division of State Lands it was clear those lands remained assets of SIIS and, should they be sold, the funds would have to be put back into the state industrial insurance fund.

Ms. Wilcox said the amendment requested was simple language. The agency noted some of the land was contained in the capital complex, which needed to remain in tact. If the system had not been mutualized it would have been decided in the future to sell those lands. Division of State Lands wanted the opportunity to buy them back for fair-market value. The amendment would simply provide that could occur. All parties were in agreement that would be appropriate. Many questions were asked regarding those lands, most of which were acquired by the NIC prior to 1977. No files were available in Division of State Lands regarding those lands, which related to the acquisition of those properties; therefore, there was no first-hand knowledge of how much money was used to acquire the properties. She said she had reviewed all of the deeds and could confirm all of the acquisitions were from private parties and that the deeds were consistent with fair-market value deeds. The amount of \$10 was used stylistically to protect the confidentiality of the parties so there was no record in the county recorder's office of the actual amount paid for the land. It was Ms. Wilcox's professional judgment that in all likelihood they were all paid for at fair-market value and she was not aware of any General Fund dollars applied to any of those lands. She said the interpretation of her office was that although her agency held the titles, the assets were wholly acquired by the system and the equitable value of those lands remained with the system. If the system was mutualized she believed it was appropriate for those land assets to go with other assets held by the fund. The amendment would allow the state the opportunity to reacquire for fair-market value the capital complex land should the system decide to sell that property in the future.

David Howard, representing the Greater Reno and Sparks Chamber of Commerce, asked to address the committee because he was a seasoned observer of workers compensation legislation. He said his organization wanted to go on record in support of S.B. 37. He pointed out Ms. Giunchigliani had made reference to rebates last year. Mr. Howard said he went back through the records and from 1982 to 1993 and there were some rebates that were politically applied. There were also seven premium increases in ten years for a total of 70 percent increase to people paying those premiums. Regarding the discussion of state property, he said he did not know why the problem could not be corrected.

Bob Gagnier, representing the State of Nevada Employees Association, presented a statement to the committee on the proposed legislation for the record (Exhibit J).

Chairman Buckley asked if there were additional questions or comments and there were none. She called for a motion to waive the deadline for S.B. 37 and extend it for 1-week.

ASSEMBLYMAN PARKS MOVED TO WAIVE THE DEADLINE FOR
S.B. 37 AND EXTEND IT ONE WEEK.

ASSEMBLYMAN ARBERRY SECONDED THE MOTION.

THE MOTION CARRIED.

The Chairman closed the hearing on S.B. 37, and opened the hearing on S.B. 128.

Senate Bill 128: Authorizes state contractors' board to request that telephone numbers be disconnected and to request beeper number be switched or disconnected if telephone or beeper number is included in unlawful advertisements. (BDR 54-607)

Assemblyman Hettrick said he was concerned regarding certain provisions in section 2 of the legislation because pagers could be used as a loophole. He proposed an amendment be added to section 2 to clarify that loophole and close it. If the committee adopted the proposed amendment, he said it might also want to consider a similar amendment to section 4 of the measure to provide that the Public Utilities Commission must issue an order to a provider of a telephone service to disconnect the telephone number under certain circumstances and, if applicable, the pager service as well. The second amendment pertained to the hearing with Judy Shelder from the Public Utilities Commission (PUC), who proposed section 4 be amended to provide that PUC hold a hearing before issuing an order to a provider of telephone service to disconnect the telephone number. Robert Barango, representing the State Contractors Board to propose similar language that might address that issue.

The Chairman called for discussion. Mr. Beers asked if the amendment proposed included the requirement hearings must first be held. Mr. Humke replied in the affirmative.

Fred Hillerby, State Contractors Board, said regarding Mr. Beers' question, both he and Mr. Barango had discussed the question with Judy Sheldrew and she

INDEX OF SECTIONS IN PROPOSED AMENDMENT TO SB 37

Section	NRS	Subject
1.	612.265	Aligns SIIS or system with Private Carrier for unemployment consideration
2.	New	Adds sections 3 and 4 of this act
3.	New	Conflict between Title 57 and Chapters 616 and 616 controlled by Chapters 616 and 617
4.	New	Definition of State Industrial Insurance System (1981)
5.	616A.015	Assignment and delegation language from System to successor organizations
6.	616A.025	Words mean as intended
7.	616A.045	Aligns SIIS or system with Private Carrier for advisory organization
8.	616A.127	Aligns SIIS or system with Private Carrier for school to career program
9.	616A.270	Deletes State Industrial Insurance System from definition of insurer
10.	616A.290	Deletes State Industrial Insurance System from definition of private carrier
11.	616A.400	Aligns SIIS or system with Private Carrier for Administrator's oversight on the delivery of workers' compensation benefits
12.	616A.465	Transfers responsibility over employee leasing to DIR
13.	616A.470	Aligns SIIS or system with Private Carrier for the collection of revenue for NAIW, Department of Administration, etc.
14.	616A.475	Aligns SIIS or system with Private Carrier for the production of data to DIR
15.	616A.485	Aligns SIIS or system with Private Carrier concerning access to employer's information by DIR

Section	NRS	Subject
16.	New	Identifies that Sections 17, 18, 19 and 20 are new
17.	New	Chief Executive Officer of successor organization shall use the money paid for the purpose of providing compensation for industrial insurance and occupational diseases and the administrative expenses incidental thereto. If successor ceases providing workers compensation, monies go to Insurance Commissioner for administration
18.	New	Creates the state insurance fund in the state treasury to fulfill requirements of section 17
19.	New	Successor organization may discount reserves for accounting periods before July 1, 1995 in an amount of not more than 6%
20.	New	Removes employees from Personnel Act; provides re-employment Rights for 24 months; identifies benefits to employees; requires 60 day notice for lay offs
21.	616B.027	Aligns SIIS or system with Private Carrier for retention of copy of claim file in the state
22.	616B.030	Aligns SIIS or system with Private Carrier for issuance of insurance policy
23.	616B.036	Aligns SIIS or system with Private Carrier for providing coverage for small groups
24.	616B.050	Removes designation of employees as being in the classified service of the state
25.	616B.065	Removes fact that assistant managers are in the unclassified service
26.	616B.068	Removes fact that the manager is in the unclassified service
27.	616B.083	Removes accounting separation into two accounts (current claims and extended claims)
28.	616B.086	Removes requirement that all monies received go into the state fund
29.	616B.167	Removes reference of classified service for managers

Section	NRS	Subject
30.	616B.185	Aligns System with private carriers for providing coverage for prison industries and transfers regulatory responsibility to DIR
31.	616B.194	Aligns SIIS or system with Private Carrier with the production of information to Insurance Commissioner
32.	616B.224	Remove's system's ability to charge a penalty for non-payment to align it is private carriers
33.	616B.227	Aligns SIIS or system with Private Carrier with employer's requirement reports and payment of premium
34.	616B.230	Aligns SIIS or system with Private Carrier for requirement of state or county to budget for workers compensation coverage
35.	616B.386	Changes System to NCCI for calculation of minimum premium for employer to qualify in a self insured group
36.	616B.386	Removes requirement that former self insured group member return to the System
37.	616B.460	Aligns SIIS or system with Private Carrier for requirement to notify DIR within 24 hours after change of insurer
38.	616B.500	Aligns SIIS or system with Private Carrier with selection of managed care organization as its third-party administrator
39.	616B.527	Aligns SIIS or system with Private Carrier with use of managed care organization
40.	616B.554	Redacts the exception to system participating in the self insured employer subsequent injury fund
41.	616B.575	Redacts the exception to system participating in the self insured association subsequent injury fund
42.	616B.584	Redacts the exception to system participating in the private carrier subsequent injury fund
43.	616B.659	Aligns SIIS or system with Private Carrier with election of coverage by sole proprietors
44.	616B.670	Transfers responsibility for employee leasing to DIR

Section	NRS	Subject
45.	616B.673	Transfers responsibility for employee leasing to DIR
46.	616B.676	Transfers responsibility for employee leasing to DIR
47.	616B.679	Transfers responsibility for employee leasing to DIR, removes National Staff Leasing Association to National Association of Professional Employer Organization or its successor
48.	616B.694	Changes manager to administrator to cooperate with ESD
49	616B.697	Changes certificate of insurance to certificate of registration
50.	616C.015	Aligns SIIS or system with Private Carrier with the rule that notices of injuries do not have to be filed with the insurer
51.	616C.055	Removes reference to NRS 616B.515 which is being repealed
52.	616C.090	Removes reference to NRS 616B.515 which is being repealed and replaced with 616B.527
53.	616C.110	Removes NRS 616B.540 which is being repealed
54.	616C.190	Aligns SIIS or system with Private Carrier for out of state employment for not more than 6 months
55.	616C.200	Aligns SIIS or system with Private Carrier for out of state injuries
56.	616C.215	Aligns SIIS or system with Private Carrier with insurer's right to subrogation
57.	616C.220	Transfers responsibility for the uninsured fund to the administrator
58.	616C.255	Aligns SIIS or system with Private Carrier for collection of premium and liability for accident benefits
59.	616C.260	Removes NRS 616B.515 which is being repealed and replaced with NRS 616B.257
60.	616C.275	Aligns SIIS or system with Private Carrier for causes of action by insurer against employer who violates this section
61.	616C.355	Removes manager's ability to hold employer hearings

Section	NRS	Subject
62.	616C.385	Removes appeal to District Court of manager's hearing decisions
63.	616C.475	Removes NRS616B.515 which is repealed
64.	616C.535	Aligns SIIS or system with Private Carrier for voluntarily executing agreements for vocational rehabilitation services
65.	616D.050	Removes rules for manager's appeals which have been removed
66.	616D.070	Removes sanctions by manager against party in manager's appeal
67.	616D.080	Removes mileage for witnesses at manager's appeal
68.	616D.100	Removes official record requirements for manager's appeal
69.	616D.200	Changes benefit penalty standard from premium of system to premium established by rates adopted by Insurance Commissioner; removes penalty of actual cost to system to reopen the account
70.	616D.210	Aligns SIIS or system with Private Carrier with prohibition of business opening a new workers' compensation policy if employer owes other insurer money
71.	616D.250	Aligns SIIS or system with Private Carrier with penalty for employer who refuses to produce its books and records to administrator or taxation
72.	616D.260	Aligns SIIS or system with Private Carrier with right of administrator to issue a subpoena to require an employer to produce a document
73.	616D.400	Removes criminal penalty for failure of a person who fails to make records available to the manager
74.	616D.430	Removes requirement that monies recovered from restitution on behalf of system be deposited with state treasurer
75.	617.1665	Aligns SIIS or system with Private Carrier with requirement that employers pay premiums for coverage under NRS 617
76.	617.1675	Aligns SIIS or system with Private Carrier for fund for silicosis
77.	617.168	Aligns SIIS or system with Private Carrier for fund for asbestos

Section	NRS	Subject
78.	617.225	Aligns SIIS or system with Private Carrier with sole proprietor's election of coverage under NRS 617
79.	617.342	Aligns SIIS or system with Private Carrier for notice of an occupational disease
80.	617.401	Transfers responsibility for the uninsured fund to the administrator
81.	617.430	Aligns SIIS or system with Private Carrier with benefits to employees for diseases under NRS 617
82.	209.189	Aligns SIIS or system with Private Carrier with the fund for prison industries for the purchase of workers' compensation insurance
83.	218.2754	Removes system from requirement for fiscal notes
84.	218.5377	Removes system from requirements for the workers' compensation interim committee duties
85.	218.610	Removes system from the definition of agency of the state
86.	218.737	Removes system from the definition of agency of the state
87.	228.420	Aligns SIIS or system with Private Carrier for cooperation with the AGFU
88.	232.550	Removes system from definition of insurer
89.	232.680	Establishes DIR assessment based upon annual expenditures for claims for injuries on or after July 1, 1999
90.	242.131	Removes DOIT services from use by system
91.	244.33505	Aligns SIIS or system with Private Carrier for requirement for business license at county level
92.	268.0955	Aligns SIIS or system with Private Carrier for requirement for business license at city level
93.	277.185	Removes system from requirement to cooperate in the collection of information for tax, ESD, workers' compensation, etc.

Section	NRS	Subject
94.	281.125	Removes exclusion that salaries of employees of system be funded by specific legislative appropriation
95.	281.390	Aligns SIIS or system with Private Carrier with requirement that state agency notify insurer of fact that employee is eligible for sick leave and temporary total disability at the same time
96.	284.013	Adds System to exclusions to personnel act
97.	284.173	Removes exclusion from requirement that contracts of system be approved by the Board of Examiners
98.	333.020	Removes exclusion of system from purchasing rules
99.	333.470	Removes ability of system from obtaining supplies, material and equipment from state purchasing
100.	338.1905	Removes system from requirement to appoint an energy retrofit coordinator
101.	353.210	Removes system from the state budget process
102.	353.246	Removes system from the state budget process
103.	353.335	Removes system from exception from rules concerning gifts or grants
104.	353A.010	Removes system from definition of agency
105.	355.140	Three LCB clean up provisions; removes prohibition or reverse-repurchase agreements for monies invested pursuant to NRS 616
106.	355.150	Removes system from requirements for investments pursuant to NRS 355.140
107.	355.160	Removes system from requirements for investments pursuant to NRS 335.140 and 150
108.	396.591	Aligns SIIS or system with Private Carrier for providing workers' compensation coverage for athletes of the University of Nevada

Section	NRS	Subject
109.	433A.430	Changes standard for administrator reimbursing physicians for examination of mentally ill person to be reasonable rather than set by system
110.	475.110	Aligns SIIS or system with Private Carrier with providing workers' compensation coverage for conscripted fire fighters
111.	475.230	Aligns SIIS or system with Private Carrier for reimbursement of fire department for cost of workers' compensation for fires on property owned by the state
112.	538.101	Aligns SIIS or system with Private Carrier with providing workers' compensation coverage for commissions appointed by Governor
113.	624.328	Aligns SIIS or system with Private Carrier with disclosure by ESD of subcontractors who are delinquent in payment by subcontractor
114.	668.045	Removes authority for bank giving security for public money of the system
115.	680B.027	Removes exclusion of System from premium tax
116.	680B.050	Provides home office credit to System until 1/1/2000
117.	680B.060	Aligns credit of premium tax from workers compensation carriers to recombining of the two accounts
118.	680B.060	Removes credit of premium tax to state fund
119.	681B.020	Limitation on the successor's use of the transferred assets
120.	682A.020	Any investment of the System is valid for the successor
121.	682B.055	Insurance Commissioner shall allow successor organization to use as a deposit without delivering same to Insurance Commissioner
122.	683A.100	Grandfathering of employees of System from licensure for 3 years
123.	686B.1759	Removes System from definition of insurer
124.	687A.020	Removes exclusion of System

Section	NRS	Subject
125.	695C.120	Removes contracting with manager of system from definition of powers of a health maintenance organization
126.	696B.360	If the Insurance Commissioner initiates a receiver action against the successor, the funds must be used to pay workers compensation benefits
127.	New	Repealer list
128.	TL ¹	Manager to take necessary steps to create a domestic mutual insurance company; file the necessary papers with the Insurance Commissioner ; Governor to appoint an advisory committee (geographic and size representation) to adopt the first bylaws of the company; Insurance Commissioner to review company for financial solvency; Insurance Commissioner to issue certificate of authority
129	TL	<p>Criteria for Governor to proclaim existence of the company:</p> <ol style="list-style-type: none"> 1) Consummation of reinsurance transaction 2) Establishment of the domestic mutual insurance company 3) Favorable ruling from the IRS 4) Insurance Commissioner has issued a certificate of authority <p>If Governor makes proclamation on January 1, 2000:</p> <ol style="list-style-type: none"> 1) System transfers all System assets to the DMIC 2) DMIC shall assume all debts and liabilities of System 3) Division of lands shall transfer real property to DMIC 4) State archives shall release all records to DMIC 5) Insurance Commissioner shall issue certificate of authority
130	TL	Classified employee of the system entitled to re-employment rights
131	TL	Classified employee of the system entitled to re-employment rights
132	TL	Classified employee of the system entitled to re-employment rights
133	TL	\$2 million in fund for DETR for retraining of layed off employees
134	TL	Company entitled to purchase up to five years service credit for employees who could then retire at an unreduced amount

¹ TL stands for transition language which will not be codified

Section	NRS	Subject
135	TL	System retrospective rating agreements survive until expiration, renewal, reissuance, amendment or December 31, 2000.
136.	TL	Certificates of insurance for employee leasing companies before January 1, 2000 effective as a certificate of registration
137	TL	Enforcement rights of the system assigned to the DMIC
138	TL	Any employee of the system on December 31, 1999 shall transfer into the DMIC
139	TL	Regulations adopted by the system are repealed unless the responsibilities are to be transferred to DIR
140	New	Effective dates
141	New	Administrative corrections authorized

WALTHER, KEY, MAUPIN, OATS
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May 12, 1999

The Honorable Kenny Guinn
Governor
State of Nevada
State Capitol Building
Carson City, NV 89710

Re: Opinion on Constitutionality of SB 37 under Article 9, Section 2 of the
Nevada Constitution.

Dear Governor Guinn:

This opinion is being provided to you at the request of the Employers Insurance
Company of Nevada ("EICN").

I. OPINION REQUESTED

This Firm has been requested to provide an opinion with respect to Senate Bill 37
("SB 37"), now under consideration before the Nevada Legislature. SB 37, if adopted,
would require all rights, obligations and liabilities of EICN, which is owned and operated
by the State of Nevada, to be assumed by a "successor organization" commonly known as
the Employers Mutual Insurance Company of Nevada ("EMICON"), a private insurer.

In particular, an opinion of this Firm has been sought on the question of whether
or not legislation privatizing EICN will violate Article 9, Section 2 of the Nevada
Constitution in light of Sections 17 and 18 of SB 37, which explicitly require all monies
to continue to be held in trust for the purpose of providing compensation for industrial
accidents and occupational diseases and administrative expenses incidental thereto. We are
of the opinion that SB 37 does not violate Article 9, Section 2 of the Nevada Constitution.

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II. SCOPE OF REVIEW

In preparing this opinion, the Firm has reviewed Article 9, Section 2 of the Nevada Constitution, including the original and current versions, applicable statutes of the State of Nevada, opinions of the Nevada Attorney General interpreting Article 9, Section 2, and other applicable case law. The Firm has contacted the Office of the Attorney General with regard to this issue, we are advised that it is still under study. The Firm has not been made aware of any internal memoranda, opinions, studies, or research done by the State of Nevada or any branch or subdivision thereof which would vary with any of the facts stated, discussion of applicable law, or opinions rendered herein. The opinion rendered herein might be qualified based upon the receipt of any such materials.

III. ANALYSIS

Article 9, Section 2 of the Nevada Constitution provides in relevant part:

Section 2. Annual tax for state expenses; trust funds for industrial accidents, occupational diseases and public employees' retirement system; administration of public employees' retirement system.

1. The legislature shall provide by law for an annual tax sufficient to defray the estimated expenses of the state for each fiscal year; and whenever the expenses of any year exceed the income, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

2. Any money paid for the purpose of providing compensation for industrial accidents and occupational diseases, and for administrative expenses incidental thereto, and for the purpose of funding and administering a public employees' retirement system, must be segregated in proper accounts in the state treasury; and such money must never be used for any other purposes, and they are hereby declared to be trust funds for the uses and purposes herein specified.
(Emphasis added).

The underscored language was approved by the Nevada Legislature in 1953 and 273829

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1955 and ratified by the voters in the general election of 1956.¹ The original State Industrial Insurance Fund was created in 1913 and had long been in existence prior to the underscored language of Article 9, Section 2 being adopted in 1956. 1912-1913 Nev. Stat. 137. It is relatively clear that the purpose of such language was to provide constitutional protection to the fund by ensuring that monies collected "never be used for any other purposes" and be "trust funds" used "only for the purpose of providing compensation for industrial accidents and occupational diseases, and for administrative expenses incidental thereto." As the Nevada Attorney General stated in 1979:

Article 9, Section 2 of the Constitution requires that any moneys paid for the purpose of providing compensation for industrial accidents and occupational diseases and for administrative expenses incidental thereto be placed in a trust fund for specific purposes....

Article 9, Section 2 only limits the purposes for which moneys in the State Insurance Fund may be expended. It does not operate to deny the Legislature the right to review and control the budget of agencies operating from these funds. Attorney General's Opinion No. 92 (August 3, 1972). However, the Legislature may not appropriate State Insurance Fund moneys for purposes other than those contemplated by the Constitution. AGO 79-7 (Mar. 23, 1979) (Emphasis added).

In this case, the proposed legislation has built-in protections ensuring that monies collected by EICN prior to privatization remain in trust to be spent only for the purposes for which they are collected. Section 17(1) of SB 37 specifically provides:

¹ 1953 Nev. Stat. 729; 1955 Nev. Stat. 927. The provision was amended in 1974 to include the public employees' retirement system (PERS) within its scope of protections. 1971 Nev. Stat. 2267; 1973 Nev. Stat. 1948. The constitutional section was amended in 1996 to include more language pertaining to PERS, and made only stylistic, but not substantive, changes to the language underscored above. 1993 Nev. Stat. 3064; 1995 Nev. Stat. 2899.

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The chief executive officer of any successor organization to the state industrial insurance system [EMICON] shall continue to hold in trust any money paid to the system for the purpose of providing compensation for industrial accidents and occupational diseases and administrative expenses incidental thereto. The successor organization shall use that money only for the purpose for which it is paid. (Emphasis added).

The proposed legislation also contemplates under Section 17(2) of SB 37 that if the "successor organization," or EMICON, ceases its operations, all money held in trust must be delivered to the State Insurance Commissioner to ensure that all benefits will be paid to qualified claimants. Under such circumstances, Section 18(3) requires that all monies reverting to the Insurance Commissioner "be held in trust by the commissioner as custodian thereof for the purpose of providing compensation of industrial accidents and occupational diseases and for administrative expenses incidental thereto." Thus, SB 37 ensures under all circumstances workers compensation premiums will be held in trust and expended only for the purposes set forth in Article 9, Section 2 of the Nevada Constitution. In this respect, SB 37 passes constitutional muster.

It must be emphasized that nothing within Article 9, Section 2 requires the State of Nevada to continue to own and operate the industrial insurance fund. Since the legislature created the fund in 1913, it can subsequently enact legislation allowing for privatization of the fund so long as the constitutional protections remain intact. SB 37 certainly meets this criteria.

As part of this opinion, the Firm has been asked to address whether the phrase in Article 9, Section 2, "shall be segregated in proper accounts in the state treasury," renders SB 37 unconstitutional because monies collected by the state-owned EICN will be transferred to EMICON and then privately held in trust. We interpret the above-quoted phrase in Article 9, Section 2 to mean that so long as the State remains in the business of industrial insurance, all funds collected must remain in segregated accounts in the State Treasury.

In this case, Section 18(1) of SB 37 clearly provides, "[t]here is hereby established in the state treasury the state insurance fund." Consequently, all monies collected by EICN are placed in this segregated account in the State Treasury in compliance with Article 9, Section 2. However, nothing within the language of Article 9, Section 2 precludes the State Legislature from later transferring these monies to a private account so long as it remains held in trust. Moreover, Article 9, Section 2 does not mandate that the State retain a government monopoly over industrial insurance, which it had until 1979.

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The Nevada Attorney General's interpretation of Article 9, Section 2 in 1980, AGO 80-27 (Aug. 6, 1980), is consistent with our interpretation. In AGO 80-27, the Attorney General was asked to rule on whether funds collected to pay workers compensation benefits by a self-insured employer needed to be held in a segregated account in the State Treasury under Article 9, Section 2. Had the Attorney General applied a literal construction of the phrase, "shall be segregated in proper accounts in the state treasury," self-insured employers would have been required to deposit monies collected into the State Treasury. However, the Attorney General ruled that self-insured employers were not required to deposit monies with the State Treasury and emphasized that in drafting the 1956 amendment to Article 9, Section 2, the legislature "appeared to be supremely concerned with the proper use of funds obtained for the purpose of providing workers' compensation benefits." AGO 80-27 at 127.

The Attorney General's ruling was based on several important observations and interpretations. First, the Attorney General concluded that the State Insurance Fund was not even part of the State Treasury. *Id.* at 124 (citing *State v. McMillan*, 36 Nev. 383 (1913)). Concurring with decisions in other jurisdictions, the Attorney General ruled that such monies do not belong to the State, but are actually for the benefit of the employers and employee participants. The State's role is merely to act as a "public trustee" for the benefit of employers and employees to ensure the monies are used for their stated purposes. *Id.* at 125. With respect to self-insured employers, they themselves act as trustees to protect eligible employees in lieu of the State. So long as funds that are collected for the purposes of industrial insurance, whether they be in the State Insurance Fund or monies collected by self-insured employers, remain separate from the State general revenue fund, the statutory scheme was permissible. *Id.* at 126. Next, the Attorney General observed that since no form of self-insurance existed in 1956 when Article 9, Section 2 was amended, the legislature had no reason to be concerned with requiring self-insured employers to deposit monies collected in the State Treasury. *Id.* Finally, the Attorney General approved the statutory scheme in which the Insurance Commissioner closely regulated the self-insured employers, thereby ensuring protection of their workers. *Id.* at 127-28. Such statutory protections included requiring the self-insured employers to present satisfactory evidence of adequate financial and administrative resources, to deposit adequate security, and to submit evidence of excess insurance or reinsurance against catastrophic losses. *Id.* at 127. In conclusion, the Attorney General ruled that self-insured employers were not required to deposit monies used to pay workers' compensation benefits in the State Treasury so long as they complied with the statutory requirements set forth in NRS Chapter 533.

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In this case, SB 37 and its provisions relating to privatization present a strong analogy to self-insured employers. If a literal interpretation were applied to the phrase,

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"shall be segregated in proper accounts in the state treasury," all monies paid for the purpose of providing compensation for industrial accidents and occupational diseases, including those collected by self-insured employers and EMICON, would need to be deposited in the State Treasury. However, as recognized in AG 80-27 and by the Nevada Supreme Court in State v. McMillan, 36 Nev. 383, 388 (1913), the industrial insurance fund is not part of the State Treasury, but is merely held in trust by the State for the benefit of employers and employees. Under SB 37, the State continues to act as "public trustee" during the time period when EICN collects monies, deposits them in the segregated state insurance fund, and administers claims. Upon assumption of such duties on January 1, 2000, EMICON will act as the trustee of the funds and continue to use those funds only for the constitutional purposes for which they were collected.

SB 37 requires that the monies be held in trust. Section 17(1) of SB 37 specifically requires the successor organization to "continue to hold in trust any money paid to the system for the purpose of providing compensation for industrial accidents and occupational diseases and administrative expenses incidental thereto." Under Section 17(2) of SB 37, if the successor organization ceases its operations, all money held in trust must be delivered to the State Insurance Commissioner to ensure that all benefits will be paid to qualified claimants. Section 18(3) then requires that all monies reverting to the Insurance Commissioner "be held in trust by the commissioner as custodian thereof for the purpose of providing compensation of industrial accidents and occupational diseases and for administrative expenses incidental thereto." Section 129 requires the successor organization, prior to assuming the roles of EIC, to obtain a certificate of insurance from the Insurance Commissioner and to purchase a sufficient amount of reinsurance to enable it to operate in a financially responsible manner. Section 128 also requires the successor organization to file all documents and information required under NRS Chapter 680A, including annual financial statements required under NRS 680A.265, and all documents and information under NRS Chapter 692B.

Since privatization did not exist and was not even contemplated in 1956, the legislature had no reason to be concerned when drafting language to amend Article 9, Section 2. Nothing within the language of Article 9, Section 2 indicates that the drafters intended to require the State to retain its then-monopoly over industrial insurance in perpetuity. Nor did the drafters contemplate whether State-collected funds needed to remain in segregated accounts in the State Treasury in the event that the legislature determined privatization was in the best interests of the public. Based on the above-discussion, we believe the phrase, "shall be segregated in proper accounts in the state treasury," can be interpreted to mean that all funds collected for by the State for purposes of providing compensation for industrial accidents and occupational diseases must be deposited in and remain in segregated accounts in the State Treasury so long as the State

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remains in the business of industrial insurance. In essence, SB 37 merely allows for a change in trustee from the State-operated EICN to the privately-owned EMICON. This type of legislative arrangement is constitutionally permissible under Article 9, Section 2.

In rendering this opinion, we are mindful of case law in Oklahoma, Oregon and Utah invalidating legislation enacted to divert workers compensation funds to be used for other purposes. Moran v. State, 534 P.2d 1282 (Okla. 1975) (excess surplus funds of the state industrial fund could not be used by the state for other purposes); Alsea Veneer, Inc. v. State, 862 P.2d 95 (Or. 1993) (transfer of state accident insurance funds to state general fund for other purposes unconstitutional); Gronning v. Smart, 561 P.2d 690 (Utah 1977) (appropriating state insurance funds to another state agency to hire safety inspections unconstitutional). Such decisions support the Attorney General's view in AGO 80-27, as well as the view of this Firm, that State Industrial Insurance funds are not funds of the State, but are held in trust for the benefit of workers. Because the trust purposes remain intact under SB 37, the proposed legislation is constitutional.

IV. OPINION OF THE FIRM

Based upon the foregoing, it is the opinion of the Firm that SB 37 does not violate Article 9, Section 2 of the Nevada Constitution.

Sincerely,

Walther, Key, Maupin, Oats, Cox & LeGoy

By: 

Steven T. Walther

Rick R. Hsu

Timeline of events for transition of Employers Insurance Company of Nevada

Upon Passage and Approval

- * EICON will finalize the reinsurance transaction to satisfy the debt on claims arising on or before July 1, 1995

On July 1, 1999

- * EICON employee are removed from the Personnel Act with the exception of retirement and leave rights
- * EICON employees are automatically entitled to voluntarily place themselves on the re-employment list with State Personnel and may remain on the list until December 31, 2002
- * The hiring freeze will be lifted for EICON employees to transfer to other state positions
- * EMICON may have to commence laying off personnel and EMICON will deposit 2 million dollars with DETR which will be used to retrain appropriate employees for future employment

January 1, 2000

- * Upon the consummation of the reinsurance transaction and receipt of a favorable ruling form the IRS, the Governor will issue a proclamation and EMICON will be transformed into a fully licensed workers compensation mutual insurance company owned and operated by its policyholders
- * Insurance Commissioner will rule on the financial strength of EMICON and shall issue EMICON a certificate of authority to operate as a fully licensed, property and casualty insurer in Nevada
- * EMICON will operate under and comply with the rules and regulations associated with a mutual insurer in Nevada and must qualify to write other lines of insurance

COMPARISON OF RIGHTS OF EICON/EMICON
EMPLOYEES WITH PERSONNEL ACT

Downsizing of employees

	<u>Rights from Company</u>	<u>Rights under Personnel Act</u>
Layoff rules	Downsize by need and merit	Downsize by seniority
	Purchase of up to five years of retirement credit for 100+ employees	No purchase of retirement credit
	Removal from hiring freeze for priority rehiring	Hiring freeze remains
	Eligibility for re-employment upon passage and approval	Not eligible until layed off
	Re-employment rights for over two-years	Re-employment rights one-year
	Retraining for layed off employees	No retraining
	Leave and vacation time will roll with employee to new job in EMICON	Leave and vacation time will roll with employee to new job in state government
	Re-employment rights for all system employees	Probationary employees receive no protection

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May 12, 1999

Assemblywoman Barbara E. Buckley
Assembly Chambers

Dear Assemblywoman Buckley:

As Chair of the Assembly Committee on Commerce and Labor, you have asked this office to review the constitutionality of the First Reprint of Senate Bill No. 37. We have identified the following issues concerning the constitutionality of the First Reprint of Senate Bill No. 37 (S.B. No. 37): (1) subsection 2 of Section 2 of Article 9 of the Nevada Constitution which regulates money paid for the purpose of providing workers' compensation; (2) the state and federal constitutional provisions forbidding laws that impair the obligation of contracts; (3) the state and federal constitutional provisions forbidding the taking of private property for a public purpose without due process and the payment of just compensation; (4) Section 1 of Article 8 of the Nevada Constitution which, under certain circumstances, prohibits the state from creating a corporation by special act; (5) Section 9 of Article 8 of the Nevada Constitution which, under certain circumstances, prohibits the state from donating money to a company, association or corporation; and (6) the constitutional doctrine prohibiting a legislative body from unlawfully delegating its legislative authority. Below, we provide you with the basic elements of S.B. No. 37 that are relevant to the discussion of its constitutionality and address each of the issues raised above.

A. Senate Bill No. 37.

S.B. No. 37 authorizes the Manager of the State Industrial Insurance System (the System) to take such actions as are necessary to establish a private, domestic mutual insurance company in this state to provide industrial insurance and coverage incidental thereto and to transact other kinds of property and casualty insurance if the company is otherwise qualified to do so. The Governor is required to issue a

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proclamation and the Manager of the System may transfer all the assets and liabilities of the System and the state insurance fund to the newly created company, if the: (1) Manager of the System creates such a company; (2) the Commissioner of Insurance determines that the company so created qualifies for a certificate of authority to transact industrial insurance under the general laws applicable to all insurance companies; (3) the System has purchased a sufficient amount of reinsurance to enable it to operate in a financially responsible manner; and (4) the System has received a private letter ruling from the Internal Revenue Service stating that it will not consider the newly created company to have recognized any gain or income-if it receives the assets and liabilities of the System and the state insurance fund. If the Manager of the System transfers all the assets and liabilities of the System and the state insurance fund to the newly created company, the provisions in NRS referring to the System are repealed or amended to remove such references and new sections addressing the use of the assets transferred to the newly created company become effective. If the transfer does not occur, the Manager of the System must take such actions as are necessary to dissolve the newly created company and the System will remain as a provider of industrial insurance, with some changes concerning the regulation of its personnel.

B. Analysis.

1. Subsection 2 of Section 2 of Article 9 of the Nevada Constitution.

Subsection 2 of Section 2 of Article 9 of the Constitution of the State of Nevada (subsection 2 of Section 2 of Article 9) regulates money paid for providing industrial insurance. The provision provides, in pertinent part:

2. Any money paid for the purpose of providing compensation for industrial accidents and occupational diseases, and for administrative expenses incidental thereto must be segregated in proper accounts in the state treasury, and such money must never be used for any other purposes, and they are hereby declared to be trust funds for the uses and purposes herein specified.

There are three issues that we must address concerning this provision: (a) whether it applies to money held by the System; (b) whether the restrictions on the use of money held by the System set forth in S.B. No. 37 comply with this provision; and (c) whether the transfer of money from the System to a private company, as authorized by S.B. No. 37, complies with this provision. Because the Nevada Supreme Court has not interpreted this provision to determine the scope of the prohibition contained therein, we must examine the language of the provision, review its legislative history, and apply rules of statutory construction to address these issues. *See Sutherland Statutory Construction* §§ 45.13, 45.14, 47.01 (5th ed. 1992).

(a) Does subsection 2 of Section 2 of Article 9 of the Nevada Constitution apply to money held by the System?

The initial question that we must address is whether subsection 2 of Section 2 of Article 9 applies to money held by the System or the state insurance fund.¹ The language of the provision itself is the primary source for the determination of the intent or meaning behind a statute or constitutional provision. *Id.* § 47.01. Therefore, we must examine the meaning of the phrase "any money paid for the purpose of providing compensation" and determine whether it refers to money paid by employers to the State Industrial Insurance System or to the state insurance fund. Premiums, penalties or interest paid by an employer to the System is "money paid" by such an employer for the purpose of obtaining industrial insurance which will "provide compensation" to his employees for industrial accidents and occupational diseases. Furthermore, because such money has been, pursuant to NRS 616B.086 and 616B.218, deposited into the state insurance fund, subsection 2 of Section 2 of Article 9 would appear to apply both to money paid to the System and paid to or deposited into the state insurance fund.

The legislative history also supports the conclusion that subsection 2 of Section 2 of Article 9 applies to money held by the System or the state insurance fund. In 1956, when the registered voters of Nevada voted on the amendatory language which became the pertinent provisions of subsection 2 of Section 2 of Article 9, the sample ballot that was mailed to all registered voters included an explanation of the effect of the amendatory language. The explanation stated that "[t]his amendment would prevent any moneys collected by the Nevada Industrial Commission from being used in any other manner or for any other purpose than those specified." Propositions to be voted upon in State of Nevada at General Election, November 6, 1956, at p. 12. This explanation indicates that the Legislature intended the amendatory language to govern the placement and use of the premiums collected by the Nevada Industrial Commission. In 1981, the Nevada Industrial Commission became the State Industrial Insurance System. *See* Chapter 642, Statutes of Nevada 1981. Therefore, it is the opinion of this office that the provisions of subsection 2 of Section 2 of Article 9 apply to money paid to the System and to any money held in the state insurance fund.

¹ The state insurance fund holds "all premiums, contributions, penalties, bonds, securities and all other properties received, collected or acquired by the system pursuant to the terms of chapters 616A to 616D, inclusive, of NRS." NRS 616B.086.

(b) Does S.B. No. 37 comply with restrictions on the use of money paid for the purpose of providing workers' compensation?

Having determined that subsection 2 of Section 2 of Article 9 applies to money paid to the System and to money held in the state insurance fund, we must next determine whether the restrictions on the use of such money set forth in S.B. No. 37 comply with the restriction on the use of money paid for the purpose of providing workers' compensation contained in subsection 2 of Section 2 of Article 9. As stated above, the language of the provision itself is the primary source for the determination of the intent or meaning behind a statute or constitutional provision. Sutherland Statutory Construction § 47.01 (5th ed. 1992). Subsection 2 of Section 2 of Article 9 states that "[a]ny money paid for the purpose of providing compensation for industrial accidents and occupational diseases, and for administrative expenses incidental thereto . . . must never be used for any other purposes." Section 17 of S.B. No. 37 specifies that "[t]he chief executive officer of any successor organization to the state industrial insurance system shall continue to hold in trust any money paid to the system for the purpose of providing compensation for industrial accidents and occupational diseases and administrative expenses incidental thereto . . . [and] . . . shall use that money only for the purpose for which it was paid." (emphasis added.) Section 17 of S.B. No. 37 also provides that if the successor organization to the System ceases to provide industrial insurance in this state, all money held in trust must be delivered to the Commissioner of Insurance for deposit in the state insurance fund. Section 18 of S.B. No. 37 provides that money delivered to the Commissioner pursuant to section 17, or pursuant to NRS 696B.360, if the successor organization has been determined to be delinquent, must be used "for the purpose of providing compensation for industrial accidents and occupational diseases and for administrative expenses incidental thereto." (emphasis added.) If the System creates a private, domestic mutual insurance company pursuant to section 128 of S.B. No. 37 to which the assets of the System are transferred, that company would become the successor organization to the System and would, therefore, be subject to the provisions of section 17 of S.B. No. 37 that are quoted and underscored above. Furthermore, if that private company ever ceases to provide industrial insurance in this state or if it is determined to be delinquent pursuant to chapter 696B of NRS, the money transferred to it pursuant to section 129 of S.B. No. 37 would be subject to the provisions in section 18 of S.B. No. 37 that are quoted and underscored above. Because the provisions of sections 17 and 18 quoted and underscored above contain the exact language from subsection 2 of Section 2 of Article 9 of the Nevada Constitution, it is the opinion of this office that these sections of S.B. No. 37 ensure that the System, or any successor organization, must satisfy the constitutional restriction on the use of money paid for the purpose of providing workers' compensation.

(c) Does S.B. No. 37 comply with restrictions on the placement of money paid for the purpose of providing workers' compensation?

Next, we must determine whether the transfer of the money held in the state insurance fund that is authorized by S.B. No. 37 complies with the language of subsection 2 of Section 2 of Article 9 stating that "any money paid for the purpose of providing compensation for industrial accidents and occupational diseases" must be "segregated in proper accounts in the state treasury." On its face, the language quoted above would appear to require that any money paid to provide workers' compensation, including money paid to a private carrier or money used by a self-insured employer, must be deposited into separate accounts in the state treasury. However, a statute must also be construed in light of its purpose as a whole. Hampton v. Brewer, 103 Nev. 73, 74 (1987), *cert. denied*, 482 U.S. 915 (1987); City of Boulder v. General Sales Drivers, 101 Nev. 117, 119 (1985); *see also*, State ex rel. Wright v. Dovey, 19 Nev. 396, 399 (1885) (stating that the rules of statutory construction apply equally to statutes and the Constitution) The legislative purpose of a statutory provision may be determined by examining circumstances which propelled the enactment of the statute. Roberts v. Nevada, 104 Nev. 33, 38 (1988). In 1953, when the Legislature first proposed and passed the amendment which became the pertinent language of subsection 2 of Section 2 of Article 9, the State Treasurer was the custodian of all premiums paid for industrial insurance. Nev. Com. Laws § 2680.84 (1943) (current version at NRS 616B.086 (1997)). In State ex rel. Beebe v. McMillan, 36 Nev. 383, 388-89 (1913), the Nevada Supreme Court concluded that, although premiums were to be held in the custody of the State Treasurer, they could not be used for the purposes for which taxes and revenues were usually paid into the state treasury. The fact that the Legislature chose to place the language of subsection 2 of Section 2 of Article 9 in the article of the Nevada Constitution that governs the state's obligation to provide for the expenses and debts of the state supports the conclusion that the purpose was to make the law consistent with the Supreme Court's holding in McMillan. Because the law already required such money to be placed in the state treasury, there is a strong argument that the purpose of the Legislature and the registered voters of Nevada was not to require that the money be placed in the state treasury. Rather, it would appear that the purpose was to provide that, despite the fact that the money is held in the state treasury, it must not be used for the purposes for which other money held in the state treasury is used and therefore must be segregated from that money. Thus, the rule that a statute must be construed in light of its purpose as a whole supports the conclusion that subsection 2 of Section 2 of Article 9 does not require that money paid to provide workers' compensation must be held in the state treasury. *See*, 80-27 Op. Att'y Gen. at p. 122 (1980) (concluding that the money used by a self-insured employer for workers' compensation need not be held in the state treasury).

Treatment of the state insurance fund subsequent to the enactment of subsection 2 of Section 2 of Article 9 indicates that the Legislature has not, in the past, interpreted subsection 2 of Section 2 of Article 9 to require that the money of the state insurance fund be held in the state treasury. As mentioned above, before subsection 2 of Section 2 of Article 9 was enacted, Nev. Com. Laws sec. 2680.84 (1943) provided that "all premiums, contributions, penalties, bonds, securities and all other properties received, collected or acquired by the commission pursuant to the terms of this act shall be credited on the records of the commission to the proper fund and thereafter delivered over to the custody of the state treasurer to be by said state treasurer held subject to the terms and provisions of this act." (emphasis added). In 1965, that provision of law, which at that time was codified as NRS 616.425, was amended to provide that the commission need only deliver to the State Treasurer "such moneys as are deemed by the commission necessary to maintain an adequate balance in the compensation payment fund." In the same 1965 bill, the Legislature repealed NCL 2680.85 which had provided that "[a]ll premiums, contributions, penalties, bonds, securities and all other properties heretofore or hereafter acquired by the commission shall be and constitute, for the purpose of custody thereof, the "State Insurance Fund," and which said state insurance fund shall be held by the state treasurer as custodian thereof, under the name and title of the "Nevada Industrial Commission," for the benefit of employees within the provisions of this act and dependents of such employees and shall be disbursed as herein provided." The Legislature appeared, therefore, to have intended to eliminate the requirement that the state insurance fund be in the state treasury.

In 1989, the Legislature again amended NRS 616.425 to eliminate completely the requirement that the Manager of the System deliver money from the state insurance fund to the custody of the State Treasurer. In that same bill, the Legislature eliminated the requirements that disbursements from the state insurance fund be paid by the State Treasurer and rather authorized the Manager of the System simply to issue checks. Again, the Legislature appeared to have intended to reduce or eliminate the State Treasurer's control and responsibility over the state insurance fund. Thus, it appears that the Legislature has, in the past, interpreted subsection 2 of Section 2 of Article 9 to require segregation of money paid for the purpose of workers' compensation and that such money be held in trust, but not that such money actually be held in the state treasury. Therefore, because the rules of statutory construction support the conclusion that subsection 2 of Section 2 of Article 9 does not require that money paid to provide workers' compensation must be held in the state treasury and because of the long-standing practice of holding such money outside of the state treasury, it is the opinion of this office that subsection 2 of Section 2 of Article 9 requires only that the money must be segregated from other money of the state, not that it must be held in the state treasury.

2. Impairment of Contracts.

Next we will consider whether the transfer of the assets and the liabilities of the System authorized by S.B. No. 37 would violate the state and federal constitutional provisions forbidding laws impairing the obligation of contracts. Section 10 of Article I of the United States Constitution provides, in part, that "[n]o state shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts." The language contained in the Nevada Constitution, which is virtually identical to the federal constitution, states that "[n]o bill of attainder, ex-post-facto law, or law impairing the obligation of contracts shall ever be passed." Section 15 of Article 1 of the Nevada Constitution. The issue of whether a statute requiring or authorizing the sale of the assets and liabilities of a state administered workers' compensation fund violates the constitutional provisions prohibiting the impairment of contracts has not been addressed by the courts of this state. However, policyholders of state workers' compensation funds in other states have challenged the transfer of assets from their state workers' compensation funds on the ground that the state statutes, in existence at the enactment of the legislation providing for the transfer, constituted a contract between the state and the policyholder which was impaired by the enactment of the legislation.

Policyholders of the state accident fund in the State of Michigan argued that they had a contractual right to receive the accumulated surplus reserves when the assets and liabilities of the state accident fund were sold and transferred to Blue Cross and Blue Shield of Michigan pursuant to state legislation. Fun 'N Sun R.V., Inc. v. Michigan, 527 N.W.2d 468 (Mich. 1994), *cert. denied*, 115 S. Ct. 2000 (1995). The legislation at issue in Fun 'N Sun authorized the sale of all or substantially all the assets of the fund and the assumption of all or substantially all the liabilities of the fund by the transferee. The legislation further provided that any consideration received from the transaction would become the property of the State of Michigan. The plaintiffs in Fun 'N Sun, who were policyholders in the fund, asserted that they had a contractual right to the accumulated surplus reserves in the fund and that this right would be impaired if the state was permitted to retain the proceeds obtained from the proposed sale. However, "[c]ourts usually have concluded that a state contractual obligation arises from legislation only if the legislature has unambiguously expressed an intention to create the obligation." Fun 'N Sun, 527 N.W.2d at 474 (*citing* Charles River Bridge v. Warren Bridge, 36 U.S. 420 (1837); United States Trust Co. v. New Jersey, 97 S. Ct. 1505, 1516, n. 14 (1977); Eckles v. State, 760 P.2d 846 (1988)). Therefore, the Supreme Court of Michigan held that the applicable statutes, which: (1) provided that premiums must be established at the lowest level possible, consistent with sound insurance actuarial standards; (2) provided for a one-time payment of excess surplus to policyholders; (3) authorized the money in the fund to be used to pay dividends and similar payments to policyholders; and (4) provided that the circuit court would dispose

of the money in the fund if the statute under which it operated was repealed or if the fund was dissolved, were not specific enough to find an explicit expression of a legislative intent that premiums collected and not used to pay liabilities would earn interest or be refunded. Id. at 478. Because the statutes did not demonstrate a clear expression of a legislative intent to create a private right of a contractual nature to receive the accumulated surplus reserves, and because there was no express promise by the legislature not to amend those statutes, the Supreme Court of Michigan found that those statutes did not constitute a contractual obligation on the part of the State of Michigan. Id. See also Fund 'N Sun R.V. Inc. v. State, 567 N.W.2d 460 (1997) (holding that statute providing that state accident fund could be "neither more nor less than self-supporting" did not create contract between policyholders and state.)

Courts in other states have similarly held that the transfer of money in their state workers' compensation funds did not constitute an unconstitutional impairment of a contractual relationship. See Methodist Hosp. Of Brooklyn v. State Ins. Fund, 476 N.E.2d 304 (N.Y. 1985). Courts in yet other states have held that pursuant to the statutes and circumstances unique to their states, legislative acts requiring the transfer of money from a state workers' compensation fund impaired contracts and the rights of policyholders. Eckles v. State of Oregon, 760 P.2d 846 (Or. 1988); Moran v. State Ex Rel. Derryberry, 534 P.2d 1282 (Okla. 1975). Those cases, however, involved situations that are distinguishable from the situation created by S.B. No. 37. In both cases, the legislation at issue had transferred the money of the state workers' compensation fund not to another insurance company but to the state to be used for general state purposes. Furthermore, prior to the legislation at issue in Eckles, the Legislature of the State of Oregon had, in another piece of legislation, explicitly set forth a promise not to transfer such funds back to the state. The Oregon Legislature had enacted a very detailed and specific policy provision which stated that the state disclaimed any right and any future right to the money maintained in the state workers' compensation fund. Therefore, the Supreme Court of Oregon found that the state had created a contractual obligation between itself and the policyholders of the state workers' compensation fund. Id. at 858. In a subsequent case, therefore, the Supreme Court of the State of Oregon ordered the State of Oregon to repay to its workers' compensation fund all money that was improperly transferred. Alsea Veneer, Inc. v. State, 862 P.2d 95 (1993). In Moran, the Legislature of the State of Oklahoma required a transfer of money from the state workers' compensation fund to the state's general fund and specifically required that the money be used for a purpose other than workers' compensation.

S.B. No. 37 authorizes the System to transfer its assets and liabilities to a private insurance company created by it if certain conditions are in existence. However, S.B. No. 37 does not provide that the State of Nevada would receive any

legal consideration for the transfer. Therefore S.B. No. 37 is distinguishable from the legislation at issue in Fun 'N Sun. However, current or past policyholders of the System may still contend that they have a contractual right to the money in the state insurance fund and that therefore, if the System is to cease to exist, the money in the state insurance fund must be returned to them rather than being transferred to a different insurance company. Pursuant to the test applied by the court in Fun 'N Sun, it is unlikely that the courts of this state would find that such a contract exists because: (1) the provisions of chapters 616A to 617, inclusive, of NRS do not express unambiguously an intent to create a contractual obligation on the part of the State of Nevada not to transfer the assets and liabilities of the state insurance fund; and (2) these provisions do not contain language indicative of a legislative commitment not to repeal or amend the statutes in the future. Furthermore, even if a court were to find that such a contract exists, it is unlikely the court would find that the obligation of the contract would be impaired by the transfer of the assets and liabilities of the state insurance fund to another entity that is required to use the money for the same purpose. The obligation of such a contract would be the payment of benefits to injured employees and their dependents in accordance with the provisions of chapters 616A to 617, inclusive, of NRS. Unlike the legislative act analyzed by the Supreme Court of Oklahoma in Moran, the provisions of S.B. No. 37 require that any money transferred from the System to the private company be used only for the purpose of providing workers' compensation. Therefore, S.B. No. 37 actually fulfills, rather than impairs, the obligation of the contract if one were found to exist. It is the opinion of this office, therefore, that it is unlikely that S.B. No. 37 would be declared unconstitutional as an impairment of contract.

3. Taking of Private Property without Just Compensation or Due Process.

Next, we will consider whether the transfer of the assets and the liabilities of the System authorized by S.B. No. 37 would violate the state and federal constitutional provisions forbidding the taking of private property without due process of law and just compensation. The Fifth Amendment to the United States Constitution provides that a person may not "be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." The Fifth Amendment applies to the states through the Fourteenth Amendment, which prohibits the states from depriving a person of life, liberty or property without due process of law. Penn Central Transportation Co. v. New York City, 98 S. Ct. 2646, 2658 (1978). Similarly, Section 8 of Article 1 of the Nevada Constitution states, in part, that no person may "be deprived of life, liberty, or property, without due process of law . . . [nor shall private property] be taken for public use without just compensation having been first made, or secured." To demonstrate that a taking of property has occurred, a person must first establish that a vested property right has

been affected. Fun 'N Sun R.V., 527 N.W.2d 468, 478 (1994), *cert. denied*, 115 S. Ct. 2000 (1995). A vested property right must be more than a mere expectation; "it must have become a title, legal or equitable, to the present or future enjoyment of property." Id. Policyholders in other states have asserted that the assets of a state workers' compensation fund are held in trust for them because they have a vested property interest in such assets.

In Fun 'N Sun R.V., the policyholders claimed that a statute authorizing the sale of the assets of the state accident fund was unconstitutional because the policyholders owned the assets being transferred to Blue Cross and Blue Shield of Michigan. They argued that the assets of the fund were held by the state in trust for the benefit of the policyholders. The Supreme Court of Michigan held that the policyholders had no property right to the fund because: (1) no language in the insurance policies issued by the fund expressly granted or recognized an ownership interest in the assets or surplus in the fund; and (2) it concluded that the assets of the fund were not being held in trust for the policyholders. Therefore, the court held that the sale of the fund did not constitute a deprivation of the policyholders' property because the policyholders had no property right in the assets of the fund. Similarly, the Court of Appeals of New York, in Methodist Hosp., 476 N.E.2d 304, held that legislation requiring the transfer of \$190 million from the state workers' compensation fund to the state's general fund did not amount to a taking of property without just compensation because the policyholders did not have a property interest in the surplus of the fund. Pursuant to the applicable New York statutes, the State of New York was liable for the payment of workers' compensation benefits and, as such, did not hold the money in the fund "in trust," but rather as money of the State of New York. Id. at 309. *Cf. Gronning v. Smart*, 561 P.2d 690 (Utah 1977) (holding that legislation which appropriated money from the state's workers' compensation fund to the industrial commission for the purpose of hiring safety inspectors was a taking of property without due process of law).

Therefore, in both Fun 'N Sun R.V. and Methodist Hosp. the state workers' compensation funds from which assets were transferred were determined to be state funds and not trust funds being held for the benefit of the policyholders or for the employees. In Nevada, subsection 2 of Section 2 of Article 9 of the Nevada Constitution, NRS 616B.083 and 616B.086 specifically provide that the state insurance fund is a trust fund for the benefit of employees and their dependents within the provisions of chapters 616A to 617, inclusive, of NRS, not for the benefit of the policyholders. Therefore, as in the cases of Fun 'N Sun R.V. and Methodist Hosp., the policyholders of the System are unlikely to be successful in arguing that the assets of the state insurance fund are held in trust for them and that, therefore, they have a property interest in such assets. However, the employees and their dependents may contend that they have a vested interest in the assets being held in trust for their benefit

which may not be deprived without due process or just compensation. However, pursuant to the provisions of S.B. No. 37, if the claims of employees and their dependents, and the assets associated with those claims, are transferred to the private company, those claims must be administered pursuant to the provisions of chapters 616A to 617, inclusive, of NRS, and those assets cannot be used for a purpose other than the provision of workers' compensation. As a general rule, there is a taking of property for the purposes of the federal and state constitutions when the act involves an actual interference with, or disturbance of, property rights, resulting in injuries which are not merely consequential or incidental. See Sanguinetti v. United States, 44 S. Ct. 264 (1924). Section 129 of S.B. No. 37 requires that if the assets of the state insurance fund are transferred to the private company, the new company shall assume all debts and liabilities of the System. Section 128 of S.B. No. 37 requires the newly formed private company to provide workers' compensation pursuant to the provisions of chapters 616A to 617, inclusive, of NRS. Therefore, there should be no injury to the injured employees. Finally, unlike the legislation at issue in Gronning v. Smart, 561 P.2d 690 which authorized the transfer of money from the state workers' compensation fund for a public purpose other than the payment of workers' compensation, sections 17 and 18 of S.B. No. 37 restrict the use of any money transferred to the providing of workers' compensation only. Therefore, it is the opinion of this office that S.B. No. 37 does not constitute a taking of private property without just compensation or due process of law in violation of the constitutions of the State of Nevada or the United States.

4. Section 1 of Article 8 of Nevada Constitution

Another potential constitutional issue that we have identified is whether the provisions of S.B. No. 37 would violate the provisions of Section 1 of Article 8 of the Nevada Constitution. Section 1 of Article 8 of the Nevada Constitution provides that "The Legislature shall pass no Special Act in any manner relating to corporate powers except for Municipal purposes; but corporations may be formed under general laws; and all such laws may from time to time, be altered or repealed." The Supreme Court of Nevada has interpreted this provision of the Nevada Constitution as applying particularly to the formation of corporations. As the Supreme Court of Nevada has stated:

The expression, "in any manner relating to corporate powers," is a rather ambiguous phrase, but we think the framers of the Constitution meant by that language to prohibit the formation of corporations by special acts. The subsequent language, "but incorporations may be formed under general laws," shows that was the meaning intended to be conveyed. Then, to use more appropriate language, the section would

read in this way: "The Legislature shall pass general laws for the formation of corporations; but no corporation (except corporations for municipal purposes) shall be created by special act."

In re Scott, 53 Nev. 24, 33 (1930) (quoting City of Virginia v. Chollar-Potosi Gold & Silver Mining Co., 2 Nev. 86, 90 (1866) (emphasis added)). Thus, the Supreme Court of Nevada has interpreted Section 1 of Article 8 of the Nevada Constitution to prohibit the "formation" or "creation" of a corporation by special act unless such corporation is being formed or created for municipal purposes. For the reasons set forth below, it is the opinion of this office that the provisions of S.B. No. 37 do not violate the provisions of Section 1 of Article 8 of the Nevada Constitution.

Section 128 of S.B. No. 37 authorizes the Manager of the System to "take such actions as are necessary" to establish a domestic mutual insurance company in this state. The domestic mutual insurance company so established would be authorized to provide industrial insurance, employer's liability insurance and, in certain circumstances, other types of property and casualty insurance. Id. In addition, the domestic mutual insurance company would be required to obtain a certificate of authority to transact industrial insurance in this state and would be required to qualify for the authority to issue nonassessable policies of insurance pursuant to NRS 693A.250. Id. Section 129 of S.B. No. 37 requires the Governor to issue a proclamation if the Governor determines that the System has taken certain required actions with respect to a domestic mutual insurance company established pursuant to section 128. If the Governor makes the required determinations and issues the proclamation, the Manager of the System is authorized to take various actions which generally involve the transfer of the assets of the System to the domestic mutual insurance company. Id. Thus, sections 128 and 129 of S.B. No. 37 provide the basic mechanism pursuant to which the System may be "privatized" into the form of a domestic mutual insurance company.

A domestic insurer must be incorporated by not less than three natural persons. Subsection 2 of NRS 692B.020. Thus, the domestic mutual insurance company described in sections 128 and 129 of S.B. No. 37 would be required to be a corporation to transact insurance in this state. However, this raises the question of whether such domestic mutual insurance company (1) would be deemed to have been incorporated by the provisions of S.B. No. 37; or (2) would simply be created as a company which then must incorporate pursuant to the general laws of this state. In answering this question, we must turn to the rules of statutory construction.

According to the Supreme Court of Nevada, the words in a statute "should be given their plain meaning unless this violates the spirit of the act." State, Dep't Ins. v.

Humana Health Ins., 112 Nev. 356, 360 (1996) (quoting McKay v. Board of Supervisors, 102 Nev. 644, 648 (1986)). We will now apply this principle to sections 128 and 129 of S.B. No. 37. As stated previously, the provisions of sections 128 and 129 of S.B. No. 37 create a mechanism pursuant to which the Manager of the System may establish a domestic mutual insurance company that is authorized to assume the assets of under certain circumstances. The provisions of sections 128 and 129 of S.B. No. 37 do not refer to the domestic mutual insurance company as a corporation, nor do those provisions purport to grant corporate powers to the domestic mutual insurance company. Thus, it is the opinion of this office that sections 128 and 129 of S.B. No. 37 do not form or create a corporation, but instead simply authorize the establishment of a domestic mutual insurance company that would be required pursuant to NRS 692B.020 to incorporate to transact insurance in this state. Applying this conclusion to the prohibition set forth in Section 1 of Article 8 of the Nevada Constitution, it is the further opinion of this office that sections 128 and 129 of S.B. No. 37 do not violate that constitutional provision, because Section 1 of Article 8 of the Nevada Constitution only prohibits the "formation" or "creation" of a corporation by special act, and sections 128 and 129 of S.B. No. 37 do not form or create a corporation.

One might conceivably contend, however, that sections 128 and 129 of S.B. No. 37 effectively do create a corporation by special act, in that they provide for the creation of a domestic mutual insurance company which in turn must be incorporated as required pursuant to NRS 692B.020 to transact insurance in this state, and that a different result should be reached with respect to the applicability of Section 1 of Article 8 of the Nevada Constitution, in light of the case of State v. Toll-Road Co., 10 Nev. 155 (1875). Toll-Road concerned a special act enacted by the Nevada Legislature on February 9, 1865, which granted to Frederick Birdsall and his associates a franchise to collect tolls upon the Dayton, Virginia and Carson Toll Road for a period of 10 years. Id. at 159. In relevant part, the special act contained a provision designated as section three which provided that "the owners of said [toll] road may incorporate the same under the general incorporation laws of this State." Id. at 160. Although section three did not form or create a corporation directly by special act, but instead simply authorized the Toll-Road Company to do so, the Supreme Court of Nevada nonetheless held that section three of the special act was unconstitutional. Id. at 160-61. Specifically, the court noted that although section three of the special act purported only to grant the authority to incorporate under the general incorporation laws of the State of Nevada, the Toll-Road Company in fact received a special benefit because at the time the special act was enacted, the general incorporation law did not allow incorporation for the purpose of carrying out the operation of a toll road. Id. at 160. The Supreme Court of Nevada summarized its analysis as follows:

But viewed from any legal standpoint of construction, section three is clearly unconstitutional. In our judgment it attempts to give a right to Birdsall and his associates to exercise corporate powers not provided for in the general law. It was an attempt upon the part of the legislature to grant a special privilege to one corporation that could not under the then existing laws be enjoyed by any other, and is clearly in violation of section one, article eight, of the Constitution, which provides that "the legislature shall pass no special act in any manner relating to corporate powers except for municipal purposes."

Id. at 161.

It might be contended that the situation described in Toll-Road is somewhat analogous to the situation created pursuant to sections 128 and 129 of S.B. No. 37, in that in both situations, a special act does not purport to form or create a corporation directly, but rather allows incorporation to be carried out by another person or governmental entity. However, sections 128 and 129 of S.B. No. 37 are distinguishable from the situation described in Toll-Road. As stated previously, the provision of the special act at issue in Toll-Road authorized a company to incorporate as a type of business that was not otherwise allowed to incorporate pursuant to the general incorporation law of this state. Id. at 160. As a result, the Toll-Road Company received a competitive advantage by being authorized by the state to do something that it could not otherwise have done by way of general incorporation. Id. In contrast, sections 128 and 129 of S.B. No. 37 do not grant to the System or to the domestic mutual insurance company any corporate powers that cannot be possessed by any other insurer that is otherwise qualified to transact insurance in this state. Thus, even accepting the premise that the reasoning in Toll-Road applies with respect to sections 128 and 129 of S.B. No. 37, it is the opinion of this office that sections 128 and 129 of S.B. No. 37 are distinguishable in that they do not convey any corporate powers that are denied to other companies that might want to incorporate as a domestic mutual insurance company in this state. Therefore, notwithstanding the Toll-Road case, it remains the opinion of this office that sections 128 and 129 of S.B. No. 37 do not violate the provisions of Section 1 of Article 8 of the Nevada Constitution.

5. Section 9 of Article 8 of Nevada Constitution

Another potential constitutional issue that we have identified is whether the provisions of S.B. No. 37 would violate the provisions of Section 9 of Article 8 of the Nevada Constitution. Section 9 of Article 8 of the Nevada Constitution provides that "The State shall not donate or loan money, or its credit, subscribe to or be, interested in the Stock of any company, association, or corporation, except corporations formed

for educational or charitable purposes.” The issue of the potential application of Section 9 of Article 8 of the Nevada Constitution is raised by the fact that, as stated previously, section 129 of S.B. No. 37 provides that in certain circumstances, the assets of the System will be transferred to a domestic mutual insurance company established pursuant to section 128 of S.B. No. 37. Specifically, section 129 of S.B. No. 37 provides that in certain circumstances:

(a) The manager of the state industrial insurance system may transfer to the chief executive officer of the domestic mutual insurance company established pursuant to section 128 of this act the premiums and other money paid to the state industrial insurance system, including contributions and penalties, all property and securities acquired through the use of money in the state insurance fund, all interests and dividends earned upon money from the state insurance fund that were deposited or invested, and all other properties received, collected or acquired by the state industrial insurance system before January 1, 2000;

Thus, we must determine whether the transfer of assets authorized pursuant to section 129 of S.B. No. 37 would violate the provisions of Section 9 of Article 8 of the Nevada Constitution.

As stated previously, Section 9 of Article 8 of the Nevada Constitution prohibits the state from donating money to a company, association or corporation, except a corporation formed for educational or charitable purposes. Although this provision addresses the situation in which the state would seek to donate its own money to a private, for-profit corporation, it does not appear to address a similar transfer of money held in trust by the state that is derived from premiums paid by policyholders to secure industrial insurance coverage. Section 9 of Article 8 of the Nevada Constitution additionally provides that the “State shall not . . . subscribe to or be . . . interested in the Stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.” The System and its predecessors, however, have been authorized to invest in stocks and bonds of private corporations since 1959. See NRS 616B.134 to 616B.143, inclusive.

The Supreme Court of Nevada held in State v. McMillan, 36 Nev. 383 (1913), that the state insurance fund is not a part of the state treasury. This view is in accordance with the view of many states that worker's compensation funds which are administered by the state but composed of premiums paid by employers are separate from other assets of the state. See Moran, 534 P.2d at 1286-87; Chez v. Indus. Comm'n of Utah, 62 P.2d at 551; State v. Yelle, 25 P.2d 569 (Wash. 1933); State v. Padgett, 209 N.W. 388, 391 (N.D. 1926) (claims against the fund are not claims

against the state); Senske v. Fairmont & Waseca Canning Co., 45 N.W.2d 640, 646 (Minn. 1951) (state has no interest in state insurance fund other than proper administration); State v. Olson, 175 N.W. 714, 717 (N.D. 1919); Idaho on Relations of Williams v. Musgrave, 370 P.2d 778, 782 (Idaho 1962) (money in state insurance fund does not belong to state). 7B Appleman, Insurance Law and Practice § 4592 at p. 75 ("[t]he fund, itself, is not synonymous with the state, and claims against the fund are not claims against the state, the fund not being considered a state fund."); Cf Methodist Hosp. of Brooklyn v. State Ins. Fund, 476 N.E.2d 304 (N.Y. 1985) (transfer of money from state insurance fund to state general fund found to be constitutional because legislature had made state liable for debts of state insurance fund therefore no distinction between the two funds); State v. Sadigur, 18 N.Y.S.2d 356 (1940) (holding that state was liable for damages caused by state insurance fund in part because legislature had repealed provision that limited state's liability). Therefore, the prevailing view appears to be that the actions, assets and liabilities of state workers' compensation funds which are composed of premiums paid by employers but administered by the state are distinct from the actions, assets and liabilities of the state. We will now apply this principle to the particular financial organization of the System.

The System is an independent, actuarially funded system. Subsection 1 of NRS 616B.050. Although the System is a public agency, it is supported by the state insurance fund. Subsection 2 of NRS 616B.050. In turn, the state insurance fund is supported primarily by the premiums, contributions and penalties collected by the System pursuant to the provisions of chapters 616A to 616D, inclusive, and 617 of NRS, although the state insurance fund is also supported by the investment of money in the state insurance fund. See NRS 616B.086 and 616B.104. Thus, the System is essentially a self-funded public agency that generates its own revenue instead of relying on public money acquired from taxation. See generally NRS 616B.083 to 616B.110, inclusive. Thus, based upon the reasoning of the Supreme Court of Nevada in McMillan and similar authority from other jurisdiction, it is the opinion of this office that the assets of the System cannot properly be characterized as money of the state, the donation of which is prohibited pursuant to section 9 of article 8 of the Nevada Constitution.

As stated previously, Section 9 of Article 8 of the Nevada Constitution, in relevant part, prohibits the state from donating money to a company, association, or corporation, except corporations formed for educational or charitable purposes. However, this prohibition only applies with respect to public money that the state acquires through taxation. See Attorney General Opinion (Nov. 25, 1907) (interpreting Section 9 of Article 8 of the Nevada Constitution to prohibit use of taxes of state to pay bounties for drilling of private artesian wells); State v. Northwestern Mut. Ins. Co., 340 P.2d 200, 201 (Ariz. 1959) (explaining that provision of Arizona Constitution

similar to Section 9 of Article 8 of Nevada Constitution is designed primarily to prevent use of public funds raised by general taxation for private purposes). Because the assets of the System are acquired through the activities of the System and not through taxation, and because of the authority set forth in McMillan and other similar cases, it is the opinion of this office that section 129 of S.B. No. 37, which authorizes the transfer of assets from the System to a domestic mutual insurance company in certain circumstances, does not violate the provisions of Section 9 of Article 8 of the Nevada Constitution.

6. Unlawful Delegation of Legislative Power

The final potential constitutional issue that we have identified is whether the provisions of S.B. No. 37 would violate the principle that legislative power may not be delegated unlawfully. The issue of the potential application of the principle that legislative power may not be delegated unlawfully is raised by subsection 1 of section 129 of S.B. No. 37, which provides that:

1. On or before December 31, 1999, if the governor determines that:

(a) The state industrial insurance system has purchased a sufficient amount of reinsurance to enable it to operate in a financially responsible manner;

(b) The manager of the state industrial insurance system has established a domestic mutual insurance company pursuant to section 128 of this act;

(c) The state industrial insurance system has received a private letter ruling from the Internal Revenue Service which states substantially that the Internal Revenue Service will not consider the domestic mutual insurance company established by the manager pursuant to section 128 of this act to have recognized any gain or income if it receives the assets and assumes the debts and liabilities of the state industrial insurance system pursuant to subsection 2; and

(d) The commissioner of insurance has determined that the domestic mutual insurance company established by the manager pursuant to section 128 of this act qualifies:

(1) For a certificate of authority to transact industrial insurance in this state; and

(2) For the authority to issue nonassessable policies of insurance pursuant to NRS 693A.250,

the governor shall issue a proclamation stating that the events described in paragraphs (a) to (d), inclusive, have occurred.

The Manager of the System is not authorized to transfer the assets of the System to the domestic mutual insurance company established pursuant to section 128 of S.B. No. 37 unless the Governor determines that the events described in paragraphs (a) to (d), inclusive, of subsection 1 of section 129 of S.B. No. 37 have taken place. Subsection 2 of section 129 of S.B. No. 37. Furthermore, most of the provisions of S.B. No. 37 do not become effective unless the Manager of the System transfers the assets of the System pursuant to subsection 2 of section 129 of S.B. No. 37. See subsection 4 of section 140 of S.B. No. 37. Thus, the "privatization" of the System is contingent on the Governor making the determinations described in subsection 1 of section 129 of S.B. No. 37. We will now determine whether this grant of authority to the Governor causes S.B. No. 37 to violate the principle that legislative power may not be delegated unlawfully.

Section 1 of Article 3 of the Nevada Constitution sets forth the basic prohibition on the unlawful delegation of legislative power. In relevant part, Section 1 of Article 3 of the Nevada Constitution states that:

1. The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.

The Supreme Court of Nevada has interpreted this provision not as an outright ban on the delegation of legislative power but rather as restricting the delegation of legislative power within certain boundaries. See, e.g., State ex rel. List v. County of Douglas, 90 Nev. 272, 281 (1974) (explaining that legislature may delegate its authority provided that legislature makes fundamental policy decisions and just allows delegatee to achieve goals set by legislature); Pine v. Leavitt, 84 Nev. 507, 510-11 (1968) (citing Field v. Clark, 143 U.S. 649 (1892) (explaining that legislature cannot delegate authority to determine what law shall be, but may delegate authority to carry out law created by legislature)). Although these cases are instructive as to the general parameters of the prohibition on the unlawful delegation of legislative power, it appears that the case which is most applicable to the provisions of S.B. No. 37 is Sheriff v. Luqman, 101 Nev. 149 (1985).

In Sheriff v. Luqman, the Sheriff of Clark County appealed the granting of writs of habeas corpus with respect to two persons who had been arrested for violating certain provisions of Nevada's Uniform Controlled Substances Act ("UCSA"). Id. at

151. In relevant part, the appeal dealt with the issue of whether the UCSA constituted an unlawful delegation of legislative power insofar as it made certain delegations of authority to the State Pharmacy Board. Id. at 153. Specifically, the UCSA authorized the State Pharmacy Board to "classify drugs into various schedules according to the drug's propensity for harm and abuse." Id. However, although the UCSA authorized the State Pharmacy Board to classify drugs, the relevant chapter of the Nevada Revised Statutes retained the guidelines which set forth the factors to be used by the State Pharmacy Board in classifying the drugs. Id. at 154.

In concluding that the authority granted by the UCSA to the State Pharmacy Board did not constitute an unlawful delegation of legislative authority, the Supreme Court of Nevada explained several principles. First, the court noted that, "Although the legislature may not delegate its power to legislate, it may delegate the power to determine the facts or state of things upon which the law makes its own operation depend." Id. at 153 (*citing State ex rel. Ginocchio v. Shaughnessy*, 47 Nev. 129 (1923)). The court explained further that, "the legislature can make the application or operation of a statute complete within itself dependent upon the existence of certain facts or conditions, the ascertainment of which is left to the administrative agency." Id. (*citing Telford v. Gainesville*, 65 S.E.2d 246 (Ga. 1951)). However, in delegating such authority to an agency, the legislature must ensure that it provides to the agency such standards as are "sufficient to guide the agency with respect to the purpose of the law and the power authorized." Id. at 153-54 (*citing Egan v. Sheriff*, 88 Nev. 611 (1972)). We will now apply these principles to the authority delegated to the Governor pursuant to subsection 1 of section 129 of S.B. No. 37.

As stated previously, subsection 1 of section 129 of S.B. No. 37 directs the Governor to determine whether certain events have taken place and if the Governor determines that all the events described have taken place, then the Governor is required to issue a proclamation to that effect. If the Governor issues such a proclamation, subsection 2 of section 129 of S.B. No. 37 authorizes the Manager of the System to transfer the assets of the System to the domestic mutual insurance company established pursuant to section 128 of S.B. No. 37. With respect to the principles set forth in Sheriff v. Luqman, it appears that the authority delegated to the Governor would not constitute an unlawful delegation of legislative power. As stated previously, Luqman makes clear that the Legislature "may delegate the power to determine the facts or state of things upon which the law makes its own operations depend." This is exactly the type of delegation made to the Governor pursuant to subsection 1 of section 129 of S.B. No. 37, in which the operation of the law (the authorization of the actions necessary to "privatize" the System) is dependent on the Governor determining that the events described in paragraphs (a) to (d), inclusive, of that subsection have taken place. Furthermore, only the determination described in paragraph (a) provides the Governor

Assemblywoman Buckley

May 12, 1999

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with any discretion at all. The determinations described in paragraphs (b), (c) and (d) simply call upon the Governor to say whether an event has taken place. Although paragraph (a) does allow the Governor to determine whether the System "has purchased a sufficient amount of reinsurance to enable it to operate in a financially responsible manner," it appears that the provisions of S.B. No. 37 properly convey to the Governor the parameters of his authority in making that determination by stating that the determination of sufficient reinsurance is the Governor's to make. Thus, it is the opinion of this office that the provisions of section 129 of S.B. No. 37 do not violate the principle that legislative power may not be delegated unlawfully.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By *Sue S. Matuska*
Sue S. Matuska
Senior Deputy Legislative Counsel

By *Scott McKenna* *by sm*
Scott McKenna
Senior Deputy Legislative Counsel

By *Kim Marsh Guinasso* *by sm*
Kim Marsh Guinasso
Principal Deputy Legislative Counsel

SSM:dtm

Encl.

Ref No. 9905101057



STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Division of State Lands

May 10, 1999

MEMORANDUM

TO: Assemblywoman Barbara Buckley, Chair
Assembly Committee on Commerce and Labor

FROM: Pamela B. Wilcox, Administrator
Division of State Lands

SUBJECT: S.B. 37: Technical Amendment

S.B. 37 will require the division of state lands to transfer to the new domestic mutual insurance company the title to lands currently held by this agency on behalf of the state industrial insurance system. It is certainly appropriate to transfer these land assets of the system to the new insurance company.

However, these land assets include land within the capitol complex in Carson City. It is important that the state capitol complex remain intact. Should the domestic mutual insurance company decide in the future that it no longer needs these lands, the State needs to have a right to reacquire them, with full compensation to the insurance company.

I am therefore requesting that the bill be amended to include a provision that, when title transfers to the new domestic mutual insurance company, it be subject to a future right of first refusal for the State, which would allow the state to reacquire these lands for fair market value. I have attached draft amendment language which was developed with the assistance of the attorney general's office.

This request has the concurrence of the Governor's office, the Budget Office, the Division of Buildings and Grounds and the State Public Works Board.

Attachment

Cc: Governor Kenny C. Guinn
John P. Comeaux, Budget Director
Mike Meizel, Buildings and Grounds
Eric Raecke, State Public Works Board

Division of State Lands

Proposed Amendment S.B. 37: State Industrial Insurance System

Amend Section 129, subsection 2(b)(2) at page 82, line 14:

Add a new sentence immediately following the provision that the division of state lands transfer the title to all real property held by the division in the name of the State of Nevada to the domestic mutual insurance company:

Recognizing the State's future interest in reacquiring those properties located in Carson City, the state land registrar shall transfer title to the domestic mutual insurance company subject to the right of the State to reacquire the property for fair market value by exercise of the right of first refusal. The state land registrar shall reserve the State's right of first refusal in any deed to the domestic mutual insurance company upon reasonable and customary terms and conditions.



State of Nevada Employees Association

709 East Robinson Street/P.O. Box 1016
Carson City, Nevada 89701

OFFICE: (702) 882-3910
FAX: (702) 882-1202

May 12, 1999

TO: Members of the Assembly Commerce & Labor Committee
FROM: Bob Gagnier
REF: SB 37

During my testimony on May 10th regarding SB 37, I stated to the effect that if the "system" does not get IRS approval that the only thing this bill will have accomplished is to remove the employees from the protection of NRS 284 subject to the provisions of Section 20 on page nine. EICON management disputes this because there is a sunset provision in Section 140 for Section 20 if the IRS ruling is not received.

Both are correct. Yes, Section 20 will expire BUT the "system" will have had six months during which they will not have been subject to the provisions of NRS 284 regarding layoff priorities, dismissal for cause, etc. They will have, in effect, had six months to clean house without regard to law.

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

**Seventieth Session
May 21, 1999**

The Committee on Commerce and Labor was called to order at 3:00 p.m., on Friday, May 21, 1999. Chairman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All Exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairman
Mr. Richard Perkins, Vice Chairman
Mr. Morse Arberry, Jr.
Mr. Bob Beers
Mr. Joe Dini, Jr.
Ms. Chris Giunchigliani
Mr. David Goldwater
Mr. Lynn Hettrick
Mr. David Humke
Mr. Dennis Nolan
Mr. David Parks
Mrs. Gene Segerblom

COMMITTEE MEMBERS ABSENT:

Ms. Merle Berman
Mrs. Jan Evans

STAFF MEMBERS PRESENT:

Vance Hughey, Committee Policy Analyst
Crystal Lesbo, Committee Counsel
Jane Baughman, Committee Secretary

OTHERS PRESENT:

Pete Ernaut, Chief of Staff, Office of the Governor

Bob Ostrovsky, lobbyist, Nevada Resort Association
Danny Thompson, lobbyist, Nevada American Federation of Labor-
Congress of Industrial Organizations
Leonard Ormsby, General Counsel, Employers Insurance Company of
Nevada
Douglas Derks, Chief Executive Officer, Employers Insurance Company of
Nevada
Alice Molasky-Arman, Commissioner of Insurance
Eloise Koenig, Self-Insurance Coordinator, Division of Insurance
Robert Gagnier, Executive Director, State of Nevada Employees
Association
Kara Kelley, Senior Vice President, Las Vegas Chamber of Commerce
Ray Badger, lobbyist, Nevada Trial Lawyers Association

**Senate Bill 37: Makes various changes regarding industrial insurance.
(BDR 53-382)**

Chairman Buckley explained two hearings had previously taken place on the bill. She expected there would be recommended amendments to the bill. It was her intention to hear the amendments first, followed by public testimony on the amendments. She also intended to have the committee vote on the bill.

Pete Ernaut, Chief of Staff, Office of the Governor, expressed support for the bill. The intention had been to privatize the state worker's compensation system. He wanted to address the loss of benefits to Nevada's workers and the increasing need for consumer protection in the health care industry. Mr. Ernaut felt the bill brought together the best recommendations between all the bill's affected parties. He stated Nevada's workers had lost benefits due to the continual changes in the state's workers compensation system. Approximately one-third of those benefits would be restored with passage of S.B. 37. Mr. Ernaut said there would be an increase in partial permanent disability awards and vocational rehabilitation. In addition, the burden of proving a preexisting condition would be moved from the worker to the insurer. The bill also mandated disclosure of medical records. Mr. Ernaut said the traditional problem with preexisting conditions stemmed from the insurer's lack of information about the worker and increased litigation. The new language would allow for better service and decreased litigation.

Next, Mr. Ernaut outlined the new cabinet position created by S.B. 37. The appointee would serve at the pleasure of the governor and would be appointed by the governor. The new director would oversee the Office of Consumer Health. That office would provide dispute resolution and a forum for grievances

to move health care problems away from the bureaucracy. Section 129 outlined the responsibilities of the governor to protect employees of the Employers Insurance Company of Nevada (EICN). In addition, section 20 moved all currently classified state employees in the agency to unclassified positions. He acknowledged the employees would remain classified if the triggering events outlined in section 129 did not come to fruition. That would allow greater job protection for current employees.

Chairman Buckley suggested all panelists presenting amendments for the bill testify before committee members asked questions. She asked if Mr. Ostrovsky had prepared a copy of the amendments he was proposing to the committee.

Bob Ostrovsky, lobbyist for the Nevada Resort Association, presented those amendments (Exhibit C). Mr. Ostrovsky went over the proposed language, which had not been formatted as an amendment, but simply as a list. Section A discussed vocational rehabilitation and made various changes to rights of out-of-state claimants, maximum length of rehabilitation, and wages paid for temporary jobs. Mr. Ostrovsky stated vocational rehabilitation was an expensive portion of the state's worker's compensation budget. The state spent as much as \$80 million per year at one time. The changes proposed by Section A of the handout took the current structure and added more funds. He said there was a buyout procedure in place, where employees could get the cost of the program issued to them, then choose whether or not to participate in the program.

Mr. Ostrovsky said problems arose when residents of California, Utah, and Arizona were injured on the job in Nevada. They were not allowed to receive benefits in their home state because they were working in Nevada. The change in the bill would allow a resident within 50 miles of the Nevada border to make a workers compensation claim in Nevada or their state of residence. Under current law, vocational rehabilitation claimants had to come into Nevada to receive their benefits. Mr. Ostrovsky gave an example of a temporary steelworker to show how it was difficult for some people injured in Nevada to receive treatment if they lived far away. The law would change after passage to allow claimants to receive treatment in their home state if they were temporary employees and could prove residence outside Nevada at the time of the injury. He said all the changes to vocational rehabilitation were built around existing law. The changes made longer terms for benefits possible and addressed problems with residency and temporary positions.

Section B of the handout included suggested changes to the permanent partial disability benefits. The first change would be to move the multiplier back to .6. The current multiplier was .54, moved there in 1993 from the original .6. The

next change specified the insurer to only deduct the amount previously paid to the claimant. The stipulation referred to a person with a second injury, because if two injuries occurred under current law, the claimant may have to give money back to the insurer for exceeding the permanent total benefits. In addition, the stipulation applied to all open permanent disability claims. Section B also made the Department of Industrial Relations responsible for choosing a doctor if the insurer and claimant could not mutually agree on a physician to establish a rating. The final change to permanent partial disability allowed claimants to get a second opinion for a different disability rating. However, if the second opinion did not change the rating by more than 1 percent, the Department of Industrial Relations could argue against paying for the second doctor.

Section C discussed preexisting conditions. It required the injured claimant to prove the injury aggravated an existing condition. The insurer then had to prove the injury was not a contributing cause of the condition. Section D included language to shift the burden of proof from the claimant to the insurer. He said it had been difficult to define "substantial contributing cause" in the legislation. It did not mean primary cause or factor; it meant the cause was less than primary but still contributing to the injury. Mr. Ostrovsky said each case would be individually evaluated to determine the substantial contributing cause. In addition, the medical records of the claimant would be available for examination by the insurer in an attempt to locate preexisting conditions.

Mr. Nolan asked if the insurer could look for any information on an individual or if the information had to be specific to a certain preexisting condition.

Mr. Ostrovsky replied the insurer would be able to get better information under the new law than in the past. He said the problem had been the insurer did not know where to look for the medical records. The new provision allowed for more investigation. He reiterated each case would be evaluated individually. Mr. Ostrovsky said he wasn't sure how the investigations would work but felt any change was a big improvement.

Mr. Ostrovsky referred the committee back to the amendment he submitted (Exhibit C). He said unresponsive administrators had been a problem in the state's industrial insurance system. The amendment proposed administrative fines remain the same, while benefits penalties would be increased. Current penalties ran from \$1,000 to \$10,000, and the new penalties would range from \$5,000 to \$25,000. He felt stiffer penalties would foster better insurer administration. The Department of Industrial Relations determined the individual penalties, but Mr. Ostrovsky said it was important to give legislative guidelines. To accomplish that, factors had been established such as the number of previous violations and severity of those violations. Another factor in

determining the size of the penalty was the insurer's timeliness for payment to the claimant. If the claimant was deceased, the benefits would be turned over to the estate. Under current law, benefits were not paid if the claimant was deceased.

Section G dealt with mandatory drug testing as mandated in chapter 652 of the Nevada Revised Statutes (NRS). Under current law, drug-testing centers had to be licensed by particular associations to perform claimant drug tests. The change in law would allow any laboratory licensed by under NRS chapter 652. Finally, section H changed the administrative claim closure procedure. The intent was for the claimant to be notified when the claim would be closed and allow the claimant to appeal closure.

Danny Thompson, representing the Nevada American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), testified on behalf of the bill. He stated employers and employees had paid considerable amounts to repay debt incurred by industrial accidents. He supported the amendments proposed by Mr. Ostrovsky, although they did not guarantee all benefits to all workers. The bill did, however, solve many problems within the current industrial insurance system. The legislature agreed to a three-way system that allowed private carriers to compete with the state system. The new system would protect injured workers and stabilize the funds in public industrial insurance. He urged the committee to support S.B. 37.

Leonard Ormsby, general counsel for the Employers Insurance Company of Nevada, submitted specific language for two of the amendments alluded to by Mr. Ostrovsky (Exhibit D). The first page referred to the newly created Office of Consumer Health Assistance. That office would consist of three workers compensation ombudsmen and their support staff. The second page dealt with language for section 20 of the bill. The provisions protected and declassified current employees of the EICN. Mr. Ormsby stated for the record Ms. Wilcox's previously suggested amendment would not be put into the bill.

Chairman Buckley submitted her proposed language for the ombudsmen amendment (Exhibit E). She was concerned about having an ombudsman to assist claimants in the new managed care environment of privatized industrial insurance. In the original language of S.B. 37, the three ombudsmen positions in the EICN were eliminated. The amendment would retain those three positions and stipulated their job functions, qualifications, and responsibilities. The amendment created a cabinet position for the Office of Consumer Health Assistance. The appointee was required to have a medical background to be considered for the position. The ombudsmen would respond to written and telephone inquiries from consumers and injured workers with regard to health

care questions and problems; assist consumers and injured workers in understanding their rights; identify, investigate, and resolve complaints made by patients and injured workers and assist with appeals; and perform any other function assisting health care consumers and injured workers. The existing ombudsmen positions in the EICN would be transferred to the Office of Consumer Health Assistance, and their equipment and supplies would also be transferred. A Department of Industrial Relations assessment would continue to provide funding for the ombudsmen in the office.

In addition, the Office of Consumer Health Assistance would be able to assist all patients of managed care organizations. The budget for that function was still under consideration. The office would provide information to consumers about possible courses of action toward negligent health care providers. The office would be comprehensive, covering both injured workers and all other patients with health care plan problems.

Mr. Ernaut suggested Mr. Ostrovsky and Mr. Ormsby cover the effective dates of the proposed legislation.

Mr. Ormsby stated the hiring freeze would be lifted for state employees effective June 1, 1999. In addition, the EICN agreed to postpone any layoffs until October 1, 1999.

Mr. Ostrovsky said the new vocational rehabilitation benefits would not become effective until October 1, 1999. Since a new benefit package was being compiled, it required a new insurance rating. He testified new ratings usually took 12 months to evaluate. The intent was to reduce that time by 6 months. The insurance commissioner had committed to getting the new rating within that time and providing them to the insurance carriers.

Chairman Buckley said several concerns had arisen after the previous hearing. One of those was the difficulty of laid off EICN workers in finding another job within the state. She wondered if they would have to complete another probationary period.

Mr. Ernaut replied state personnel rules stipulated all employees must complete another probationary period if transferring to another state position. The governor's office was not opposed to waiving the probationary period for EICN transfers.

Chairman Buckley also had a concern about buying up to 5 years of credit in the Public Employees Retirement System (PERS) for EICN employees. She wanted

to know what would happen if the worker already had purchased PERS credits and if the additional credits supplemented their savings.

Mr. Ormsby said the sponsors of the bill had been working with several state agencies, including PERS, the Department of Personnel, and the Department of Employment, Training and Rehabilitation. He understood the 5 years of PERS credits was a requirement and could not be waived or modified. If an employee had already purchased 5 years of credits, he could not purchase any additional time.

Chairman Buckley expressed her desire to include those credits in any amendment and work with the bill drafters. She was concerned because forward-thinking employees were penalized for purchasing credits while they were employed.

Mr. Ernaut expressed the governor's desire to work with Chairman Buckley on that language.

Mr. Humke asked if the Office of Consumer Health Assistance would have authority to conduct lobbying activities.

Mr. Ernaut responded there had been no intent for the office to have a lobbying function. The intent was to provide dispute resolution and consumer protection. He said there had never been an opportunity to provide an ombudsman for health insurance, unlike many other regulated industries. The ombudsmen would be responsible for assisting and directing health insurance customers. The office was intended to be high profile.

Mr. Humke asked if the office would have its own set of bill draft requests.

Mr. Ernaut said it was not the intention to give the office its own requests since the office would operate within the Office of the Governor, similarly to the Nuclear Projects Office. The head of the Office of Consumer Health Assistance would report directly to the governor and be administrated by the chief of staff. He expected the governor's office to provide far fewer bill drafts in the next legislative session.

Mr. Humke asked if the bill's sponsors wanted to restrict the head of the office to a medical professional, as recommended by the Chair. He thought insurance professional might be just as effective in the position, as would an attorney.

Mr. Ostrovsky said there had been a continuing position within the insurance commissioner's office to assist consumers with insurance matters. The problem

was the Office of Consumer Health Assistance was not to help with insurance, but with health care. Insurance professionals did not know a lot about health problems and did not have a medical background. The intention was to provide a new service and meet the needs of currently unserved health care consumers.

Chairman Buckley was concerned because so many of the problems with health care lay in medical necessity. Medical necessity was such a broad term it had been open to argument between physicians, patients, and health insurance providers. Insurance providers were overruling physicians in some cases as to the medical necessity of a patient's care, without having a medical background. The intent was to have a focus on health care, rather than insurance or litigation.

Mr. Ernaut added there were four positions in the Office of the Attorney General to investigate patient insurance fraud. The medical background required for the head of the office would make it an advocacy position and office in nature.

Ms. Segerblom commented the legislature received many phone calls from Nevadans with health care issues.

Mr. Ernaut responded the governor's office received just as many calls, if not more. He stated the office received upwards of 100 calls per week.

Ms. Giunchigliani asked the sponsors to explain the issue of preponderance. She wondered about the terminology and the standard for determining preponderance.

Mr. Ormsby replied preponderance was the lowest threshold in the law.

Ms. Giunchigliani referred to section D, paragraph B of Mr. Ostrovsky's amendment (Exhibit C). She asked what the word "precipitated" meant in the context of preexisting conditions and additional injuries.

Mr. Ormsby said the language existed in current statute. It had been discussed in several published decisions. It was difficult to separate precipitate, aggravate, or accelerate in the language.

Ms. Giunchigliani asked about the cap of two-thirds of a claimant's salary. She wanted to know if it had been adjusted.

Mr. Ormsby answered the temporary total disability had been settled at 66 and two-thirds of the average wages as a net dollar amount.

Ms. Giunchigliani asked if the average wage amount had been raised or if the maximum wage amount had been capped.

Mr. Ormsby said the maximum wage amount had been capped for two years, then increased.

Ms. Giunchigliani wanted to know about the standard of "reasonably related" in reference to preexisting conditions. She was referring to section F of Mr. Ostrovsky's handout (Exhibit C). Ms. Giunchigliani expressed a desire for confidentiality of claimant's medical records.

Mr. Ostrovsky stated language was already in place to allow access to medical records. He agreed it was inappropriate to examine records for conditions unrelated to the industrial injury.

Ms. Giunchigliani asked if Mr. Ormsby had a comment on assets.

Chairman Buckley said there had been no previous discussion on assets. She had received many calls from individuals concerned about various programs.

Douglas Dirks, Chief Executive Officer of the EICN, said the trust assets included monies paid for workers compensation. Those assets would transfer into the new company, including the capitol complex facilities in Carson City, the Jean Hannah Clark facility and another office building in Las Vegas.

Ms. Giunchigliani asked why those assets could not remain with the state. She understood the assets were paid for with employers' premiums, but she felt that money was intended for Nevada's workers. She suggested they could be loaned to the new company, but still kept under the state's ownership.

Mr. Dirks said the assets would be transferred. The EICN was allowed, under current statute, to sell those assets at fair market value. He hoped to keep utilizing the facilities and open them up for further use by the new company to benefit the injured workers of Nevada.

Ms. Giunchigliani commented that goal could still be accomplished by loaning the buildings to the new company, rather than transferring them.

Chairman Buckley asked if competing insurance companies would be able to use the facilities.

Mr. Dirks replied part of the facilities would be used for community outreach. Especially the Jean Hannah Clark facility, which had been previously

underutilized, would be used for community programs like cardiac rehabilitation, which were not currently available.

Mr. Ernaut pointed out it was traditional business practice to have assets and liabilities travel together. If the assets of the EICN were separated from the liabilities, there would be several problems. He said the intention was to reduce liability for the state. It was not advisable to retain the assets because they were the property of the EICN and paid for by premium dollars.

Mr. Nolan understood and agreed with Mr. Ernaut's statement. He asked Mr. Dirks what would happen if EICN failed. He wanted to know what would happen to any surplus assets under that situation.

Mr. Dirks responded if the private company holding the assets encountered financial problems, it would be subject to all the rules applied to any other insurance company. The insurance commissioner could seize the assets of the company and subsequently rehabilitate or liquidate the company.

Mr. Beers said he was a 10-year ratepayer in the state's industrial insurance system. He intended to continue by using the new company as his insurance carrier. Mr. Beers would be upset if the assets funded by his premiums were taken from his insurance company without compensation.

Mr. Hettrick had a question about the effective dates. He was concerned the rate filing was not available to tell the new insurance carriers what they could charge. He said the rates would not match the benefit effective date of October 1.

Mr. Ernaut said a refiling for the new rating would take about 6 months. Without a refiling, insurance companies would be operating without enough premiums.

Alice Molasky-Arman, the Commissioner of Insurance, said she intended to request a new rate filing as soon as the amendment was adopted. The rating agency had already indicated an ability to have the new filing within the 6-month deadline.

Mr. Hettrick asked if there would be any impact on the self-insured employers.

Ms. Molasky-Arman said the self-insured groups filed annually, and had to file an actuarial review to validate the assessments charged to their members. The time period was similar to the private carriers, and she thought it corresponded with when the self-insured group was originally certified. The self-insured

groups could refile for their rating at any time. The 6-month time period given to the state's new private insurance company would be the same time period given for the self-insured groups.

Mr. Hettrick asked if an unexpected financial burden would then be placed on the self-insured groups because of the refiling. He wanted to know how significant the cost would be to those groups.

Ms. Molasky-Arman said they would be required to refile anyway.

Mr. Hettrick asked if they filed now, would the groups be forced to refile again at the end of the normal year. He wondered if their filing requirements would be inadvertently doubled.

Eloise Koenig, Self-Insurance Coordinator for the Division of Insurance, said the self-insured groups were not required to file at any specific time. If they refilled in light of the new benefit requirements, they would not have to refile. However, they would need to file an actuarial review with the division. She said most of the groups carried a surplus, and should be able to carry a small increase with no problem.

Mr. Beers understood the premiums paid by employers went into a separate account. Out of that account, benefits were paid to injured workers and the administration of the program was funded, including any capital improvements. General fund money was never used to pay for the buildings or other assets owned by the EICN.

Chairman Buckley agreed, adding the account was a trust fund.

Mr. Beers said in a business sense, it would be most simple to compile every asset from that separate system and move it to the new entity.

Chairman Buckley pointed out there was also a responsibility to the workers, because they had given up higher wages and the ability to sue for development of an industrial insurance system. The system was a balance, because both employers and employees gave up rights and privileges to provide no-fault insurance.

Mr. Beers did not feel workers would be giving up anything they put into the system, because their new insurer would be part of that same no-fault process. Workers would continue to receive the insurance services they needed.

Chairman Buckley said the employers who chose not to remain with the privatized EICN would not have access to the assets of the state system like the Jean Hannah Clark facility. She was concerned because some injured workers would not get the community resource benefits of the new EICN because their employer chose not to participate. Chairman Buckley acknowledged they would still receive workers compensation benefits. She was also concerned about the loss of those assets if the privatized EICN were to fail.

Mr. Beers hoped the new company formed by the privatization of EICN would charge rent to other companies using the facilities.

Mr. Ernaut said the effect of privatization would lead to greater competition in many services. He anticipated many community resources would be opening up to compete with the new company created from EICN.

Ms. Giunchigliani suggested a real privatized company needed to get its own offices and facilities to be competitive. She said the privatized company would be given an advantage over other companies. She felt the facilities were a state asset and wanted to explore a possible sale.

Mr. Ernaut said the competitors already had facilities. There would not be a rush of new enterprises coming into the state to set up industrial insurance agencies. He said the privatized company would have a competitive disadvantage if the assets were taken away.

Ms. Giunchigliani wanted to know what guarantees were present in the system and which companies would choose to reinsure. She asked which companies would be bidding.

Mr. Dirks responded the EICN was still negotiating the details of those agreements. He assured the committee major insurers were interested in entering the agreement, and the negotiations had been going on for several months. Some primary insurers had not been interested, but he said there were very high quality reinsurers who were interested.

Chairman Buckley wanted to clarify no one lobbying on behalf of the bill had entered into those negotiations.

Mr. Dirks replied no one was participating to the best of his knowledge.

Mr. Ernaut interjected the reinsurance transaction was required before privatization could take place. One of the triggering events for privatization included reinsurance.

Mr. Hettrick said when private insurance carriers exchanged their revenue for exclusive remedy they did not give up their assets. The money held in trust for the injured worker was simply that—money held in trust. When capital was needed for expanded facilities, the premiums were raised accordingly. He contended the assets belonged to the EICN and were paid for by the ratepayers.

Mr. Ernaut added S.B. 37 was a victory for consumers for protection at the cabinet level of government. The bill was also a victory for taxpayers, because it eliminated a huge liability from the state. At the same time, workers compensation benefits had been increased. Labor organizations, businesses, and workers all supported the bill. He said the governor appreciated the hard work of the committee and the Chair on the bill.

Chairman Buckley appreciated Mr. Ernaut's efforts to pass the legislation as well.

Robert Gagnier, Executive Director of the State of Nevada Employee's Association, expressed his support for the bill as amended. Mr. Gagnier addressed the issue of reemployment rights and probationary status. The bill provided for reemployment of probationary employees, which was not in current law. All the employees of the EICN were allowed to take their status with them, probationary or not.

Chairman Buckley asked where that provision was located in the bill.

Mr. Gagnier answered the law was in place in Nevada Administrative Code (NAC) chapter 284. He urged the committee to remember that provision did not ensure reemployment rights for probationary employees. Mr. Gagnier also addressed the practice of buying credits from PERS. The EICN general counsel had referred to NRS 286.300 to authorize purchase of 5 years. He did not think it would be possible to change that statute by recommendation from the governor's office only. He suggested amending NRS 286.300 to allow special rights for purchase of PERS credits, similarly to the amendment of NRS 284 for reemployment.

Mr. Parks said when employees were first hired they were placed in a probationary period. After completion of probation and transfer, they enter into a "qualification" period. He asked if that provision would apply to EICN employees.

Mr. Gagnier said when a permanent employee transferred to a new department they did not have to serve a probationary period. If the employee was

promoted to a higher level position they served a new probationary period in that level; however, the employee retained restoration rights to the former position.

Mr. Parks asked if any employees had already entered into a purchase agreement program with PERS.

Mr. Ormsby responded the question was not academic, because the question had been asked on the company's internet a few times. He was concerned whether or not there would be consequences for the PERS retirement plan, which was approved by the Internal Revenue Service (IRS). He did not know if the tax status of the PERS system would be adversely affected if the rules were changed for EICN employees. He did not know if a change in statute would be adequate.

Mr. Beers asked how seniority applied to the layoffs of EICN employees.

Mr. Gagnier responded a definition was included in NAC 284. Seniority was applied to each job class, then job series and time on the job with satisfactory evaluations. The computation was actually very simple to make.

Mr. Beers clarified the seniority would be calculated based on existing rules.

Mr. Gagnier replied the amendment proposed by Mr. Ormsby removed the layoff section as applied to EICN employees effective July 1. The existing layoff regulation for EICN in NAC 284 would apply until it became a private company. Then, the four triggering conditions would have to be met for more layoffs to occur.

Mr. Ernaut told a short story about a man who went into a place of "ill-repute" to perform some business. When the madam showed him the three ladies of the night from which he could choose, he asked if the shop was union. The madam replied that it was, and asked him to choose. There was a buxom blonde, a redhead, and a large woman called Helga who wore a mumu. The man chose the blonde. Unfortunately, the madam told him he could only have Helga, because she had seniority.

Kara Kelley, representing the Las Vegas Chamber of Commerce, expressed the chamber's support for the bill and the amendments. She urged the committee to do so as well.

Chairman Buckley asked Mr. Dirks to discuss what may happen to buildings owned by EICN if the company was to fail after privatization.

Mr. Dirks replied the state would be given a right of first refusal if the EICN ever decided to sell the properties in the capitol complex. He offered to extend that right to all property currently held by EICN.

Ms. Giunchigliani clarified the state would have right of first refusal to buy back its own property at full market value.

Mr. Dirks said the state would be buying back EICN property, not property owned by the state.

Mr. Goldwater asked if Mr. Dirks considered removing the exclusion of the premium tax for policies of reinsurance. Mr. Dirks said the thought was never considered during the transaction. Mr. Goldwater asked if the provision should be removed in the bill to allow for a premium tax. Mr. Dirks responded it could significantly increase the cost of the transaction and may not be economically viable.

Chairman Buckley asked Mr. Ostrovsky a technical question about his amendment (Exhibit C). On the bottom of the first page, there was a request for amendment of subsection 2 of NRS 616C.175 and section 20 of A.B. 326. She did not see section 20 in A.B. 326 and asked if a correlating reference was available.

Mr. Ormsby said those were the correlating chapters in NRS chapter 617 for preexisting conditions and occupational disease.

Chairman Buckley reiterated there was no section 20 in A.B. 326.

Ray Badger, representing the Nevada Trial Lawyers Association, stated the reference was for the original version of the bill. The amended version moved those provisions to a different section.

Crystal Lesbo, Committee Counsel, said in the first reprint version of the bill, the amendment would correspond to section 4 and section 17.

Chairman Buckley wanted to clarify the effective date for benefits restoration.

Mr. Ostrovsky stated the effective date would be no later than January 1, 2000.

Chairman Buckley said she would entertain an amend and do pass motion, with the amendment containing Mr. Ostrovsky's suggested language (Exhibit C),

including clarification on section 20 of A.B. 326 and an effective date of not later than January 1, 2000. The amendment would also contain her suggested language on the ombudsman consumer protection function (Exhibit E) as well as the triggering mechanism and employee clarifications suggested by Mr. Ormsby (Exhibit D). Chairman Buckley wanted to include language to protect the employment status of employees transferring out of EICN. She also suggested language included to amend NRS chapter 326 to allow EICN employees who had purchased previous credits in PERS to be able to purchase the additional 5 years, unless the provision would bring adverse tax consequences to PERS.

Chairman Buckley asked Mr. Ostrovsky to clarify the effective dates for vocational benefits. She wanted to know if it would be the date of injury, or the date of receipt of benefits.

Mr. Ostrovsky said the effective date would be when the injured worker received the right to vocational benefits, regardless of the date of the injury.

Chairman Buckley then asked him to clarify the effective date of other benefits, not including vocational rehabilitation.

Mr. Ostrovsky stated calculation of the permanent partial disability awards would be made at the time of payment. If the payment was made after the increased benefits were in place, the injured worker would be entitled to them. The date of injury would not matter.

Mr. Ormsby clarified the amount of benefits was established on the date of injury. For vocational rehabilitation benefits, there would be an exception in the law to allow increased benefits upon receipt, and not base those benefits on the date of injury. All the other benefits relied on the date of injury as the effective date.

Mr. Ostrovsky recalled that to be the arrangement and stated vocational rehabilitation was the exception to most injured worker benefit rules.

ASSEMBLYMAN NOLAN MOVED TO AMEND AND DO PASS S.B. 37.

ASSEMBLYMAN PARKS SECONDED THE MOTION.

THE MOTION CARRIED.

The meeting of the Assembly Committee on Commerce and Labor was adjourned at 5:00 p.m.

Benefits

- A) Vocational Rehabilitation
 - 1) Out of state claimants eligible only if
 - a) reside within 50 miles of the Nevada border; or
 - b) worker was injured on a temporary job in Nevada, but can demonstrate that his permanent residence was outside Nevada on the date of injury
 - 2) Maximum length
 - a) extends maximum by 3 months for each category
 - 1) 6 months if claimant has transferrable skills
 - 2) 9 months if PPD is less than 6 percent
 - 3) 1 year if PPD is 6 percent or more but less than 11 percent
 - 4) 18 months if PPD is 11 percent or more
 - 3) Temporary jobs
 - a) must pay the same wage as paid before the injury if claimant is returned to his pre-injury employment in the same job classification
- B) Permanent Partial Disability (PPD)
 - 1) change multiplier back to .6
 - 2) PPD offset from Permanent Total awards
 - a) An Insurer can only deduct the monetary amount previously paid to the claimant
 - b) applies retroactively to all open claims for permanent total disability
 - 3) Insurer and claimant can mutually agree on the rating physician, otherwise the doctor is chosen randomly off the list by DIR
 - 4) Cost of second PPD
 - a) Appeals Officer or Hearing Officer can order that insurer reimburse claimant for the cost of second rating if it resulted in higher award in accordance with regulations of DIR regarding the allowed fee amount
- C) Pre-Existing Conditions
 - 1) First, require claimant to prove by a preponderance of evidence that his industrial injury did, in fact, aggravate a pre-existing condition
 - 2) Then, insurer must prove by a preponderance of evidence that the industrial injury is not a substantial contributing cause of the medical condition which requires treatment
- D) Instructions to Bill drafter regarding Pre-existing conditions: Amend NRS 616C.175 (Sec. 5 of AB326) to read as follows:
 - 1) The resulting condition of an employee who:
 - a) Has a preexisting condition from a cause or origin that did not arise out of and in the course of his current or past employment; and
 - b) Subsequently sustains an injury by accident arising out of and in the course of his employment which aggravates, precipitates or accelerates his preexisting condition, shall be deemed to be an injury by accident that is compensable pursuant to the provisions of chapters 616A to 616C, inclusive, of NRS, unless the insurer can prove by a preponderance of evidence that the aggravation is not a substantial contributing cause of the resulting condition.

Amend subsection 2 of NRS 616C.175 and section 20 of AB326 (AB326) to use the same language.

E) Administrative Fines & Benefit Penalties

- 1) Administrative Fines stay the same
- 2) Benefits Penalties
 - a) Benefit penalties are paid to the claimant or his estate in an amount not less than \$5,000.00 and not greater than \$25,000.00.
 - b) The factors to be considered in determining the amount of the benefit penalty include, but are not limited to,:
 - 1) The harm suffered by the claimant as a result of the violation; and
 - 2) The number of prior violations of NRS 616D.120,

F) Release of information regarding Pre-existing Conditions

- 1) An injured employee must sign all medical releases necessary for the insurer to obtain appropriate information and documentation to determine the nature and amount of benefits to which he is entitled. The insurer may inquire about, and seek medical records of, any prior medical condition which may be reasonably related to the industrial injury.

G) Proposed Amendment to SB37

Add the following provision to SB37:

NRS 616C.230 is hereby amended to read as follows:

- 1) Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS for an injury:
 - a) Caused by the employee's willful intention to injure himself.
 - b) Caused by the employee's wilful intention to injure another.
 - c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.
 - d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.
- 2) For the purposes of paragraphs (c) and (d) of subsection 1:
 - a) The affidavit or declaration of an expert of other person described in NRS 50.315 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.
 - b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, the laboratory that conducts the testing must be licensed pursuant to the provisions of Chapter 652 of NRS.
- 3) No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.
- 4) If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended.
- 5) An injured employee's compensation, other than accident benefits, must be suspended if:
 - a) A physician or chiropractor determines that the employee is unable to

undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

- b) It is within the ability of the employee to correct the nonindustrial condition or injury. The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury

H) Amend the automatic claim closure (NRS616C.235) provision

If medical benefits are less than \$300 and the claimant has not received medical treatment for at least 12 months, the insurer may close the claim after providing notice to the claimant that . . .

- 1.) the claimant will not have the right to request reopening of his claim once claim closure is final; and
- 2.) the claimant may appeal the closure of his claim.

Proposed amendment to SB 37.

1. Create the Office of Consumer Health Assistance to be contained within the Governor's Office.

A. This office to be staffed by transferring three worker's compensation claims ombudsmen and two support staff, together with equipment and supplies from EICN to the newly formed Office of Consumer Health Assistance.

- (1) Worker's compensation insurance ombudsmen will be responsible to
 - (A) Assist consumers in understanding their rights and responsibilities under worker's compensation insurance plans;
 - (B) Provide information to the general public, agencies, legislators and other persons concerning the problems and concerns of consumers relating to worker's compensation insurance, and make recommendations as appropriate for solving those problems and concerns;
 - (C) To the extent possible, identify, investigate and resolve complaints on behalf of consumers and assist those consumers with the filing and pursuit of complaints and appeals;
 - (D) Analyze and monitor the development and implementation of federal, state and local laws, regulations and policies relating the worker's compensation insurance in this state, including the opening of the market to private insurers, and recommend such changes concerning the development and implementation of those laws, regulations and policies as the ombudsman deems appropriate;
 - (E) Facilitate and encourage public comment on laws, regulations and policies relating to worker's compensation insurance in this state, including, without limitation the policies and actions of insurers who issue or delivers for issuance worker's compensation insurance plans in this state; and
 - (F) Ensure that consumers have timely access to the services offered by the office of consumer health assistance.

(2) Worker's compensation ombudsmen and support staff to be funded through a DIR assessment on providers of workers' compensation insurance.

B. In an effort to streamline state government, the consumer health assistance person currently housed within the Division of Health together with supporting staff and equipment and supplies will also be transferred to the newly formed Office of Consumer Health Assistance.

- (1) Those positions will be funded through an assessment on managed care organizations.

Proposed amendment to SB 37

Section 20 1. Except as otherwise provided in this section, upon the satisfaction of the requirements called for in paragraph 1 a-d of section 129,

pick up remaining language.

PROPOSED OMBUDSMAN AMENDMENT TO SB 37

1. The office of "Consumer Health Assistance" is hereby created as a Cabinet position in the Office of the Governor. The Governor shall appoint as his Cabinet appointee, to serve at his pleasure, a physician, registered nurse, advanced nurse practitioner or physician's assistant as defined by N.R.S. _____.
2. The Cabinet member may hire such persons as necessary to perform the duties of the office, including, without limitation, providers of health care. The personnel:
 - (a) Must be qualified by training and experience to perform the duties and functions of the office; and
 - (b) Are in the classified of the state.
3. The office shall provide the following services:
 - (a) Respond to written and telephonic inquiries of consumers of health care and injured workers concerning health care concerns and problems;
 - (b) Assist consumers and injured workers in understanding their rights and responsibilities under health care plans;
 - (c) Identify, investigate, and resolve complaints of patients and injured workers with their health care plans and assist those consumers with the filing and pursuit of appeals;
 - (d) Refer consumers of health care and injured workers to the appropriate agency, department or other entity that is responsible for addressing the specific type of complaint of the consumer;
 - (e) Provide counseling and assistance to consumers of health care and injured workers concerning health care plans;

- (f) Provide education to consumers of health care and injured workers concerning health care plans in this state;
 - (g) Adopt and maintain a system for collection and maintenance of information relating to the written and telephonic inquiries received by the office;
 - (h) Take such actions as are necessary to ensure public awareness of the existence and purpose of the services provided by the division pursuant to this section.
4. All existing worker's compensation ombudsman positions will be transferred to the Office of Consumer Health Assistance office, along with equipment and supplies. These functions will be continued to be funded through a D.I.R. assessment on providers of worker's compensation insurance.
5. The office may:
- (a) Obtain such information from consumers of health care and health care plans as are necessary to carry out the duties of the office; and
 - (b) Investigate and attempt to resolve complaints made by or on behalf of consumers of health care.
 - (c) The Office may adopt regulations as are necessary to carry out the provisions of this bill.
6. On or before February 1 of each year, the Office shall submit a written report to the Governor and the Legislative Counsel Bureau for transmittal to the appropriate legislative committees. The report must include, without limitation:
- (a) A statement of the number and geographic origin of the inquiries received by the office and the issues to which those inquiries were related;

- (b) A statement of the type of assistance provided, including, without limitation, the number of referrals made and the agencies, departments and other entities to which those referrals were made; and
- (c) The disposition of all inquiries and complaints received by the office.

6. In appropriate cases and under the direction of the Governor, the office shall refer a complaint or the results of an investigation to the Commissioner of Insurance for enforcement or to other government agencies, including, but not limited to the Attorney General, without authority to enforce applicable laws and regulations.

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventieth Session
May 28, 1999**

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 12:54 p.m., on Friday, May 28, 1999, on the Senate Floor of the Legislative Building, Carson City, Nevada. There was no Agenda. There was no Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Mark Amodei
Senator Dean A. Rhoads
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Angela Culbert, Committee Secretary

Chairman Townsend explained the language in Amendment No. 1150 for Senate Bill (S.B.) 438 had not been agreed upon. He further stated the new amendment was in the process of being drafted. The committee agreed to hold the amendment until such time as the new one could be presented and reviewed.

SENATE BILL 438: Makes various changes related to electric restructuring.
(BDR 58- 861)

Senator Townsend outlined the proposed changes in Amendment No. 1156 for S.B. 37.

SENATE BILL 37: Makes various changes regarding industrial insurance.
(BDR 58-382)

Senator Schneider indicated the language from S.B. 196 had been included in

Senate Committee on Commerce and Labor
May 28, 1999
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the amendment.

SENATE BILL 196: Creates office of consumer health insurance within division of insurance of department of business and industry. (BDR 57-1147)

Senator Townsend stated that every interested party had agreed to the amendment.

Senator Carlton noted she had a philosophical problem with the measure.

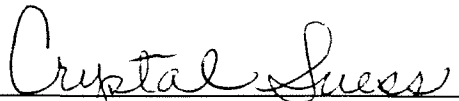

SENATOR O'CONNELL MOVED TO CONCUR WITH AMENDMENT NO.1156 TO S.B.37.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

Senator Townsend adjourned the meeting at 1:03 p.m.

RESPECTFULLY SUBMITTED:


Crystal Suess, By 
Committee Secretary

APPROVED BY:


Senator Randolph J. Townsend, Chairman

DATE: 6/24/99