

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

**Seventy-Fourth Session
April 16, 2007**

The Committee on Commerce and Labor was called to order by Chair John Ocegüera at 2:30 p.m., on Monday, April 16, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ocegüera, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Francis Allen
Assemblyman Bernie Anderson
Assemblyman Morse Arberry, Jr.
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblywoman Marilyn Kirkpatrick
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman David R. Parks
Assemblyman James Settelmeyer

COMMITTEE MEMBERS ABSENT:

Assemblywoman Buckley (excused)
Assemblyman Horne (excused)



GUEST LEGISLATORS PRESENT:

Senator Warren B. Hardy II, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Earlene Miller, Committee Secretary
Gillis Colgan, Committee Assistant

OTHERS PRESENT:

Gary Milliken, representing Associated General Contractors, Las Vegas Chapter
Robert Ostrovsky, representing Employers Holding, and Employers Insurance Group
Jeanette Belz, representing Property Casualty Insurers Association of America
George Ross, representing Nevada Self Insured Association
John E. Jeffrey, representing Southern Nevada Building and Construction Trades, AFL-CIO, and Nevada Trial Lawyers Association
Donna Sweger, representing Nevada Attorneys for Injured Workers
Thomas Husted, Chief Executive Officer, Valley Electric Association, Inc.
Clay Fitch, President, Nevada Rural Electric Association
Jesse A. Wadhams, representing Nevada Rural Electric Association
Judy Stokey, representing Nevada Power Company, and Sierra Pacific Power Company
Kyle Davis, Policy Director, Nevada Conservation League
Dave Noble, representing the Public Utilities Commission

[The roll was called. A quorum was not present.]

Chairman Ocegüera:

We will open the Committee as a subcommittee.

**Senate Bill 99: Revises provisions concerning consolidated insurance programs.
(BDR 53-1010)**

Senator Warren B. Hardy II, Clark County Senatorial District No. 12:

In the interest of disclosure, I am President of the Associated Builders and Contractors of Las Vegas. This bill relates to consolidated insurance programs in the construction industry. I introduced the bill at the request of Tom Burns, Vice President of Cragin and Pike Insurance who is also a board member of the

Associated Builders and Contractors of Las Vegas. The bill is simple and makes changes to laws with regard to owner consolidated insurance programs. In the 48 states that utilize owner consolidated insurance programs the modification factor follows the subcontractor or the contractor who is insured. In Nevada, however, the modification factor follows the owner of the policy. It is problematic for a couple of reasons. If the contractor goes to the time and expense of having a quality safety program, they receive no benefit. This law seeks to change that to allow the modification factor to follow the subcontractor instead of the owner of the policy. When there is no responsibility for the modification factor, you tend to find contractors who are not as safe as they should be gravitating towards owner consolidated insurance programs because there is no negative consequence in having a poor safety record. This bill seeks to bring Nevada into line with the other 48 states that use owner consolidated insurance programs by saying that the modification factor follows the subcontractor. It does not change who pays the premium, or who pays the claim. It is a technical change.

Chairman Ocegura:

[A quorum was present.]

We now have a full Committee and will no longer be operating as a subcommittee. Are there any questions?

Assemblyman Conklin:

Section 1 of the bill addresses the employees of the contractor or subcontractor. What happens if it is an employee of the owner?

Senator Hardy:

That question did not come up in the Senate. I will leave that to the legal staff.

Brenda Erdoes, Committee Counsel:

I will be glad to look into it for you.

Assemblyman Conklin:

If the intent of the bill with that language is true, I am fine with it. It seems if you reference employees of the above, you should be consistent.

Senator Hardy:

I will accept whatever Mrs. Erdoes decides.

Chairman Ocegura:

Are there further questions for Senator Hardy? Are there others to testify in favor of S.B. 99?

Gary Milliken, representing Associated General Contractors, Las Vegas Chapter:

Where this modification factor should go is a gray area. We have done a lot of legislation since 1999 to clean up owner consolidated insurance programs. There are about 19 such programs in Clark County at the present time. The bill is needed to clarify where the modification factor belongs.

Chairman Oceguera:

Are there any questions? Are there any others to testify in favor of S.B. 99? Are there any to testify against the bill? Are there any to testify neutrally?

We will close the hearing on S.B. 99 and open the hearing on Senate Bill 119.

Senate Bill 119: Makes various changes to provisions relating to benefits for certain workers with injuries. (BDR 53-257)

Robert Ostrovsky, representing Employers Holding, and Employers Insurance Group:

This bill addresses an issue relative to the closing of a claim. Nevada is a state with lifetime reopening rights. The claim remains open for the lifetime of the claimant. There are two circumstances when a claim cannot be reopened. One is when the case is first-aid in nature and the other is what this bill addresses. In the early 1990s the legislature added language to the workers' compensation statutes which said if a claim had less than \$500 in medical expenses and there were no other expenses in one year, the claim could be closed and the reopening rights could be waived. That was the law until 1999 when the legislature readdressed this issue and added language which allowed for certain appeal rights. The claimant with benefits of \$300 or less was then offered appeal rights. There was a conflict between two bills with different benefit amounts as the level at which the claimant could have reopening rights. In 2001, the number was established at \$300. This bill proposes that the level be raised to \$1,000. The reason for that is the cost of medical inflation. In 2006, Employers Insurance Group closed 1,631 claims using the level of \$300 which is about a 75 percent reduction of the claims it closed five years earlier and soon no claims will fall into this category. We would like the legislature to take into consideration the amount of time that has passed since the \$300 level was created. We support a change.

Assemblyman Conklin:

How many people who have a claim between \$300 and \$1,000 actually reopen them?

Robert Ostrovsky:

I do not have a specific answer, but we have never had a case where anyone ever appealed the decision to close a claim at \$300. We have had cases in which people who received notice have stated that it was a mistake because they had more than \$300 in expenses. Employers Insurance would have almost doubled the number of claims we closed in 2006 if the level was \$1,000. Many other claimants would be affected by this decision.

Assemblyman Conklin:

If the claim is in dispute, regardless of the amount, can it be closed?

Robert Ostrovsky:

I would assume there would be a conflict in a claim that was still open, but I would have to do some research.

Assemblyman Conklin:

I have additional questions, but I have to review this further.

Robert Ostrovsky:

I would be happy to meet with Mr. Conklin to discuss this.

Chairman Oceguela:

Are there further questions from the Committee? Are there others wishing to testify in favor of S.B. 119?

Jeanette Belz, representing Property Casualty Insurers Association of America:

I am testifying in support of this bill to acknowledge the impact of inflation over time.

George Ross, representing Nevada Self Insured Association:

We also support S.B. 119 because medical inflation has increased significantly since these concepts were developed and the workers' compensation program is not designed to take care of the type of injury you could now take care of for \$300.

Chairman Oceguela:

Will this change the lifetime reopening rights for people who have ten-year-old claims under the designated amount?

George Ross:

I understand the question, but if there was no medical treatment in ten years, you may not be able to determine if your symptoms today are in any way related to the incident you had ten years ago.

Chairman Ocegüera:

I understand what you are trying to do. Are there any questions for Mr. Ross? Are there others to testify in favor of the bill? Are there any to oppose the bill?

John E. Jeffrey, representing Southern Nevada Building and Construction Trades, AFL-CIO, and Nevada Trial Lawyers Association:

Ordinarily these people do not go to an emergency room unless it is serious. They go to one of the preferred providers of the insurance companies and get a reduced rate. In construction, a person may be injured and may see the provider for stitches, but he often tries to work despite his injury. After the provision was put in, I thought it was innocuous, but we started getting calls as soon as it was implemented from people who were having their claims closed. The problem is that these claims cannot be reopened, ever. If something shows up that was part of the original injury, it is too late. We need to be extremely careful about what we do with this kind of provision. We are opposed to this bill and plan on working with the proponents on it. The unintended consequences can be very severe.

Chairman Ocegüera:

Are there any questions?

Assemblyman Parks:

There has been in statute, the 12-month limitation. Would it change the thought if it were changed to 24 months?

John E. Jeffrey:

It would certainly help, but we would like to have the time to try to work something out with the proponents.

Chairman Ocegüera:

Are there any further questions?

Donna Sweger, representing Nevada Attorneys for Injured Workers:

We are opposed to this bill. Never being able to reopen a claim is a severe consequence because there may be treatment needed later that is related to the industrial injury. I have had cases over the years where this has hurt the injured worker. Sometimes conservative care is given and a doctor may want to try other care, but the claim is closed and cannot be reopened. Sometimes the workers' compensation clinics give conservative care and the diagnosis can change with more aggressive testing. In some cases, the injuries are masked for a period time and a claim may close because the person feels well, but later they do not.

The words in the bill "required to be paid" is a problem. What is required to be paid may be less than the suggested level for a claim to be closed due to fee schedules and contractual arrangements. It should be based on the actual amount of the medical bills. For those reasons, we have had injured workers who have not been able to reopen a claim when they had a worsening condition that was supported by medical doctors and would meet all of the other reopening requirements if they had not been closed under subsection 2 of this bill.

Chairman Ocegüera:

Are there questions from the Committee? Are there others wishing to oppose the bill? Is there anyone wishing to testify in the neutral? We will close the hearing on S.B. 119. We will open the hearing on Senate Bill 111.

Senate Bill 111: Clarifies applicability of certain provisions to certain suppliers of utility services. (BDR 58-985)

Thomas Husted, Chief Executive Officer, Valley Electric Association, Inc.:

Senate Bill 111 is a straight forward bill. The purpose of the bill is to reiterate what this body has formerly done. It is before you now because the Public Utility Commission (PUC) has recently struggled with what they interpret to be a potential discrepancy in *Nevada Revised Statutes* (NRS) 704 with regard to cooperative associations. This bill is designed to clarify this potential discrepancy and remove any ambiguity in this regard. The bill simply confirms the policy of NRS 704.675 and NRS 704.673 which makes a cooperative association subject to the scrutiny of its members. This bill will also assure that cooperative associations are not subject to duplicative licensing and permitting by the federal government and the PUC. We are in support of the amendments that will be introduced.

Clay Fitch, President, Nevada Rural Electric Association:

We have been working since the Senate Committee on Commerce and Labor meeting with parties that have had concerns. They included Sierra Pacific Power, Nevada Power, and the PUC. We came to a friendly amendment ([Exhibit C](#)). In Section 1, subsection (d), the amendment strikes out "cooperative association, nonprofit corporation, association or" and substitutes "supplier of services described in NRS 704.673 or NRS 704.675 and that is not jointly owned with any entity that is not a supplier of services described in NRS 704.673 or NRS 704.675." The purpose of the amendment is to insure this is for cooperatives and nobody else. We are in favor of the amendment. There were some concerns by the Nevada Conservation League and they have proposed an amendment ([Exhibit D](#)). They are concerned that there be an environmental review. We do not have a problem with the amendment they

intend to propose. We go through a national review process rather than a state review.

Assemblyman Anderson:

In the first amendment, does this expand into the general power companies?

Clay Fitch:

The amendment was proposed by Nevada Power Company and Sierra Pacific Power Company and was worked out with the PUC. It clearly applies only to nonprofits or electric cooperatives that sell power to their members. No one else would get this exclusion.

Jesse A. Wadhams, representing Nevada Rural Electric Association:

The two particular jurisdictional pieces are specific and they would not open it to a general power company.

Chairman Ocegura:

Are there further questions? Are there others in favor of S.B.111?

Judy Stokey, representing Nevada Power Company and Sierra Pacific Power Company:

We support this bill with the amendments that were discussed.

Chairman Ocegura:

Are there questions for Ms. Stokey? Are there others wishing to testify for the bill?

Kyle Davis, Policy Director, Nevada Conservation League:

With our amendment, we are in support of the bill.

Chairman Ocegura:

Are there others to speak in favor of S.B. 111? Are there any opposed? Does anyone wish to speak neutrally?

Dave Noble, representing the Public Utilities Commission:

There is a pending docket with the PUC regarding clarification if cooperatives that are subject to NRS 704.675 are subject to the Utility Environmental Protection Act (UEPA) review processes. This bill will clarify our jurisdiction with regard to those entities. With the amendments proposed, we believe there will be a catch all environmental review process at the State or federal level.

Chairman Oceguela:

Are there any questions? Is there anyone else to testify from a neutral position?
We will close the hearing on S.B. 111.

The meeting was adjourned [at 3:10 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman John Oceguela, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 16, 2007

Time of Meeting: 2:30p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 111	C	Clay Fitch	Proposed Amendment
S.B. 111	D	Clay Fitch	Proposed Amendment