MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fourth Session
February 15, 2007

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8:40 a.m. on Thursday, February 15, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington, Vice Chair (Excused)

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Gale Maynard, Committee Secretary

OTHERS PRESENT:

Rose E. McKinney-James, Clark County School District
Janine Hansen, Nevada Eagle Forum
Bill Bradley, Nevada Trial Lawyers Association
Edward Gobel, Council of Nevada Veterans Organizations
Linda West Myers, Council of Nevada Veterans Organizations
Wayne Carlson, Nevada Public Agency Insurance Pool
Vinson W. Guthreau, Nevada Association of Counties

Bjorn Selinder, Churchill County; Eureka County Board of Commissioners
Lee B. Rowland, American Civil Liberties Union of Nevada
William Henry, City of Las Vegas
Robert Roshak, Las Vegas Metropolitan Police Department
Robin L. Keith, Liability Cooperative of Nevada
Nicolas Anthony, City of Reno
Dan Musgrove, University Medical Center of Southern Nevada
Sabra Smith-Newby, Clark County
Jim R. Jeppson, Washoe County
Mark Zalaras, City of Henderson
William R. Uffelman, Nevada Bankers Association
William Cashill, Nevada Trial Lawyers Association
Natalie Okeson
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State

CHAIR AMODEI:
This meeting of Senate Judiciary is called to order, and we will open the hearing on Senate Bill (S.B.) 57.

SENATE BILL 57: Requires the parent of a child who is the victim of a sexual offense to give written consent before the name of the child may be included in a notice provided to a school. (BDR 5-669)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):
I appear before this Committee to urge your support for S.B. 57 and submit my written testimony (Exhibit C).

My memorandum (Exhibit D) attaches two letters in support of S.B. 57; one is from Michael J. Pomi, President, Nevada Association of Juvenile Justice Administrators and the other is from Cheryln K. Townsend, Director, Clark County Department of Juvenile Justice Services.

My intent is to allow both family and the victim of a sexual offense the opportunity to have a voice in the process at a time when the child is attempting to rebuild his/her life.

A concern from Washoe County was how to keep the children separate if the school does not know the identity of the victim. Therefore, Legislative Counsel

prepared an amendment to notify a parent each time the offender moves on to another school. This gives the parent an opportunity to make the decision whether to provide the name of the victim to the school.

This bill is about giving the victim and their family a voice and the opportunity to determine whether to submit the name to the school. I urge your support for this bill.

CHAIR AMODEI:
If there are no further comments, we will close the hearing on S.B. 57. What is the vote of the Committee?

SENATOR McGINNESS MOVED TO DO PASS S.B. 57.

SENATOR HORSFORD SECONDED THE MOTION.

CHAIR AMODEI:
Is there any discussion on the motion?

SENATOR WIENER:
I would like to hear discussion from other voices on proposed Amendment 3201 to Senate Bill 57, prepared by Legislative Counsel (Exhibit E) to ensure we are going in the right direction with this bill.

CHAIR AMODEI:
The only issue is getting the bill correct. Are there any further testifiers?

ROSE E. MCKINNEY-JAMES (Clark County School District):
Historically, school districts through the superintendents have been notified. As written, this bill excludes superintendents or schools from notification, and we will have no ability to express our interest in protecting the student. It is important to have the parent involved. We want to be part of the process, and we have the ability to maintain confidentiality.

Schools have always been involved; the issue of our exclusion had to be brought to the Committee's attention. It is appropriate for parents to make choices.

SENATOR WIENER:
This bill does not exclude schools from continuing notification. It gives parents the opportunity to voice whether they want a child's name exposed. It is not an all-or-nothing bill. The victim's parent currently has no rights deciding whether the victim's name is circulated. This is something the probation officers want to secure. The amendment allows the parent to give written permission for the name to be submitted to the superintendent and ensures that each time the delinquent child changes schools, the victim's parent receives notification.

MS. MCKINNEY-JAMES:
When I read this language I heard that if a parent says "no," the superintendent is not notified when something occurs on school property. If we have no knowledge, we have no ability to address the issue. This is the problem with S.B. 57.

SENATOR CARE:
The amendment and the bill in consenting say "the parent." Should it read "a parent"? Is it possible there could be a situation where one parent says yes while the other says no or may not be found? Does it make a difference?

BRAD WILKINSON (Chief Deputy Legislative Counsel):
It could be clarified by specifically saying "a parent." I am not sure it is clear with the word "the." The original bill precludes the school from notification. The school is notified if the juvenile sex offender attends their school; the bill would preclude the school from knowing the victim attends their school. Therefore, the name of the victim will not be given, but more exploration of the issue is needed to avoid confusion.

CHAIR AMODEI:
There was a motion made. Senator Wiener has asked for an opportunity to coordinate with those involved with this bill to formulate a resolution.

SENATOR MCGINNESS:
I withdraw my motion to do pass S.B. 57.

SENATOR HORSFORD:
I withdraw my second.

CHAIR AMODEI:
The hearing on S.B. 57 is closed. We will hear several bills by Senator Care. I will open the hearing on Senate Bill 70.

SENATE BILL 70: Enacts the Uniform Prudent Management of Institutional Funds Act. (BDR 13-970)

SENATOR TERRY CARE (Clark County Senatorial District No. 7):
The person to help me discuss S.B. 70 has not arrived. If the Committee can indulge me, I would like to move on to the next Senate bill hearing.

CHAIR AMODEI:
This will be fine. The Committee will close the hearing on S.B. 70 and open the hearing on Senate Bill 66.

SENATE BILL 66: Increases the amount of damages that may be awarded in certain tort actions brought against a governmental entity or its officers or employees. (BDR 3-120)

SENATOR CARE:
There is an inflation calculator on the Internet. If you punch in 1979 with an amount of $50,000, based on inflation, this sum in 2006 is $138,842.98.

Many things happened in the 60th Legislative Session. One event was the raising of the cap by the Legislature in *Nevada Revised Statute* (NRS) 41.035, subsection 1. After 28 years, it is time for a raise in the cap. In the interim after the 1999 Legislative Session, a study was conducted. A number of recommendations were made for the 2001 Legislative Session such as creating a special pool and funds and raising the cap; nothing ever happened.

There are arguments in opposition to this bill. One argument alludes to a catastrophic event; you may not be able to pay the $100,000 judgment.

Case law has also evolved in this area and it is not just a single incident. It is how many causes of action might evolve from a single incident. This could include multiple defendants or plaintiffs and loss of consortium.

The notion is to leave the damages award at $50,000, due primarily to rural counties and cities that are unable to afford increased damages. There are many

instances where we raised the amount or increased fees on something because it was time.

An accident in Henderson brought this legislation to a head. Four people were killed in their vehicle after being rear-ended. I do not know if they or the administrators of their estates are pursuing the matter. There is policy responsibility, and there is an issue of responsibility. How do you place a dollar figure on a life? Present legislation is $50,000; I am asking for new legislation of $100,000 which is long overdue and based on inflation. That amount should be higher.

CHAIR AMODEI:
In the research you conducted, were you able to ascertain how we reached the $50,000 mark in 1979 and identify the prior dollar amount?

SENATOR CARE:
That information is contained in a study prepared by the interim committee in 2001. The prior amount of $25,000 was raised to its present amount of $50,000 in 1979. The time between increases was not that great. My recollection is the Legislature did not hesitate when the cap was raised to the present amount.

JANINE HANSEN (Nevada Eagle Forum):
We support this legislation and appreciate Senator Care for bringing this forward. I have a handout (Exhibit F) which measures the relative value of a dollar and shows five ways to compute this.

The main reason for an increase is an accountability measure for government. People have few ways to protect themselves. Entities that are accountable monetarily make a difference.

BILL BRADLEY (Nevada Trial Lawyers Association)
I thank Senator Care for his insight. As a lawyer, we see injustices every day and this Committee has an opportunity to rectify a law that denies access to people we swore to protect. This bill will not open the floodgates to litigation. The present cap of $50,000 does not cover a two- or three-night stay in the hospital. It is hard to explain to a person injured by a government employee the government is not accountable.

In the single instance of negligence, the cap is $50,000. Where there is a pattern of misbehavior by a county, state or city department, federal law comes into play and there is no cap. Many entities pay judgments in excess of the cap due to a federal law involved.

If your constituent is affected by a policy adopted by an agency, there is no cap. If the injury is due to negligence, that victim is limited by the present cap. It bothers me governmental entities do not want to extend decency to a child hurt on a school ground.

I have looked at the history of this legislation and this policy decision is overdue.

SENATOR NOLAN:
Before the cap was raised in 1979, how long had it been?

MR. BRADLEY:
I want to say ten years prior to 1979, but I could not find it. In 1965, the cap was $25,000. It went up to $35,000 in 1977. In a period of 14 years, the cap increased twice. It has been 30 years since the last increase.

EDWARD GOBEL (Council of Nevada Veterans Organizations):
I am against this bill. No one has seen the fiscal note attached to this bill. There will be a profound impact on all 17 counties as well as municipal governments. If we increase everything due to inflation, we should pass an arbitrary law to increase using the consumer price index.

The argument is not whether anyone can afford an increase, but whether caps are necessary. If this cap will not pay for medical bills, should there be a cap at all? Why should there be a cap for governmental entities and not for others? Without the fiscal note, all we have is an unfunded mandate and we passed laws on this.

LINDA WEST MYERS (Council of Nevada Veterans Organizations):
I am against this legislation and echo the words of the previous speaker.

MS. MCKINNEY-JAMES:
Our opposition to this bill is not based on lack of recognition to inflationary costs. We are in a situation where most tort cases are settled for the cap. The Clark County School District is self-insured, and liability reserves come from our

general operating fund. Therefore, if the cap increases, the amount in the general fund increases as well.

We are aware of studies conducted and an appropriate level of the cap. We suggest some level of discussion regarding our budget. A discussion of an incremental increase may be another option.

Our present cases and those occurring over the years suggest an increase of $1 million to our budget. There has been debate about policy versus fiscal. If there is a way to identify funds to fill the void, we will live with this.

CHAIR AMODEI:
You put out a number of $1 million. Is Clark County operating on an annual budget?

MS. MCKINNEY-JAMES:
The budget is biennial.

CHAIR AMODEI:
Are you aware of what Clark County paid for these claims?

MS. MCKINNEY-JAMES:
Our general counsel indicated the million-dollar figure was his best guess based on the number of claims, which is five to eight cases.

CHAIR AMODEI:
Eight times $50,000 is $400,000 with insurance implications.

MS. MCKINNEY-JAMES:
Sometimes, these are multiple implications.

CHAIR AMODEI:
I am trying to get a handle on this. Could you get me information on claims brought against the Clark County School District? In other words, there were eight claims in the last biennium and six claims in the biennium before and so on.

MS. MCKINNEY-JAMES:
I will provide the Committee with the information you requested.

WAYNE CARLSON (Nevada Public Agency Insurance Pool):
The insurance pool has evolved over the years. I will highlight a few points from my written testimony (Exhibit G). The insurance pool was established in 1987, and we retain the first $500,000 of each liability claim including defense costs.

Local government employees act responsibly; the cap is not a deterrent for acting responsibly. Unlike the private sector, those in the public sector cannot choose to perform poorly.

If the cap is increased to $100,000, our settlements also increase. Some cases can be settled for $50,000.

I suggest alternative solutions other than increasing the cap and causing a pyramid effect of multiple causes of action. If the cap is changed, make it inclusive of all causes of action to allow governments the ability to manage the risk.

VINSON W. GUTHREAU (Nevada Association of Counties):
The organization I represent opposes this bill. Smaller counties will have an issue balancing budgets considering public policy mission and the cap.

BJORN SELINDER (Churchill County; Eureka County Board of Commissioners):
On behalf of my organizations, we are against S.B. 70. Both Churchill and Eureka Counties are members of the Insurance Pool. Any action taken will be shared among members and will have an impact.

LEE B. ROWLAND (American Civil Liberties Union of Nevada):
My organization and I are here in support of this bill. We have no fiscal interest and urge the Committee to look beyond the fiscal cost. I speak with dozens of persons whose rights have been violated and they are unable to find relief in the courts.

The present cap is not in step with federal laws and other types of lawsuits. Most attorneys will not take a case with this cap. Only those with financial means are able to pursue justice; the exceptions are those fortunate to secure a nonprofit or legal services agency. This bill is long overdue.

WILLIAM HENRY (City of Las Vegas):
I oppose the bill and would briefly address the history and cost of the cap. The cap is a limited waiver of sovereign immunity, a term used in early history to mean the sovereignty can do no wrong. In present terms, the government's ability to do business should not be threatened or eliminated by judgments imposed.

We have a policy question of counties and municipalities having money to perform imposed government business—providing police, fire, hospitals, education, parks and recreation, and senior centers—and balancing that against compensation for people injured by agents of the government.

Governments are not only liable to suits under state law but federal law as well. Many lawsuits brought against the City of Las Vegas are 1983 actions with no caps; the sky is the limit. Title VII of the Civil Rights Act of 1964 holds a cap by federal law regarding general damages of $300,000, but other damage claims are available.

Hiring outside counsel is one of the most expensive costs in a lawsuit. It is assumed cities have money to defend cases and pay judgments. Every dollar spent in defense, judgments or settlements is a dollar not available for the next senior center or soccer field.

This cap request comes at a time when Clark County is in a situation where the projected growth has not been met; hence, the finances are not there.

I have an answer to Ms. Rowland who claimed justice is for those who can afford it. When a case comes before my office, it is reviewed. An award is given regardless if the claimant had an attorney. There is a system that works.

SENATOR CARE:
Is it the position of the City of Las Vegas that the $50,000 cap never be raised? If this is not their position, when should the cap rise and by how much?

MR. HENRY:
The future is uncertain. It is our position the cap should not be raised. A lot of settlements are not settled at the cap.

ROBERT ROSHAK (Las Vegas Metropolitan Police Department):
I oppose the bill. Higher caps impact us financially.

ROBIN L. KEITH (Liability Cooperative of Nevada):
Liability Cooperative of Nevada (LICON) is a risk-retention pool providing professional liability coverage to our member hospitals and physicians they employ. We self-insure the first $500,000 and also purchase extra coverage. Members realize the cap has not been increased and it is time to consider the matter, but there are consequences for smaller hospitals. Most of our hospitals are public entities, and this has helped restrain our rate increases. If the cap is increased, LICON will have to consider raising member premiums to offset the higher cap and subsequent litigation.

Our carrier will be at risk, and our premiums will increase. This increase will be 26 percent, and we will pass those increases to our patients. There are a large number of patients without insurance, and government programs do not pay their share. The groups largely affected are taxpayers and businesses in the form of higher premiums.

More money will be needed for malpractice coverage with less money available for equipment. I have no problem with the policy of this bill as long as the Committee is aware of the impact this legislation will have on small hospitals and communities that use its service.

NICOLAS ANTHONY (City of Reno):
I voice opposition to S.B. 66 by giving the Committee statistical information. Under current law, claims can be stacked; an average number of five claims arise out of one incident. If you multiply those five claims by $50,000, it amounts to $250,000. Raising the cap doubles this figure.

In 2006, there were approximately 137 cases filed at a cost of $6.8 million; double the cap, double the cost. I appreciate Senator Care's concerns, and the time is right to review raising the cap. There may be other options such as mandatory arbitration, limits on stacking claims and attorney fees.

DAN MUSGROVE (University Medical Center of Southern Nevada):
We are the only public, county-run hospital in Nevada, and our present financial condition is tenuous. On a daily basis, we deal with pregnant women, and we handle approximately 6,000 births per year. Twenty percent of the women had

no prenatal care. Our doctors are responsible for providing medical treatment for the mother and child. Sometimes things go wrong. As a public service, we cannot refuse treatment. We are putting ourselves at risk and that risk comes with the possibility of litigation.

The number of plaintiffs who have sued the Medical Center for medical malpractice or bodily injury has gone down. There were 23 cases between 2003 and 2004, 17 in 2005 and 7 in 2006. The difference between the settlement amount and what it could be with S.B. 66 is $3.4 million.

I am sure legislators looked at raising the cap over a number of years. Our job as stewards of the taxpayers' money is to give you the information on the impact of your decision.

SABRA SMITH-NEWBY (Clark County):
I echo many of the same concerns brought to this Committee by previous speakers. The cost for claims in Clark County year to date is $350,000. In the last fiscal year, $850,000 was paid. In the last three years, 13 claims were paid either near or in excess of the current cap at a cost of over $1 million.

When a tort issue is a payout intended to inflict financial harm to a government agency, we hurt ourselves. Every dollar towards this measure is a dollar not going to indigent care or social services.

JIM R. JEPPSON (Washoe County):
Insurance implications were mentioned earlier. As a former insurance regulator, commercial liability insurance is available to businesses in Nevada through hundreds of licensed companies. Insurance for public entities is scarce. Representatives from the Nevada Public Agency Insurance Pool and LICON discussed their $500,000 retention; this is before their excess insurance kicks in.

Three months ago, Washoe County had bids from three insurance companies. One was not credible in asking for $300,000 with a $2-million deductible. We carry a $1.5-million retention or deductible on our liability risks. There is a direct dollar impact on operating revenues of an entity. We have to pay the bill and can only carry insurance for catastrophic losses.

MARK ZALARAS (City of Henderson):
I primarily do general litigation for the City of Henderson. A serious consideration should be made to take out the joint and several liability laws pertaining to government liability in tort cases. If more than one person were at fault for causing an injury and one of the parties is judgment proof, although guilty, if a government action is involved and determined 1 percent at fault, the government could pay the entire judgment up to the cap.

Attorney fees and costs of litigation have nothing to do with the cap. If an arbitrator or judge determines attorney fees are to be awarded, they are above the cap.

There is a mandatory arbitration program for tort action initially perceived to be valued at $50,000 or less. This means a reduction in costs of litigation as opposed to going to trial, reduction in attorney fees and a quicker time for resolution by the plaintiff. In Clark County, all cases for arbitration are to be completed within nine months but can be extended by the Alternative Dispute Resolution Commissioner.

If this Committee decides to increase the tort cap, it would be appropriate for government liability to include a mandatory arbitration program up to the limit of the cap. This does not mean if an agreement is not met, either side has the right to proceed to a jury trial. If the cap goes beyond $50,000, you increase the number of tort cases going to trial that are not covered by the mandatory arbitration program and increase the cost.

On average, it costs $15,000 to $20,000 to try a case including expert witness fees by an accident reconstruction expert, a medical expert and—if there are permanent injuries or loss of wages—an economic expert.

If these cases were in an arbitration program, costs are cut by half or less. Experts do not testify at arbitration hearings because their written testimony is considered by the arbitrator. If it goes to a trial or bench trial, the defense pays the fees.

SENATOR CARE:
If you feel entitled to damages in excess of $50,000, a petition has to be filed for exemption from arbitration. The arbitration commission is not necessarily looking at the merits of the case. It is your task to convince the commissioner

there is a basis for a case where damages will exceed $50,000. It is not automatic arbitration. This may provide a greater incentive to settle if the commission grants the petition.

CHAIR AMODEI:
We will close the hearing on S.B. 66 and realize this bill is a significant policy issue. Anyone who wants to submit additional information may do so. If the Committee has no further thoughts on this bill, we will open the hearing on Senate Bill 72.

SENATE BILL 72: Adopts the Uniform Limited Partnership Act (2001) and provides for its applicability on a voluntary basis. (BDR 7-720)

SENATOR CARE (Clark County Senatorial District No. 7):
This bill is the 2001 Uniform Limited Partnership Act (Exhibit H, original is on file in the Research Library). The first Act came about in 1916 by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The 2001 Act has been adopted in ten states, including Nevada; four other states have introduced the Act this year.

The Business Law Section of the State Bar of Nevada wanted an opt-in provision in this bill to the Revised Uniform Partnership Act passed last session. Partnerships existing prior to its enactment would have the option of being governed by that statute; new partnerships formed after enactment could opt in or organize under the earlier Act. This bill is unique in that the Act will not apply to any limited partnership unless a new limited partnership chooses to organize under this Act. The Act will not apply to existing limited partnerships unless they chose that governance.

A copy of this bill was submitted for review to the Business Law Section and they requested an opt-in provision. A letter (Exhibit I) from the Chair of the Business Law Section, Robert C. Kim, expresses no opposition to introducing this legislation.

In the last 20 years, we have seen the advent of other entities such as limited liability company (LLC), limited liability partnership (LLP) and other partnerships. There are reasons for using these entities. I brought this bill forward to keep Nevada in step. There are a few highlights for the record:

> Number one, the bill clearly states that a limited partnership is an entity; you will find that in section 32. In other words, it is not just an aggregate of general partners and limited partners; it is an entity of its own. It is basically designed for those people who are looking for—sometimes these are called family limited partnerships, but basically where you are going to have—strong central management and investors. Those are going to be your limited partners who are, essentially, passive for the most part. Again, I have never been involved in one of these things, but I am assured there are people who take an interest in this sort of thing.
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> The bill also allows a limited partnership to convert to a limited liability limited partnership. That is in section 125 of the bill and it grants to all of the partners, including the generals—this is different—the liability shield that is enjoyed by officers and directors, shareholders of corporations, economic members of LLCs and the limited partners in LLPs. It does not mean that the limited partnership, itself, is not liable. It clearly is under this act, but the shield is there for the generals and the limited; that is different, that is in section 72.

Another handout (Exhibit J) was given to me as an amendment by Mr. Kim. It clarifies the opt-in language in section 139. You will also find it in section 30 of S.B. 72.

It allows a limited partnership to have any lawful purpose and that removes requirements a limited partnership carries on a business for profit. *Nevada Revised Statute* 88 expresses how limited partnerships cannot engage in certain business such as banking and insurance.

Section 36 provides for a limited partnership to have perpetual duration unless the partners agree otherwise. This is language contained in statute for limited liability companies.

Section 58 allows the use of a limited partner's name in the name of the limited partnership; this is new. This section requires each limited partnership to file an annual report with the Secretary of State.

Section 68 states that limited partners who lack management power have no fiduciary duties. These are passive investors who make contributions and collect their distribution checks. They are also partners until the partnership is dissolved unless another agreement is reached. Essentially, this makes up S.B. 72.

SENATOR WIENER:
Did you say one of the revisions allows the use of a limited partner's name?

SENATOR CARE:
Yes.

SENATOR WIENER:
What would be the purpose and why was it included?

SENATOR CARE:
I was not a member of the drafting committee, but if a partner wants his name out there, there may be some advantage. I do not know. Section 58 discusses this in detail.

SENATOR NOLAN:
Are all provisions in this Act optional?

SENATOR CARE:
No. An existing limited partnership has the option of governance under this Act, and any limited partnership formed after the effective date of this bill has the same option. You can create an LLC after October 1 and fall under the old law, but you have a choice.

WILLIAM R. UFFELMAN (Nevada Bankers Association):
Regarding the opt-in and opt-out section of the bill, I have informed my members to be cautious. If a partner of an LLP walks into the bank to do business, they need to find out which statute applies. The roles and liabilities of the partners vary depending on which statute they opted to use.

SENATOR CARE:
In Nevada, we have seen the evolution of these entities and grant immunity shields to the members, shareholders, partners and others.

CHAIR AMODEI:
Is this the same concept you have been working on with the Secretary of State?

SENATOR CARE:
That bill draft about nominee officers and directors, and straw officers and directors is to be rewritten. That is a different bill altogether.

CHAIR AMODEI:
Will it be germane to these issues?

SENATOR CARE:
No, it will not.

WILLIAM CASHILL (Nevada Trial Lawyers Association):
Our concern is to the immunity aspect of the bill. We agree with the Legislative Counsel's Digest on page 2, lines 27 through 29 of the bill that states, "The new Act provides that a limited partner cannot be held liable for the partnership debts even if he participates in the management and control of the limited partnership."

In addition, the Act provides a limited liability partnership status may be used to provide a liability shield to all general partners. This is bad public policy. This superimposes a new roof over two existing roofs. The first roof is the common law in the State of Nevada as it has evolved. The second is the existing structure by statute and creates limited partnerships.

The difference between the previous Act and this new language is liability. The difference can be seen in NRS 88.430, versus page 26, section 69, line 40 of S.B. 72. This language provides immunity and is not good policy for Nevada.

CHAIR AMODEI:
Give this another look and report back to the Committee on what needs to be done to achieve objectives and address public policy issues.

SENATOR CARE:
The way I read section 69, it says "erroneously but in good faith." As stated earlier, you can go after the limited partnership and if it needs another look, that is fine. I do not want to wait too long to pass this bill.

CHAIR AMODEI:
Mr. Cashill, is the language in section 69, line 45, "exercising any rights of" and on page 27, line 1, "appropriate to a limited partner"?

MR. CASHILL:
In that specific context, you are correct. I have a concern with the language in the Digest provided by the Legislative Counsel Bureau. I would like the opportunity with the help of others to make sure we are not missing something from a public policy standpoint.

CHAIR AMODEI:
Mr. Wilkinson, what is the protocol for the Legislative Counsel's Digest?

MR. WILKINSON:
We prepared those digests and took information from the NCCUSL as to the effect of this bill. There might be some confusion in the provisions in section 66, page 25, lines 3 through 7. It is difficult to read these sections.

MR. CASHILL:
I have concern over section 66; it is as troublesome as section 69.

CHAIR AMODEI:
We will add this to a work session.

MR. CASHILL:
I request a copy of Mr. Kim's letter and any other information Mr. Wilkinson can provide.

CHAIR AMODEI:
If there is no further discussion on S.B. 72, we will close the hearing. Part of the record on S.B. 72 is a letter from Mr. Kim in his capacity as the Chair of the Executive Committee of the Business Law Section, State Bar of Nevada, (Exhibit I). The letterhead is from the law firm called Kummer Kaempfer Bonner Renshaw & Ferrario, my employer. I will make a disclosure and hand in documentation to this effect (Exhibit K, original is on file in the Research Library) with Attachments A and B. I do not anticipate a problem with my participation in S.B. 72.

SENATOR WIENER:
I disclose that my company has provided services to the law firm of which you are affiliated. In consideration of this bill, I will submit a letter for file and participate in S.B. 72 unless otherwise advised by counsel.

CHAIR AMODEI:
Let us reopen the hearing on Senate Bill 70.

SENATOR CARE:
Mr. Frank W. Daykin is not going to be here today, but he has provided a summary from NCCUSL (Exhibit L, original is on file in the Research Library). I will proceed without him.

This Uniform Prudent Management of Institutional Funds Act replaces the Uniform Management-of-Institutional-Funds Act Nevada adopted in 1997. It is a short bill of mostly definitions. The main bill is contained in sections 12 through 15. I will give a quick comparison of this Act as opposed to the one enacted in 1997 for the record:

> The scope of this act: all charitable institutions holding institutional funds including trusts without charitable beneficiaries. The current Act: the scope is simply charitable organizations except for trusts. I think we had another act six years ago that governed trusts. Section 12, investment conduct: There is an expressed duty of loyalty and expressed cost management obligation; there is a whole portfolio of management standard of performance; there is an expressed diversification requirement; there is a portfolio balancing requirement and special skills standard of performance. The old act simply said, "general obligation to invest prudent and reasonable, ordinary business care."
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> Section 13 addresses expenditure of funds, contains expressed prudent total returns standard where seven factors, if they are relevant, are to be considered and over 7 percent of total return is presumed to be imprudent. In other words, there is a restriction there on the amount of expenditures that can be used by institutions in a presumption if it goes too high.

> Section 14, delegation of management investment: prudent delegation in good faith, care standard of a prudent person. It allows the selection of an agent—that same standard applies, however—establishes the scope and terms of the delegation, and requires periodic review and supervision of the agent. The agent, as I said earlier, also has the duty of reasonable care.
>
> Finally, in section 15, release or modification of restrictions: That is where somebody bequeaths and says the funds can only be used for such and such and such and such. This allows the courts to release or modify such a restriction when it is impractical or wasteful. The impairment or management, if it were investment, would be the result of that without the lifting of the restriction unanticipated circumstances allowing the release or modification furthering purposes of the fund.

That is it. I was not involved in the drafting of S.B. 70, but for the record, "I have pretty much given you the high points." The Act was promulgated last summer when the Conference met in July. I cannot say if any other states have adopted this measure, but it was given a two-year drafting process.

MR. UFFELMAN:
The bankers are neutral on this bill. It is important to know this applies to charitable trusts and organizations managing the funds they have. It does not apply to trusts managed by corporations and other fiduciaries that are not charities. The optional provisions in section 14 of this bill come from section 5 of the Uniform Act which says if your state has other provisions for when an agent is appointed, the agent steps into the shoes of the principal.

If a charitable organization handed over the endowment to a bank or trust company for management, what would be the standard of care the trust company exercises? Section 14 says they step into the shoes, but then says if there is no other law in the state, the optional part becomes the law.

There are two standards: the trust itself or a trust company managing the endowment. You should be aware of the options as you move forward. I have four pages of information (Exhibit M).

NATALIE OKESON:
I am representing myself today. In reading S.B. 70, language in section 15, subsection 3, line 43 states "unlawful, impracticable, impossible to achieve or wasteful ... ." I am not as concerned about "unlawful" as I am with "impossible to achieve." My parents' institute will be concerned with neuroimmune diseases, specifically chronic fatigue syndrome. Many doctors across the country and the world do not believe this disease exists. I want to be cautious with the terminology. It might be impossible to find a cure for a disease that does not exist.

SENATOR CARE:
I appreciate the concern. When I read "impossible to achieve," we are talking about where the donor has set up the endowment and some time later, the purpose intended by the donor cannot be fulfilled because it is gone.

CHAIR AMODEI:
The Committee will close the hearing on S.B. 70 and reopen the hearing on S.B. 72.

SCOTT ANDERSON (Deputy for Commercial Recordings, Office of the Secretary of State):
The Secretary of State's Office does not oppose this bill. We are reviewing and comparing this bill to statutes and determining how it applies with our filing practices and fee structures. We will consult with Senator Care if we have any problems. As far as the legal policy of the statute, we usually defer to the Business Law Section and will contact Mr. Kim.

CHAIR AMODEI:
You understand this will be part of a work session in about two weeks?

MR. ANDERSON:
Yes, we will review this and forward any information to Senator Care.

SENATOR CARE:
Two years ago, we did not have the October 1 effective date for the Uniform Partnership Act; we delayed it into the next year because the Secretary of State's Office had to set up filing fee recommendations. Is this one of the things you may be reviewing?

MR. ANDERSON:
We will let you know if there is a problem with an October 1 implementation date. It appears the provisions are following our processes with minor fee changes and some minor processes. We may not have to defer past October; however, we will let you know.

CHAIR AMODEI:
We will close the hearing on S.B. 72. If there is nothing else to come before the Committee, we are adjourned at 10:35 a.m.

RESPECTFULLY SUBMITTED:

Gale Maynard,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: