

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

**Seventy-Seventh Session
May 29, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 2:05 p.m. on Wednesday, May 29, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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 nelis.leg.state.nv.us/77th2013. 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 David P. Bobzien, Chairman
Assemblywoman Marilyn K. Kirkpatrick, Vice Chairwoman
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Ira Hansen
Assemblyman Crescent Hardy
Assemblyman James W. Healey
Assemblyman William C. Horne
Assemblyman Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

Minutes ID: 1302



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Earlene Miller, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Jon Hager, Executive Director, Silver State Health Insurance Exchange
Chelsea Capurro, representing National Association of Vision Care Plans
Greg Ferraro, representing Employers Insurance Group

Chairman Bobzien:

[The role was called; a quorum was present.] We will open the hearing on Senate Bill 454 (1st Reprint).

Senate Bill 454 (1st Reprint): Makes various changes relating to the Silver State Health Insurance Exchange. (BDR 57-1167)

Jon Hager, Executive Director, Silver State Health Insurance Exchange:

Senate Bill 454 (1st Reprint) was provided as part of the Governor's recommended budget. Section 2 provides that the interest earned on Exchange reserves will be retained by the Exchange. The Exchange is receiving grants from the federal government, and we are charging a small fee to pay for our navigator program which was part of Assembly Bill 425. The fee will create a reserve so that we have operational funds to pay our expenses. That long-term reserve is expected to be a 30-day reserve. It is higher in the beginning because we do not know exactly what our enrollment will be. We have targeted numbers, but we want to make sure we can pay our bills. We would like to be able to retain the interest on the reserves, which would go toward charging lower fees in the future.

Sections 3 and 8 exempt the fees charged by the Exchange from the premium tax calculation. Currently, carriers pay a premium tax to the state equal to 3.5 percent for foreign carriers and 1.75 percent for domestic carriers of net direct premiums and net direct considerations. The fee charged by the Exchange is approximately \$4.95 in the first year and it goes up to between

\$8 and \$9 per member per month in 2017 and beyond. It gradually increases to that rate in the middle years. If we charge the carriers, they will have to build that into their premiums. They will be charged a tax on the full premium.

In creating this program and trying to make it work for all parties, it has been requested, and the Exchange Board feels it is important, that the fees that are charged by the Exchange not be taxed. The difference in the State General Fund for that cost would be approximately \$100,000 in fiscal year 2014, approximately \$300,000 in fiscal year 2015, and approximately \$500,000 in each biennium after that. Because of that piece, I believe this bill will have to be referred to the Assembly Committee on Ways and Means. It is important to note that the reduction ends up in a reduction to the burden on small employers that participate in the shops. We think it would be appropriate if we can reduce the burden on the small employers, as well as on the individuals who purchase coverage through the Exchange in Nevada.

Section 4 authorizes the Exchange to offer supplemental products. The way the statute is written, we are only allowed to offer qualified health plans. That does not align with federal law, as a stand-alone dental plan is not a qualified health plan. We are required by the Affordable Care Act (ACA) to offer stand-alone dental plans. We feel the federal law allows us to offer stand-alone dental plans. This would align state statute to federal law. It would allow the Exchange to offer supplemental dental and vision benefits for adults that are not stand-alone dental plans. The vision benefits for children is included in a qualified health plan. The essential health benefits do not include vision benefits for adults. Section 4 also allows the exchange to potentially offer other supplemental products assuming that the Division of Insurance approves the product itself and approves the product for sale on the Exchange. Our intent for this is that it is a collaborative effort between the Exchange and the Division of Insurance. We do not want to do something that could potentially harm the market so we want to make sure we are in agreement with the Division of Insurance. The Division would make sure a product is licensed and in good standing in the state, and that we can offer it on the Exchange.

Section 5 addresses how Board members are appointed. We have several representatives who represent consumer advocates. There are members who represent small business. The federal law requires at least one member to be a consumer advocate. While we have three members that represent consumer advocates, this ensures that the Governor will appoint one of his members specifically as a consumer advocate in accordance with federal law.

Section 6 was deleted by amendment. Section 7 allows the Board to delegate authority to submit federal reports. Currently, the statute reads that the Board

shall submit all reports. However, we are going to have to submit reports on a daily basis and it is not practical to convene the Board every day to submit the hundreds of reports that will need to be submitted. Section 9 repeals two unused definitions that are not used anywhere else.

We feel that the exemption of fees from the premium tax calculation is important to the small businesses and individuals in Nevada to try to reduce that burden on the individuals and small businesses. Sections 2, 3, and 4 are important to implement the Governor's recommended budget and the budget which the Exchange has submitted.

Chairman Bobzien:

Are there any questions?

Assemblywoman Carlton:

I am trying to understand the budget ramifications. Why did you include these changes? I understand setting up an account, but I thought there was already an overarching account.

Jon Hager:

An account has been set up. Section 2 allows us to retain the interest on the reserves that we generate through the qualified health plans. That is a line item to retain the reserves. Sections 3 and 8 do not affect the Exchange budget; however, if there is an exemption from the premium tax calculation, that would potentially affect the General Fund available to the state. Over the next several years, we are going to insure a lot of people. Our targeted population is about 115,000 in the first year and 151,000 the second year. Those are people who do not have insurance or a majority of whom currently do not have insurance. When they pay the premium, there will be a premium tax that will be collected for those individuals. We estimate, based on the enrollment within the Exchange, that it will generate more than \$10 million in additional general funds. We are not asking to create an exemption for the full \$10 million. We are asking for an exemption for the fee charged by the Exchange and not charge the premium tax on the fee that is charged by the Exchange. Because it would affect the amount of General Fund revenues, it does affect the budget.

Assemblywoman Carlton:

So are you saying that it affects the budget, but it is not a part of the budget? I want the Committee to be clear that this is not integral to the budget, but it will have an effect somewhat this biennium and in future biennia with those credits.

Jon Hager:

It does not affect the expenditures of the budget. It affects the revenue of the budget.

Assemblywoman Carlton:

There was a bill introduced by Assembly Ways and Means, Assembly Bill 500 which addressed new markets. It has an investment component for insurance companies to invest in small businesses and receive tax credits. Vice Chairwoman Kirkpatrick commented that people were getting too many different tax credits from too many different directions. I would want to make sure if we did something here, it would not allow multiple access. It seems as if we have a lot of insurance premium tax credit bills this session. That is a big part of the budget and it also funds the Insurance Division. We need to make sure we understand how all of the pieces fit together. Are you aware of that bill?

Jon Hager:

I was not aware of that particular bill. The reason this came forward from the Board was that we are a state agency charging a fee. The Board felt that they should leave it to the judgment of the Legislature to determine if it was appropriate to charge a premium tax on that fee. We recognize that the Division of Insurance gets all of their fees from the insurance industry and everything that they charge except for three items is taxed. We do recognize that. This piece of the premium tax exemption would lower the tax burden on the carriers. When we charge expenses to the carrier, they have to charge those to the consumers. We were trying to keep that as low as possible. Additionally, as we work through this process, it would simplify our administration.

The supplemental products implement a portion of the Governor's recommended budget. In the Exchange budget, we have revenue lines for fees charged for dental and vision products. It has been challenging to work through the process with the federal government. We feel this bill will help provide a structure to implement what we need to have to move forward on October 1 of this year.

Chairman Bobzien:

Are there other questions for Mr. Hager?

Assemblywoman Bustamante Adams:

Was section 6 moved to another section of the bill?

Jon Hager:

It was deleted. It was added in the drafting process. There was concern that there was nobody on the Board that represented consumer advocates, and it provided the mechanism for the Governor to remove one of those individuals to appoint somebody in their place. Because we currently have three consumer advocates on our Board, there is no reason to remove any current Board member to implement the provisions of section 6. It was deleted because it was not necessary.

Assemblywoman Bustamante Adams:

Section 4 authorizes the Exchange to offer supplemental products. I understood that was not the intent of the Exchange. Now you are going to expand your scope and are morphing into something more. Is that the intent?

Jon Hager:

The ACA requires that we offer stand-alone dental products. The original discussion about this was, first of all, to align state statute to allow us to offer stand-alone dental products. We can offer them through the federal statute and want to make sure we are not in conflict. The second thing is that the Board feels it is important for a person's overall health to offer both dental and vision coverage. While those benefits are included for children under the federal mandates in and out of the Exchange, those requirements do not apply for adults. Section 4, subsection 2, paragraph (c) allows us to offer supplemental dental and vision products for adults. Paragraph (d) talks about other potential products that may go with the qualified health plans that we offer. We have been discussing a health savings account (HSA) or a health reimbursement arrangement (HRA). We think it would be appropriate to allow third-party administrators (TPA) to provide products to enroll people in HSAs and HRAs. A health insurance issuer who offers a qualified health plan could offer an HSA or HRA in conjunction with their plan, but that HSA or HRA would not be available to anybody else in any other qualified health plan. This would allow an individual who purchases a plan that is compatible with the HSA or HRA to purchase or enroll in them. They are products that are quite often offered with health plans and we think it is appropriate to offer that. This is not something we are offering in year one, but this would allow us to start to prepare that for calendar year 2015.

Assemblywoman Carlton:

When HSAs and HRAs first came into being, they were not meant to be health insurance. They were meant to be supplements to health insurance. This is a health insurance exchange. The caution that I have is what I have seen happen with our state employee plans with the HSAs and HRAs, the high deductible plans, the utilization rates, and the cost shifts that have happened.

When we start talking about allowing an outside TPA to coordinate with the Exchange to set up an HSA to pay for a supplemental product, did I get the path right?

Jon Hager:

Not exactly; these supplemental products would only be offered to people who enroll in qualified health plans. There are going to be a number of qualified health plans offered through the Exchange ranging from very rich benefits to very lean benefits. It is up to the individual to decide what they want to enroll in on the qualified health plan side.

Assemblywoman Carlton:

Some of those plans are subsidized depending upon what their income is so there will be federal dollars involved in those plans. Is that correct?

Jon Hager:

Yes, the advanced premium tax credits provided by the federal government would go to pay for the premiums of those qualified health plans. On top of that, if we were to offer an HSA or HRA, this would be another mechanism to help shield consumers from tax consequences and to allow them to have a larger range of benefits. If a person is going to enroll in a qualified health plan, if the HSA or HRA is compatible, he would be allowed to enroll in that plan to use pretax dollars to pay for benefits or premiums. This would allow us to move forward, be as flexible as possible, and offer those benefits. *Nevada Revised Statutes* 695I.200 addresses enrolling in plans and taking advantage of the tax situation. We are trying to do that.

Assemblywoman Carlton:

I support the Silver State Health Insurance Exchange because I have always looked at it as a way for people who could not get health insurance to be able to get a reasonably priced product. I do not see that the people who will be eligible for the Exchange will have the money to afford these products. I have a concern that the Exchange is beginning to sound like a multiline insurance company. I want to be sure we have our feet under us before we start running too fast.

Chairman Bobzien:

Are there additional questions from the Committee? [There were none.] What are the parameters set by the federal government? Are we within the bounds with this legislation with the other services and products?

Jon Hager:

It is difficult to say completely. These products that we are trying to offer are not for the first year of the program. We are implementing within the bounds of the ACA. There is guidance issued by the federal government on almost a daily basis, which has been difficult to follow. There was one that put into question the dental and vision products. We are doing our best to work with them to understand better what they are requiring and what they are allowing and not allowing. We are trying to provide a product that is in the best interest of our citizens. We are trying to be able to have the flexibility to do these things in 2014 and 2015. We are in the bounds of federal law, but the federal law is changing and it is difficult. We hope we will be one of the example states on what you can provide to your citizens to have comprehensive health coverage.

Chairman Bobzien:

What concerns me is that we have made so much progress, we are leading the pack, and we know the importance of the roles of the navigators and the assistance people will need to access the Exchange. At what point do we say we have expanded the scope too much and it will make it difficult to use? Has there been discussion about that balance?

Jon Hager:

The complexities that are added are not at the state level. They are the federal level requirements. It is going to be an extremely complicated endeavor. The single streamlined application, which up until about a month ago was 16 pages of questions and answers, is now 3 pages, except now it has quadrupled into four different applications. We are going to have a difficult time managing that. There is a process to determine whether or not a person is eligible for the advanced premium tax credit (APTC), the Medicaid Children's Health Insurance Plan, and the qualified health plans. We are trying to make that as simple as possible for consumers. Those that are not going to be eligible for APTC, just go straight to shop and compare. Those that may be eligible for APTC answer a few questions and do not necessarily answer the Medicaid questions. If the applicant wants to answer all of the Medicaid questions, you can, just like you have to do to enroll in Medicaid. That is part of the complicated process, but it will lead the person where he needs to be. There is a shop and compare component, and we are trying to create a web portal that provides the qualified health plans in a way that allows a person to choose between the plans that have his provider, have the drugs he is currently taking for a chronic condition, allow him to choose between various deductibles, premiums, out-of-pocket costs, et cetera. It is complicated to get to a qualified health plan. Offering supplemental products in the future would be one more optional step. Everything that the ACA requires will be complicated and difficult.

Chairman Bobzien:

Are there any questions?

Assemblyman Daly:

I understand that the states are supposed to set up an exchange with a group of insurance companies that meet the qualifications and there is the Medicaid component, which is run by the state. The Exchange does not sell any products. You are just telling the buyers that here are insurance opportunities to purchase and to be in compliance. When you talk about products, are you talking about private companies selling insurance?

Jon Hager:

Yes, the Exchange is simply a marketplace. There has been a lot of concern from the broker community that we are taking away their business. If you go to your broker today and want to enroll in coverage through the Exchange, that broker will be able to enroll you in any product within the Exchange. We are going to pass the enrollment information and the broker's information to the carrier. The carrier will pay the broker as they do today. We are not getting in the middle between the carrier and the broker. We are simply making a place for people to purchase insurance.

Assemblyman Daly:

The Silver State Health Insurance Exchange is not selling insurance. This is a government-run program with private companies who sell insurance. Where does the premium tax break come into place? If I go to an insurance company and they give me a quote for a premium which includes all of the costs including the tax that would have to be paid to the state, how do we know the tax rate that you are trying to get is going to benefit the consumer? Keep in mind, that from my point of view, the ACA was written by the insurance companies, for the insurance companies. It forces their market to be increased 200 percent because everyone is supposed to get insurance now. How do you know if you are giving a company a tax break if it will save money for the consumer and how are you going to measure that? How are you going to account for that and make sure it happens?

Jon Hager:

We do not know. Anytime you add an expense to an organization, they have to recoup that cost through a revenue of some kind. You can reduce costs, and we have been careful at the Exchange to try to keep our expenses as low as possible. We have one of the leanest staffing models in the country. Only Idaho and New Mexico are beginning to have fewer staff than we do. We have tried to cut costs wherever we can. We cut consulting costs when we came into the Exchange. We try to keep our costs as low as possible and

this premium tax exemption is in the same vein as keeping those costs as low as possible. We are trying to keep our expenses as low as possible and the fees charged to the carriers as low as possible to allow the carriers to charge the lowest possible premium to the consumers.

Assemblyman Daly:

You have no way of knowing if any of these cost savings will be passed on to the consumers.

Jon Hager:

That is correct, we do not know specifically.

Assemblywoman Bustamante Adams:

Are you proposing the tax credit or are the insurance companies asking for that?

Jon Hager:

The Silver State Health Insurance Exchange Board has requested that be included in the statute.

Assemblywoman Bustamante Adams:

Then the bill would be acceptable if we do not include that part?

Jon Hager:

I will take whatever I can get. We are doing our best to make sure that the Exchange is created in a way in which all stakeholders can be comfortable. In creating the Exchange, this was one of the mechanisms that we felt was important to propose to the Legislature.

Assemblyman Ellison:

Does the broker also deal with a third party?

Jon Hager:

The way the Exchange is set up, you can come to the Exchange directly to purchase a qualified health plan. If you do that, there is no brokerage fee paid to a broker. The Exchange still gets the \$4.95 per month to cover our administrative costs, but the broker would not be paid. Outside of the Exchange, if an individual goes directly to an insurer, there is no brokerage fee. If you go to a broker, you can buy the same product for the same premium and the broker is paid a commission on it. The carrier pays the broker a fee because they want the broker to help the consumer with the questions he may have. The plan is required to be the same cost. The same thing happens with the Exchange. We want to make sure that the brokers can continue to do business in Nevada and continue to get paid on or off the Exchange. We are transferring

the information to the insurer to make sure that they can pay the broker in whatever manner that they already have pursuant to their contracts so that we do not have brokers steering business away from or to the Exchange. They can simply enroll people on or off the Exchange, depending on their economic circumstance and the preference of the individual.

Chairman Bobzien:

Are there any additional questions for Mr. Hager? Seeing none, is there any support testimony for the bill?

Chelsea Capurro, representing National Association of Vision Care Plans:

We are here in support of S.B. 454 (R1), specifically to section 4, subsection 2, paragraph (c), which would allow us and our members to provide supplemental vision coverage on the Exchange. Without this, we cannot provide the supplemental vision coverage to adults. One of our members, VSP, covers 26 percent of the entire population of the state of Nevada, with the remaining member vision plans covering about another 10 percent of the population. We hope to be able to provide this coverage on the Exchange.

Chairman Bobzien:

Seeing no one else in support, is there any opposition to S.B. 454 (R1)? [There was none.] Is there anyone wishing to testify in neutral? [There was no one.] We will close the hearing on S.B. 454 (R1) and open the hearing on Senate Bill 479.

Senate Bill 479: Revises provisions governing credits against the insurance premium tax. (BDR 57-1200)

Greg Ferraro, representing Employers Insurance Group:

This was a Senate Finance Committee bill introduced by Senator Debbie Smith. It was referred to the Senate Commerce, Labor and Energy Committee where it had a favorable hearing and was rereferred to the Senate Finance Committee because at that stage it had a fiscal note. It was passed unanimously by the Senate Finance Committee, and we are before you on the policy point and it will be up to the Chairman of the Ways and Means Committee and others if it has to go to that Committee as well.

This bill has only two sections. It is a straightforward measure that helps clarify the original intent of the 1999 Nevada Legislature. From 1999 to 2008, the Department of Taxation allowed all private carriers to carry forward excess credits from the payment of Division of Industrial Relations (DIR) assessments in the subsequent years and apply those excess credits to subsequent year premium tax liabilities. This was consistent with the language in *Nevada*

Revised Statutes (NRS) 680B.036 which provides private carriers with a credit that is "equal to" the DIR assessments. The practice of the Department of Taxation changed, however, in the year 2009. Since that time, there have been multiple administrative appeals and pending litigation over this issue. Last summer, we reached an accommodation of a stay in effect between the litigants and all parties who decided to approach the Nevada Legislature to see if we could not resolve this outstanding difference. That manifested itself in this bill. The purpose of S.B. 479 is to resolve the litigation among those parties and to make clear that private carriers may use any and all DIR assessments that have been accrued since July 1, 1999 against premium tax liability until those amounts are exhausted.

That is the history of this issue. The Department of Taxation and my client, among other industrial insurance carriers, came to this as an innovative solution. All parties are in agreement and this would clear up any future litigation. The case is on appeal now.

Chairman Bobzien:

Are there any questions?

Assemblywoman Carlton:

It is my impression as the Chairman of the Assembly Committee on Ways and Means, if a bill has passed a policy committee and a money committee in a house, it goes to the second policy committee to affirm the agreement on policy. Once the money has been addressed, it should go forward.

Chairman Bobzien:

Are there further questions for Mr. Ferraro? Seeing none, is there anyone else to testify on this bill? Seeing none, I will close the hearing on S.B. 479. Is there any public comment?

Jon Hager:

In Senate Bill 454 (1st Reprint), I would like to respond to Assemblyman Daly's question about whether or not there is a guarantee about the premium tax exemption. There is no guarantee that the premium tax exemption would go to lower premiums; however, there is a rate review process that is conducted by the Division of Insurance to make sure that the premiums are appropriate for the expenses of the carriers. The Exchange is not in existence today, so carriers do not currently pay a tax on the fees today because we do not charge anything today. In the future, we will charge a fee to carriers to cover our expenses at the Exchange and we are simply saying do not increase the taxes based on our fees, continue to get taxes based on the fees that are already in existence.

Chairman Bobzien:

Is there any other public comment? [There was none.] Are there any other matters to come before the Committee? [There was no response.] The meeting is adjourned [at 2:52 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 29, 2013

Time of Meeting: 2:05 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster