

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

**Seventy-Eighth Session
March 6, 2015**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair James A. Settelmeyer at 8:32 a.m. on Friday, March 6, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 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 James A. Settelmeyer, Chair
Senator Patricia Farley, Vice Chair
Senator Joe P. Hardy
Senator Becky Harris
Senator Mark A. Manendo
Senator Kelvin Atkinson
Senator Pat Spearman

GUEST LEGISLATORS PRESENT:

Assemblywoman Irene Bustamante Adams, Assembly District No. 42

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Christine Miner, Committee Secretary

OTHERS PRESENT:

Renee Olson, Administrator, Employment Security Division, Department of
Employment, Training and Rehabilitation
Greg Magda, Senior Vice President, Alliant Insurance Services, Inc.
Jim Wadhams, Alliant Insurance Services, Inc.
Paul Enos, CEO, Nevada Trucking Association
Robert Vogel, Vice President, Pro Group Management
Jessica Ferrato, Builders Association of Western Nevada

Senate Committee on Commerce, Labor and Energy
March 6, 2015
Page 2

Chair Settlemeyer:

I will open the meeting and request Committee introduction of Bill Draft Request (BDR) 53-984.

BILL DRAFT REQUEST 53-984: Revises provisions relating to contractors. (Later introduced as [Senate Bill 223](#).)

SENATOR HARDY MOVED TO INTRODUCE BDR 53-984.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Settlemeyer:

I am requesting Committee introduction of BDR 53-985.

BILL DRAFT REQUEST 53-985: Revises provisions relating to labor and employment. (Later introduced as [Senate Bill 224](#).)

SENATOR HARRIS MOVED TO INTRODUCE BDR 53-985.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Settlemeyer:

I will open the hearing on Assembly Bill (A.B.) 154.

ASSEMBLY BILL 154: Makes various changes to the Nevada Employment Security Council. (BDR 53-553)

Assemblywoman Irene Bustamante Adams (Assembly District No. 42):

Assembly Bill 154 recommends provisional changes regarding the Employment Security Council. There are 200 boards, commissions, committees, councils and entities created in statute over several years. Many of these entities have not

been reviewed for some time. The Sunset Subcommittee of the Legislative Commission was created for the purpose of reviewing these boards and commissions. The Sunset Subcommittee was created in 2011 with passage of S.B. No. 251 of the 76th Session. The mission of the Subcommittee is to review and advise on government programs. One of four possibilities can be recommended by the Subcommittee: continuation, modification, consolidation with another entity or termination of the governmental program being reviewed.

In 2011, 29 boards and commissions were reviewed and in the last interim 31 were reviewed. At the end of each interim, the Sunset Subcommittee is required to advise the Legislative Commission on its recommendations.

The Employment Security Council was created in 1941 to advise the administrator of the Employment Security Division on ways to reduce and prevent unemployment; to encourage and assist in the practical methods of vocational training, retraining and guidance; to establish and operate reserves for public works to be used by the State and its political subdivisions in times of depression and unemployment; to promote reemployment of the unemployed; and conduct and report results of research studies and investigations. The Council also advises on changes to the contribution or benefit rates to protect the solvency of the Unemployment Compensation Fund. These topics have not changed in statute since 1940. The Council under the State government reports to the Department of Employment, Training and Rehabilitation (DETR).

The Sunset Subcommittee found no record that the Nevada Employment Security Council has advised or assisted in the establishment and operation of reserves for public works, which reflects the condition of the Great Depression of the 1930s. The Subcommittee also found that the Council has not published any resolves of investigations or research studies relating to any of its assigned topic areas. The Subcommittee reviewed testimony that the Council does have an interest in vocational training. We encourage that interest. The essential function of the Council is to advise on unemployment compensation. The Sunset Committee unanimously recommends continuation of the Employment Security Council and recommends the duties of the Council be revised to align with current practice and not those of the 1940s. There is no fiscal note on A.B. 154 and the bill passed unanimously in the Assembly of the 78th Session.

Senator Hardy:

How often does the Employment Security Council meet? What will the duties of the Council be versus what the duties were prior to this bill?

Renee Olson (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):

The Council is allowed to meet up to three times per year and hold special meetings as necessary. We hold one meeting a year to advise on the unemployment insurance compensation program average tax rate. Meetings have been held for regulatory work for the small business loan program and another meeting is scheduled for July to update the Council on issues pertinent to the current economy and unemployment.

Senator Hardy:

If the Council does not perform these duties, are there other government regulatory bodies that will?

Ms. Olson:

No other regulatory body meets on the issue of unemployment insurance rates.

Chair Settlemeyer:

I will pull back on A.B. 154 and open the hearing on S.B. 194.

SENATE BILL 194: Revises provisions relating to industrial insurance.
(BDR 53-991)

Greg Magda (Senior Vice President, Alliant Insurance Services, Inc.):

We are here today to discuss the suggested changes to the owner-controlled insurance program (OCIP), which is a consolidated insurance program. The two primary changes reduce the threshold limits of the project and change public entity and private company restrictions.

The single project threshold nationwide is \$240 million. Every year it has been raised per statute, originally beginning at \$100 million. The average construction value on a single project nationwide is \$50 million. Some states have different limits: Connecticut has \$50 million; California, \$125 million; Alaska, \$50 million; Arizona, \$50 million; New Jersey, \$100 million; New Mexico, \$150 million; and Oklahoma, \$0. A single project is different from a rolling

program. A rolling program includes multiple million-dollar projects for one entity. A rolling program is beneficial to school districts and states.

Chair Settlemeyer:

Please explain the concept, background and benefits to participating in an OCIP program.

Mr. Magda:

On a construction project, an OCIP consolidates the workers' compensation and the general liability insurance under an umbrella for all the contractors in the program during the course of that construction project. This bundled coverage allows for better pricing, 1 percent to 3 percent of the construction value. A state project obtains dedicated coverage for that project with higher limits of coverage, which produces cost savings and dedicated limits for that specific project.

Jim Wadhams (Alliant Insurance Services, Inc.):

Prior to 1999 in Nevada, the State Industrial Insurance System was the single insurance company in the State. Before that, the Nevada Industrial Commission was the State insurer. All employers were insured by a single insurer. Today's system allows private insurance companies to participate. The OCIP eliminates multiple contractors on one project from having multiple insurance coverages with multiple policy premiums. The owner of the OCIP project, whether a public entity or private business, can buy the insurance in bulk to cover the entire project. The OCIP program allows the costs to be identified and efficiencies gained.

Senate Bill 194 does not change the regulatory structure covering worker safety, as overseen by the Division of Industrial Relations (DIR), or the financial integrity of the insurance company, as regulated by the Division of Insurance. When commercial insurance was allowed to be included in the State system, there was concern insurance companies might not be as solvent as the State company. The State Industrial Insurance System was \$2.2 billion insolvent and had to be dissolved. The threshold limits in the most recent *Nevada Revised Statute* (NRS) 616B.710 are set at \$150 million with incremental increases. Private business owners can do a project at less than \$240 million. Senate Bill 194 seeks to eliminate the restriction on a private owner, and to reset the limit of public projects at \$100 million. The use of taxpayer dollars requires a more careful review of the public entity to ensure cost savings can be

achieved. The concept is nothing new to the State, but it is now being done in the private sector.

Senator Harris:

How was the Nevada limit of \$100 million determined as the right amount of insurance for Nevada, since the average limits nationwide are \$50 million?

Mr. Magda:

The best value on public projects nationwide is based on \$100 million. A survey of the statutes of every state in the Country determined the appropriate value be \$100 million.

Chair Settlemeyer:

For clarification, the threshold limit he is referencing is on the value of the project, not the insurance coverage.

Mr. Magda:

The threshold figures represent the construction value of the entire project.

Senator Hardy:

Why would an entity choose not to obtain this coverage? Why not expand the coverage to a lower-cost project?

Mr. Magda:

The purpose of a rolling wrap is to consolidate smaller projects. There are administration costs, safety costs and other costs for the firm that manages a project. A smaller project may not produce the cost savings as a larger project would. The threshold amount is set to accommodate this event. An independent firm will evaluate and validate the savings on a public project, give an opinion on the usefulness of the OCIP and proceed with a selection process for a firm to administer the program. A private business owner would prefer the threshold be zero. The coverage is better dedicated to an OCIP project versus traditional insurance that has no dedicated coverage and where gaps in coverage exist. A private owner wants to control the project limits and help construct the project safely. The limit should be zero for a private project.

Senator Hardy:

Would S.B. 194 allow a private business to obtain an OCIP if the number warranted it, but would not be mandatory?

Mr. Magda:
Yes.

Chair Settlemeyer:

An OCIP is best suited to a larger-sized project because it requires an in-house safety officer be on staff. The smaller company may not have this ability.

Mr. Magda:

In residential construction, 99.9 percent of those projects are OCIP programs because the contractors on the project cannot independently obtain the necessary private residential coverage.

Senator Farley:

I understand the value of an OCIP from experience. Mr. Magda is one of the pillars in the community on insurance. I am a member of one of the opposing groups. Please explain the benefits of the OCIP projects, the ease of ability for smaller businesses to bid and get on the projects and the cost savings. There are several projects coming up, including the school bond and bond rollover. Can you estimate the level of savings and illustrate what this would mean to the State?

Mr. Magda:

Creating a level playing field for all contractors enrolled in the program is one of the benefits of the OCIP. It allows small businesses, the minorities, to have the same insurance procured by the owner and accentuates the level of minority participation. Many of the entities in the Country have a 30 percent threshold for minority participation. The California high-speed rail program is one example. The OCIP allows contractors to bid and succeed in procuring the job without being disqualified by the insurance coverage and limits.

Senator Farley:

There are projects with the Nevada Department of Transportation (NDOT) and Nevada schools—\$400 million going to the schools. What should the State expect to save by electing the OCIP program?

Mr. Magda:

On the proposed NDOT project, the construction value of \$700 million to \$800 million would present a savings of \$7 million to \$15 million to the State. The average range of savings is 1 percent to 3 percent of the construction

value; 1.5 percent of construction costs. The savings on a school project would go back to the State, an emergency fund or to another project within the school district.

Paul Enos (CEO, Nevada Trucking Association):

The Nevada Trucking Association is a sponsor of the Nevada Transportation Network Self Insured Group (NTNSIG). We have more than 400 member companies and insure nearly 10,000 individuals. We oppose S.B. 194 because it removes the threshold requirement for the private businesses that participate in an OCIP. A threshold is necessary to properly comply with the safety requirements and create a safe workplace. One of the issues with the under-controlled insurance projects is the contractor not having access to the job site to ensure its workers' safety. When a business participates in an OCIP, their employees are no longer considered theirs for purposes of workers' compensation. They are an employee of the owner of that project. If an employee is injured and requires light duty, the OCIP is not required to supply a light-duty job. The worker will return as an employee of one of the members of the Nevada Trucking Association and the member will be responsible for finding this worker a light-duty job. The Nevada Trucking Association wants their members to have access to the claims and the examiners to be sure a claim is handled properly. When a worker returns as an employee of one of our members, the member will know that the claim was handled properly. We would like to work with the sponsors of this legislation. We have submitted a proposed amendment ([Exhibit C](#)). A \$50-million-project threshold is in the amendment. That is the average construction value for both public- and private-sector projects. The \$50 million threshold is appropriate for an OCIP in order to ensure the level of safety needed for the worker.

Robert Vogel (Vice President, Pro Group Management):

I am with the Pro Group Network and a plan administrator of NTNSIG and five other self-insured groups in Nevada. Pro Group represents 2,600 employers statewide and in excess of 70,000 employees. The primary mission and goal of a self-insured group is workplace safety, training and education. If there is an injury, we ensure that the employee is treated appropriately, quickly and is fit to return to work. We provide return-to-work programs, light-duty programs and job descriptions that allow for permanent restrictions so the employer can find employment for those people.

Within the self-insured groups, over 1,000 employers are actively involved or eligible for construction projects, including OCIPs. One of the concerns that led to the statute of 1999 was the financial ability of a company to provide required safety standards. The thresholds were set to ensure the owners would establish the safety concerns. The \$240 million threshold puts many owners out of the realm of forming an OCIP and taking advantage of bundling various insurances. By eliminating the private companies from the thresholds, as proposed by S.B. 194, it eliminates them from proving they are putting together the proper safety and claims administration on the project and from meeting the requirements of the statute. They would not have to apply and prove that they have the right ingredients of an OCIP program. The proposed amendment, Exhibit C, suggests the current statute remain intact, reduces the threshold to \$50 million and keeps the application requirements and the safety and claims management requirements of the current statute. Except for the threshold requirement, the statute works very well in providing a statutory framework for our employers and OCIP programs. Sections of the proposed amendment allow the employer of record to have access to the job site for efforts regarding issues of occupational safety and health to create and maintain a safe and healthful workplace. It is important for the employer of record to have some control in order to reduce the effect on its experience modification rate (EMR), which affects their insurance premiums.

Jessica Ferrato (Builders Association of Western Nevada):

The Builders Association of Western Nevada is in opposition to S.B. 194. The safety issue and ability to have oversight of our employees on an OCIP site is a concern to us.

Chair Settlemeyer:

Please let me know of any other states that put limits on the OCIPs.

Senator Farley:

The testimony is confusing from the standpoint of the employer of record participating in an OCIP. The testimony indicates the employee of a business is no longer its employee, but that of the OCIP project owner. If an employee of a contractor is injured on an OCIP job, that information remains with the contractor and affects the business's EMR and the report to the State can be accessed. Does the reporting change with this proposed amendment? Light duty is the responsibility of the employer of record, and the testimony insinuates that it is not. Would you clarify these issues?

Mr. Vogel:

An employer of record has limited or no control of workplace safety on the OCIP job. There are OCIP programs that do not run as smoothly as Alliant. The safety of the employees on the job site is the responsibility of the project owner of an OCIP. The employer of record has little control and is often refused access to the job site to investigate accidents and observe safety standards.

Senator Farley:

Is that different from non-OCIP jobs? The safety programs on any job are overseen by the federal Occupational Safety and Health Administration (OSHA). The goal of any job is to avoid accidents and safety issues. Is it an incentive to have proper safety in place to avoid the costs?

Mr. Vogel:

Accidents are costly for the short term and long term. On a non-OCIP job, employers can represent themselves and have access to the job site for safety purposes. The OSHA inspects each individual employer's sites and issues fines. The contractor may or may not be fined depending on the violations found. A fine is generally applied to the subcontractor on the job. It is the responsibility of the DIR to inspect the job sites. A proactive employer will have a representative on the job site to be able to identify weaknesses in exposure and safety standards with their company and surrounding companies that may be causing exposure to them. It is the responsibility of the company to keep their employees safe. Without access to an OCIP job site, the employer cannot be assured the appropriate actions are being taken. The OCIP is incentivized to accomplish this, but the horror stories and fatalities exist on big projects. An employer in this situation wants to have access to observe the workplace safety. On a private work site, an accident can occur when one contractor is lacking in proper safety standards and causes an injury to the employee of another contractor. The claim can be investigated and the contractor can subrogate against the other's insurance. On an OCIP project, that ability is not available. The employees and contractors are considered employees of the OCIP manager on that project. If an accident occurs, there is no subrogation with the offending company. Statute requires that the OCIP have safe workplaces. It is important to have a threshold to ensure companies can take advantage of the benefits of the OCIP.

Senator Hardy:

Is the \$50 million average determined by the average dollars of a project or by the other states' averages?

Mr. Vogel:

The proposed \$50 million is the average of the project costs.

Mr. Wadhams:

It is important to understand that the OCIP programs include both general liability and workers' compensation. This allows the State to have complete control over the lawsuits and is beneficial to the administration of this process. We will take the opportunity to review the proposed amendment, speak with its authors and bring something workable back to the Committee.

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Senate Committee on Commerce, Labor and Energy
March 6, 2015
Page 12

Chair Settlemeyer:

I will close the hearing on S.B. 194 and adjourn this meeting at 9:19 a.m.

RESPECTFULLY SUBMITTED:

Christine Miner,
Committee Secretary

APPROVED BY:

Senator James A. Settlemeyer, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	2		Attendance Roster
S.B. 194	C	6	Paul Enos	Proposed Amendment