

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session  
March 11, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:07 a.m. on Monday, March 11, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 Nicole J. Cannizzaro, Chair  
Senator Dallas Harris, Vice Chair  
Senator James Ohrenschall  
Senator Marilyn Dondero Loop  
Senator Melanie Scheible  
Senator Scott Hammond  
Senator Ira Hansen  
Senator Keith F. Pickard

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Nicolas Anthony, Committee Counsel  
Jeanne Mortimer, Committee Secretary

**OTHERS PRESENT:**

Matthew Sharp, Nevada Justice Association  
Mark Wenzel, Nevada Justice Association  
Sean Claggett, Nevada Justice Association  
Ardea G. Canepa-Rotoli, Nevada Justice Association  
Charles Falkenroth  
Thomas Hall  
Debbie Sheltra  
Mary Anne Healy  
David Watts-Vial, Office of the District Attorney, Washoe County

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Steve Balkenbush, Liability Cooperative of Nevada; Nevada Rural Hospital Partners; Nevada Public Agency Insurance Pool  
Brandon Kemble, City of Henderson  
Yolanda Givens, Office of the District Attorney, Clark County  
Warren B. Hardy II, Nevada League of Cities and Municipalities; City of Mesquite  
Jesse Wadhams, Las Vegas Metro Chamber of Commerce  
Jeff Dorocail, City of Las Vegas  
Eleissa Clavelle, Office of the General Counsel, Clark County School District  
Kimberly Krumland, Clark County School District  
Brian McAnallen, City of North Las Vegas

CHAIR CANNIZZARO:

The meeting is called to order and will begin with a presentation on Senate Bill (S.B.) 245.

**SENATE BILL 245**: Revises provisions relating to civil actions. (BDR 3-965)

SENATOR JAMES OHRENSCHALL (Senatorial District No. 21):

With me I have Mr. Matthew Sharp who practices law and has experience in tort law. Senate Bill 245 addresses tort law. The main goal of tort law is to make the victim whole again and to try to make sure the wrongdoer takes responsibility. Senate Bill 245 tries to accomplish the goal of accountability with the changes to *Nevada Revised Statutes* (NRS) as recommended.

MATTHEW SHARP (Nevada Justice Association):

There was a rule of law that the government could not be sued for a tort. The states have adopted a waiver of sovereign immunity. A waiver allows the State to be sued for a wrongdoing, the same way a private citizen can be sued. The State cannot be sued for policy decisions; however, the State can be sued for conduct in tort.

If my client were injured by the State for a tort, the cap would be \$100,000; medical bills would be capped at this amount. The cap applies to loss of property and economic loss, not just pain and suffering. The cap is unfair and unjust. I have clients who have lost their property due to wrongdoing by the State—their lives were transformed. The cap of \$100,000 is unjust. We propose to increase the cap to \$250,000 and to increase the cap of instances of gross negligence to \$1 million.

It is negligence for a defendant to run through a stop sign from lack of attentiveness. If a defendant were driving blind and drove through a stop sign, it is gross negligence. Our tort system is designed to encourage responsibility and accountability. Citizens have the obligation to act with a duty of care, and so does the State. The State needs an incentive to act appropriately. If the State had a cap for gross negligence, the Little Valley Fire may not have happened.

SENATOR PICKARD:

I remember the Little Valley Fire and its results. Would the gross negligence standard result in a loss of insurance coverage? If so, would liability shift to the individual? Or would the jurisdiction remain on the hook for that?

MR. SHARP:

Gross negligence is an insurable risk. If an employee acted with gross negligence, the responsibility would be shifted to the governmental entity.

SENATOR PICKARD:

Why do we need a \$1 million cap for gross negligence? As a public works contractor, I was required to have a \$1 million policy for any liability. Where did the \$1 million amount derive from?

MR. SHARP:

This concept derived from an idea that most responsible businesses carry a \$1 million insurance policy. This number is considered fair, and we used a balancing test. This bill restores modernization and fairness to the process.

SENATOR HARRIS:

Can you explain how Nevada sits in relation to caps in other states?

MR. SHARP:

Nevada has a \$100,000 cap which is a low cap in relation to other states. A \$250,000 cap would be in the middle range. In relation to neighboring Western States, Nevada is below other states.

SENATOR HARRIS:

We are introducing the concept of gross negligence and recovery for tort. Are there other states that have a cap for gross negligence?

MR. SHARP:

I am not aware of a state that has a gross negligence cap. These statutes are state-specific. In medical malpractice, there is a gross negligence standard for going above \$100,000. In certain instances, the standard is gross negligence. That is how we came up with that idea.

SENATOR OHRENSCHALL:

Idaho Statute Section 6-926, has a \$500,000 cap and is not applicable if the harm is caused by willful or reckless conduct. There may be other states, but Idaho has something similar.

SENATOR DONDERO LOOP:

Are gross negligence cases more common where there are fires? Or does that not apply since we are right next to California and we have had so many wildfires in the past?

MR. SHARP:

The Little Valley Fire was my own experience. The cap does have real-life implications. Property damage and bodily injury caused by the State is capped at \$100,000 for recovery damages.

SENATOR OHRENSCHALL:

For example, a citizen who was injured by a government-operated snow plow ended up losing a leg; the victim could not find an attorney because the legal fees would cost more than the \$100,000 cap. The cap failed the victim.

SENATOR HANSEN:

My understanding is that Pacific Gas and Electric Company (PG&E) filed for or is on the verge of bankruptcy due to the Camp Fire in Paradise, California, in 2018. There is no cap on the possibility of being sued. For example, if the City of Sparks has a significant fire caused by one of its employees, what would happen if a city had to declare bankruptcy because of no caps being in place?

MR. SHARP:

The situation with PG&E is complex. If the allegations are determined to be true, PG&E acts of negligence caused the Camp Fire in Paradise, California.

SENATOR HANSEN:

What happens if the caps increase? Senate Bill 245 lacks a fiscal note and does not contain an unfunded mandate. Will S.B. 245 have a significant cost to the cities and counties?

MR. SHARP:

If State or public entities commit negligent acts producing injury and if those injuries are not compensated for, there is a cost to society.

SENATOR HANSEN:

I have a concern, for example, with the Little Valley Fire. I have empathy for the homeowners and families who experienced this situation. We have other situations where the State is being directed to deal with the fire risks. In the case of Little Valley Fire, a combination of bad things occurred. State agencies will be reluctant to conduct preventive work. There is a significant cost of the homes in Lake Tahoe that are in wildfire territory. The Division of Forestry will be reluctant to conduct fire preventative maintenance. This bill is a double-edged sword. When you live in a high-risk area for fires, like the Little Valley area, I assume the homeowners would have substantial personal insurance to cover lost. It is safe to assume that a high-risk homeowner's policy for fires would factor into recovery and mitigate some of the damages.

MR. SHARP:

Public entities have insurance to cover the costs associated with a lawsuit. I do not know specific homeowner insurance policies. I am aware of what the State had for insurance in 2016 regarding the Little Valley Fire; it is appalling that an entity that large would have little insurance. Part of the issue is risk management. In high-risk areas, residents may not want to do controlled burns—in the Little Valley Fire, it was the context in which the burn occurred. The evidence in that case is appalling. If there had been an incentive to act appropriately, the Division of Forestry would have. When a controlled burn is conducted in a reckless manner, there should be consequences. Homeowners insurance covers the dwelling unit; however, the land and landscaping are not typically covered under the policy.

SENATOR HANSEN:

Are there extended coverage options that would cover the land and landscape?

MR. SHARP:

There is insurance for the property itself. Insurance companies do not always cover real property. There is limited coverage for landscaping. The real property is not typically what homeowners insure. I have 25 years of experience in insurance law, and I was surprised at how little coverage insurance companies cover in a total loss situation.

MARK WENZEL (Nevada Justice Association):

In my experience with tort law, I had a client who had been injured by a State snowplow while driving in his vehicle to work. The victim had been severely injured, and he ended up losing his leg and becoming unemployable. If the victim had been injured in California, the victim's ability to recover would have been significantly higher. California does not have a cap; however, we are not asking the Committee to remove all caps for tort liability. We are trying to accomplish what we think is fair.

Senate Bill 245 is a reasonable balance between compensating an injury victim and the State's interest in making sure that one tragedy does not bankrupt the municipality or the State. The goal of S.B. 245 is to create balance and bring Nevada into the middle ground of all states across the Country.

SEAN CLAGGETT (Nevada Justice Association):

As attorneys, we have experience dealing with tort law. With regard to gross negligence, it is rare for a jury to render a finding of gross negligence. It is unlikely that gross negligence would be found by a jury often; it is a rare and extreme situation. There is a distinction between gross negligence and negligence. A common issue we see is where a victim is injured by the State and incurs millions of dollars in medical bills, which can lead to the victim's family going bankrupt. This often leaves the family with no remedy. Many people feel this is an injustice; nobody feels good about the tragedy.

In one example, a family whose daughter was injured by the State became a physically disabled child who was once healthy. The State was responsible for physically injuring the child. As a result of the injuries and medical bills incurred, the family went bankrupt. This is injustice. I was shocked to realize how low Nevada's caps on tort law are compared to nearby states.

The cost of health care has increased. The caps do not account for the cost of health care. The caps are going to help the people who have been injured by the

State to pay their bills. Senate Bill 245 addresses this issue and takes into account what could be helpful for victims to pay their medical bills.

ARDEA G. CANEPA-ROTOLO (Nevada Justice Association):

I represented clients whose lives were devastated by intentional State conduct. In October 2016, the State conducted a controlled burn in Little Valley, which is located on the west side of Washoe Valley, adjacent to the ridgeline that leads down to residences on Franktown Road. The State began the controlled burn with knowledge that it was not a typical small-pile burn; instead, it was a complex burn that had high-risks associated with it. The State knew that if the controlled burn was not carried out correctly, it would put a number of residents at risk. The State then violated Nevada law.

First, the State implemented a burn plan that did not consider the fuels adjacent to the control burn area. The State adopted a burn plan that had a contingency plan that was designed to fail. With fuels adjacent to the burn area, the canyon below and lack of resources, the contingency plan was not designed to succeed. The State hired a burn boss for the controlled burn who did not meet the qualifications to run a complex controlled burn. The burn boss knowingly and intentionally admitted under oath that he knew he was burning outside the prescriptive parameters set by the State's own burn plan regarding wind and humidity. For an extended period of time before the fire, the burn boss continued to burn outside of the prescriptive parameters.

The most egregious part of this situation is that on October 13, 2018, the burn boss and his trainee left the mountain in the middle of the day. Later that afternoon, the State knowingly and intentionally pulled every firefighter off of that mountain. The State knew that the controlled burn was not 100 percent controlled or contained. One firefighter testified he expressed concern about leaving the mountain that day. There was knowledge that high winds were coming. With a combination of high winds, no firefighters and no notice, there was no chance of saving all homeowners' properties.

Many properties and lives were saved by the diligence of the community; neighbors and volunteer firefighters knocked on the doors, waking up homeowners to get them out of their homes. Residents could have lost their lives. One of the resident's prized horses did not survive. This is an extreme case of gross negligence. The State acknowledged that State employees must have started the fire. Photos have been submitted ([Exhibit C](#)). The charred

hillside is still visible from the highway. Diminution of property value has occurred. Trees that were hundreds of years old are now charred, have decreased the property value and the homes are now unsellable.

An independent board investigation authorized by the State found the State was the cause of the wildfire and the subsequent damage. The State did not accept responsibility. I represented clients in August 2018 in a jury trial against the State in this action—the jury found the State guilty of gross negligence. Twenty-three houses totally burned to the ground. There were millions of dollars of lost property value. The biggest issue is that the State will not take responsibility. Property rights are one of the most important constitutional rights. Our homes are our biggest financial investment. Many residents of the Little Valley Fire invested their entire retirements into their properties, and other clients lost irreplaceable family heirlooms in this fire. Many others lost their ranches and as a result, lost their livelihood.

If a private citizen caused a wildfire, that citizen would be sued for everything her or she owns. It is not acceptable for the State to treat taxpaying citizens in this manner. There has been no consequence for the State. Senate Bill 245 will not solve the issues regarding the homes destroyed in the Little Valley Fire. This bill addresses future injustices. This specific case of gross negligence committed by the State should not be tolerated—we need to protect our citizens. We support S.B. 245.

SENATOR HANSEN:

I am sympathetic to the homeowners in the Little Valley Fire. Within a week of the fire, I had a call from Dennis Hof who had stated this fire may be a stimulus for him to run for office. How many residences were destroyed in this fire? If we multiplied the number of homes destroyed times the \$1 million cap that the State would have been responsible for, it equates to millions of dollars. For the municipalities that would have to purchase insurance for up to \$1 million, what would be the potential cost for taxpayers? I represent seven counties, and some counties only have a budget of a couple million dollars. Dramatic increases for insurance has a huge fiscal impact.

Senate Bill 245 does not contain a fiscal note, and there is no unfunded mandate attached. I am taking the perspective of protecting the taxpayer as well as potential future victims. What is your estimate of the damages created in the Little Valley Fire?



MS. CANEPA-ROTOLI:

This is a case of extreme gross negligence. Had there been a cap in place prior to the Little Valley Fire, the Division of Forestry may not have been so reckless. There would have been incentive to act with care. If a fire gets out of control and is not reckless like the Little Valley Fire, there will not be the \$1 million cap, it would instead be the \$250,000 cap.

SENATOR HANSEN:

Municipalities within the State need to secure insurance for the most extreme gross negligence example possible. If there was a \$75 million payout that a municipality is required to pay, the insurance company is going to factor that amount in for coverage. What is the insurance going to cost if the cap is increased? What is the cost going to be for every municipality in Nevada to have this coverage?

MS. CANEPA-ROTOLI:

The independent investigation estimated that there was \$80 million total value loss for the Little Valley Fire.

SENATOR HANSEN:

Why is there no fiscal note attached to S.B. 245? Is there a reason there is no unfunded mandate attached?

CHAIR CANNIZZARO:

Fiscal notes are for consideration of the Senate Committee on Finance.

SENATOR HANSEN:

I would like to request an answer from the Legal Division as to why there is no fiscal note attached.

SENATOR HAMMOND:

When North Las Vegas was going through financial difficulty, the problems looked like they might have to turn to the State and conduct a receivership. Is bankruptcy an option for cities and municipalities?

CHAIR CANNIZZARO:

No, cities and municipalities cannot file for bankruptcy.

CHARLES FALKENROTH:

I am in favor of S.B. 245. My family lost more than 50 years of pictures and family heirlooms in the Little Valley Fire. The jury determined that the State was guilty of gross negligence. I submitted pictures of my home, [Exhibit C](#). I had good homeowners insurance; however, we have loss documented at well over \$1 million. This bill would help people in the future. The \$100,000 cap is low. This gross negligence seldom arises, and the \$1 million cap on gross negligence is a deterrent for this type of conduct. Three levels of management did not succeed in covering this fire in an appropriate manner.

THOMAS HALL:

I lost one of my houses in the Little Valley Fire. Before the fire, I served as the chairman of the West Washoe Association. This is a group of homeowners in Washoe Valley that grouped together to protect the Valley from disasters. There were 450 people on our mailing list. In July 2016, we conducted a meeting with various members of the Division of Forestry. The fire service members assured residents that they would ensure the utmost protection. West Washoe Association wrote a letter of support for the controlled burn.

We were woken up in the early hours the morning of the fire and grabbed our belongings. We built our home in 1978 and lost our home due to the fire. We raised four kids in our home and had a beautiful view. We recovered from our insurance; however, the value of the property decreased dramatically. We lost as many as 250 trees on our property. We did not have insurance on either parcel of land. The parcels had a panoramic view of Washoe Valley. The property value has plummeted. Others similarly situated should not have to bear the cost when the State is grossly negligent. I support S.B. 245.

DEBBIE SHELTRA:

I built my house in 1979 in Washoe Valley. Many Washoe Valley residents opposed the fire plan. We were told that insurance should cover the costs of any lost homes; however, we were met with a cavalier attitude. I have submitted a proposed amendment ([Exhibit D](#)). We would like this bill to be retroactive. I lost so much in the Little Valley Fire, not only material items.

I had five acres and over 1,000 trees on my property. As a result of the fire, my property has been valued at less than \$100,000. I did have good insurance on my home; however, I was unable to insure my lot. The amount of loss is valued around \$400,000. I urge the Committee to make S.B. 245 retroactive; in the

alternative, perhaps the State can permit a one-time appropriation. The State has not accepted responsibility. The Division of Forestry was negligent. We did our due diligence. Taxpaying citizens were let down by the State. I support S.B. 245.

MARY ANNE HEALY:

Our ranch was one of the original ranches in Washoe Valley ([Exhibit E](#)). Many structures on our property were historic. We had lived in our home for 40 years. There was a tremendous amount of structure damage, and we lost our livelihood. Structures on our property are gone. This was gross negligence. We had been reassured many times by the Division of Forestry that the controlled burn was not going to cause any damage. That turned out to be untrue. I support S.B. 245.

DAVID WATTS-VIAL (Office of the District Attorney, Washoe County):

We oppose S.B. 245, but we are in favor of the goal that the bill embodies. The wording in the bill is flawed, but the goal is appropriate. The primary goal of the legislation is to increase caps to provide a mechanism for victims who have been injured by the government. While an increase in the cap is appropriate, the creation of a new cause of action against the government for gross negligence is not the best vehicle to compensate citizens who have been injured in excess of the cap. The creation of a higher cap and a new cause of gross negligence will lower the cap for negligence and render it meaningless. It will drastically increase the cost of litigation for State and local governments.

It will decrease the government's ability to provide services that citizens of Nevada rightfully expect those entities to provide. Rather than create a new cause of action, the Committee should look into the creation of a new catastrophic injury fund. This would allow plaintiffs to receive compensation to the full extent of their injuries while continuing to allow State and local governments to provide the services that taxpayers rightfully expect. The tort cap has increased so governments have time to build up reserves. The costs of claims rise along with the increase in liability. The cap should be raised in accordance with inflation rates. The increase to \$250,000 would create problems. This bill attempts to find a way to compensate a victim who was harmed as a result of governmental action.

There is no dispute that victims should receive full compensation. Creating a new cause of action with a cap of \$1 million is not a viable solution. A better

solution would be a Statewide fund that severely injured plaintiffs could look to for full compensation of their injuries. The creation of a Statewide fund would spread the cost of injuries across 3 million taxpayers.

CHAIR CANNIZZARO:

If you have an amendment for the Committee to consider regarding a Statewide catastrophic fund, please provide the amendment to the Committee Secretary.

MR. WATTS-VIAL:

The issue is that S.B. 245 would create many problems for local governments. It is important to look at alternatives. I do not have an amendment to S.B. 245. The Little Valley Fire burned down 23 homes; those homeowners would be entitled to \$23 million, less attorney's fees under the law. Costs to defend cases are costly. All the increased costs will come at the expense of taxpayers. When the government loses money, the government has to cut programs. The cap will never fully compensate plaintiffs because the attorney's fees are as high as 40 percent of the total judgment.

States waive their sovereign immunity in attempts to compensate plaintiffs. This bill would make it difficult for government to provide services, and purchasing insurance will greatly increase. Taxpayers pay for governmental services and expect for those services to be available. The argument that a gross negligence cap will change government behavior is not accurate. Punitive damages under NRS 41.035 are not awarded against governments. A gross negligence cause of action would eliminate a negligence cause of action. Senate Bill 245 punishes taxpayers—governments are not businesses. The government will be responsible for the entire cost.

Insurance comes with increased cost. Insurance companies base rates based on claims history and evaluation of risk. If the insurance company decides that a risk is too high, the insurance company will not insure the entity. The goal is full victim compensation. Bad facts make bad law. Senate Bill 245 seeks drastic changes to the law in response to an isolated tragedy. This bill will have wide-ranging, unintended consequences affecting state and local governments. Costs of litigation will increase for all parties involved; victims will only receive 60 percent compensation instead of 100 percent compensation that would come from a catastrophic fund. We ask that the Committee eliminate the cause of action for gross negligence. There is a better way to compensate victims.

STEVE BALKENBUSH (Liability Cooperative of Nevada; Nevada Rural Hospital Partners; Nevada Public Agency Insurance Pool):

The Nevada Rural Hospital Partners (NRHP) consists of many hospitals located in rural Nevada. Liability Cooperative of Nevada and NRHP provide help to rural hospitals by insuring them through a risk pool. When a cap is increased, it has a substantial impact on the rural hospitals. Rural hospitals operate on tight budgets. Risk is retained by the hospitals. There is insurance for excess problems. To save money, rural hospitals will purchase insurance for three years. If the cap were to be increased, the insurance company has to reconsider the premium.

The Nevada Public Agency Insurance Pool (POOL) insures 15 out of 17 counties in Nevada. The Nevada Public Agency Insurance Pool does not insure Washoe County or Clark County because of the size. The Nevada Public Agency Insurance Pool was created as a mechanism to insure small municipalities and was formed in 1987. The cap is important for these municipalities as well as rural hospitals. Receivership is a possibility. When caps become so high, it would be difficult for these small entities to operate. Whether gross negligence would be covered under an insurance policy is at the discretion of the insurance policy; negligence is typically covered.

I have been involved in tort litigation for 40 years. Increasing the caps for gross negligence will increase these types of claims. The cap has steadily increased since 2007. Senate Bill 245 is not a solution. Indexing the cap beyond \$150,000 is not necessary. Anytime this cap is increased, there is an impact on the rural hospitals and small municipalities. If the Committee is going to vote on an increase, an increase to \$150,000 would be sufficient. We do not support S.B. 245.

SENATOR HANSEN:

Can you expand on the catastrophic injury fund idea? Our goal is to help the people who have been damaged by the State. Are there any other states that have a catastrophic injury fund? Increasing the cap would not wholly compensate the victim because attorneys' fees would take almost half of the amount the victim would recover.

MR. WATTS-VIAL:

I do not have statistics on catastrophic injury funds; however, the idea has been presented before.

SENATOR HANSEN:

I would like additional information on catastrophic injury funds. Most insurance policies have a deduction for other payments that occur. Please elaborate on this.

MR. BALKENBUSH:

Some insurance policies do read that way.

SENATOR HANSEN:

There is typically a clause that limits the amount of recovery from the private insurance if the victim is allowed a financial remedy against the State. Is the cost going to be offset? If this bill would have been in place prior to the Little Valley Fire, the attorneys would have been allowed to collect up to \$400,000 of a \$1 million recovery from the State. Which state started this?

MR. BALKENBUSH:

It was Arizona.

SENATOR HANSEN:

For small municipalities to get insurance coverage, the risk would become so great it would be unlikely the municipality would obtain coverage. Private insurance would be nearly unaffordable if the caps were raised.

MR. BALKENBUSH:

These entities pay out-of-pocket for insurance coverage. Insurance companies and some entities can reserve their right to renegotiate premiums if the cap is increased. If the cap increases, the insurance companies will want higher premiums paid.

SENATOR HANSEN:

If a small rural hospital created millions of dollars of damage, many entities would be financially impacted. Some rural counties have budgets of \$5 million or less. It is possible for a small county to create \$80 million worth of damage.

SENATOR PICKARD:

Please clarify punitive damages. My understanding is that punitive damages go beyond compensatory damages. Senate Bill 245 pertains to compensatory damages. Can we please clarify this distinction? Any ability to collect damages will have an effect on behavior.

MR. WATTS-VIAL:

The reason it is punitive is because the effort is to alter governmental behavior. Anytime the government tries to adjust behavior, that will have a punitive aspect. In the Little Valley Fire, the Division of Forestry needed to be taught a lesson. The only lesson that will be learned will be by the taxpayers. Taxpayers will ultimately incur this cost. There is a punitive aspect to this bill; however, the people who will be punished are taxpayers.

VICE CHAIR HARRIS:

In this context, the term "punitive" is not being used as a legal term.

SENATOR PICKARD:

There is a difference between an exposure to liability damages and punitive damages, which are intended to punish. These are two distinct terms. There is a characterization between the litigation efforts and expense, between negligence and gross negligence. Court procedures and discovery are the same for both causes of action, correct?

MR. BALKENBUSH:

We are not talking about punitive damages today. The cost of litigation would be similar in both a negligence and gross negligence claim. The standard for gross negligence is substantially higher than negligence. The result of this bill would increase the amount of damages substantially for a gross negligent act. Everything will be more expensive if S.B. 245 is passed.

SENATOR PICKARD:

Are hospitals covered under S.B. No. 292 of the 78th Legislative Session under those caps? Senate Bill 245 does not expose hospitals to additional risk.

MR. BALKENBUSH:

Hospitals are covered by medical malpractice caps. Hospitals would be impacted because hospitals are protected under the cap instead of S.B. No. 292 of the 78th Legislative Session. Under S.B. No. 292 of the 78th Legislative Session, you have \$350,000 limited to noneconomic damages. The other damages are what can be proved in those cases. Under the law, hospitals have a cap of \$100,000 and enjoy more protection under the cap than they would under S.B. No. 292 of the 78th Legislative Session.

SENATOR PICKARD:

We are talking about gross negligence for hospitals. I cannot imagine a hospital being placed at more risk other than for medical claims. There is no cap for doctors under S.B. No. 292 of the 78th Legislative Session for gross negligence. Senate Bill 245 would improve the situation if it was found that the cap applied to hospitals—there is no cap applicable to hospitals.

MR. BALKENBUSH:

This bill improves the situation for claims for gross negligence. If there was gross negligence on behalf of a physician, that is a viable argument. However, for common negligence claims, it would not improve the recovery.

SENATOR PICKARD:

With regard to S.B. No. 292 of the 78th Legislative Session, the cap for noneconomic damages would apply to the hospital. Senate Bill 245 would add a cap if the court were to find this legislation applicable to hospitals. Offers of judgment are still applicable in Nevada. A defendant could issue an offer of judgment in order to limit any recovery in a frivolous claim. The plaintiff would pay the attorney's fees for the defendant.

MR. BALKENBUSH:

Yes, offers of judgment are viable remedies available to defendants in Nevada. An offer of judgment allows a defendant to request attorney's fees. The amount granted to the defendant in attorney's fees is at the discretion of the court.

SENATOR DONDERO LOOP:

For those of us who are nonlawyers, I would like this to be put in the average citizen perspective. Senate Bill 245 is about accountability. Accountability can be determined in a court of law. Any entity committing a wrong must be held accountable. We are not looking for any entity to become bankrupt. I was a teacher for many years, and I was accountable. When someone does something wrong, there has to be accountability.

MR. BALKENBUSH:

We agree that there needs to be accountability.



MR. WATTS-VIAL:

Accountability serves a purpose in this bill, and a negligence cap holds the government accountable. If the caps increase, there will be more costs associated.

VICE CHAIR HARRIS:

Based on testimony today, it was presented that other states have removed the cap for torts, not including negligence. Where is S.B. 245 on the scale of things? Is this bill better than removing the cap for all other torts? Is this bill a more measured approach?

MR. WATTS-VIAL:

Are you asking if it would be better to have no cap or the cap proposed in S.B. 245?

VICE CHAIR HARRIS:

Yes, pertaining to gross negligence.

MR. WATTS-VIAL:

It would be better to have a measured cap. The creation of a gross negligence cause of action would increase settlements and costs of litigation.

MR. BALKENBUSH:

I agree that it would be better to have a measured cap.

BRANDON KEMBLE (City of Henderson):

We oppose S.B. 245. This bill does too much too fast. We have been asked to incur a huge increase. The municipal budgets cannot handle that stress. The \$1 million cap for gross negligence is too much and is unique in tort caps. In Idaho, there is only a prohibition against punitive damages. Under NRS 41.035, there is a prohibition against punitive damages as well as exemplary damages. This bill would impose exemplary damages against the local jurisdiction for tortious conduct. Exemplary damages make an example out of the tortfeasor. The gross negligence cap is not exclusive only to compensatory damages. There is no correlation between the amount of damages that a party incurs and the type of negligence that precipitated those damages.

An ordinary negligence recovery is capped for \$500,000. For a gross negligence claim, the recovery is not capped. The difference between the two awards is

that recovery for a gross negligence claim is to punish the tortfeasor. The City of Henderson has never been found guilty of gross negligence. Our insurance company has stated that there could be as much as a 50 percent increase in premiums if S.B. 245 was passed. There is a risk of loss of coverage. A single occurrence under this bill that resulted in a significant claim would potentially make the City of Henderson uninsurable. With regard to the medical malpractice caps as outlined in S.B. No. 292 of the 78th Legislative Session, the caps cover medical negligence. Hospitals will still see increased insurance costs.

YOLANDA GIVENS (Office of the District Attorney, Clark County):

We oppose S.B. 245. This statute was not designed to make the victims whole. The sovereign immunity was waived to transfer personal liability from the public employee to the State. Individual employees would not be subject to personal lawsuits in the event of negligence. Senate Bill 245 is not the appropriate vehicle to compensate victims. If there was some sort of gross negligence, the allegations would be if the employee acted out of the scope of his or her authority. Would the State indemnify the actions of the employee? This bill dilutes the potency of immunity of public duty doctrine which bars negligence claims against first responders. There are negative ramifications and additional costs that would be incurred. We do not support S.B. 245.

SENATOR PICKARD:

In legal terms, exemplary damages are punitive damages and are used interchangeably. If penalties are attached to certain conduct and are intended to deter, how is S.B. 245 different? Can you expand on that aspect? What is your requirement for contractors in terms of their liability insurance?

MR. KEMBLE:

The technical difference is to punish, and the other is to make an example out of the tortfeasor as outlined in NRS 41.035, section 1. We have varying requirements for our contractors. Typically, we require the contractor to hold \$1 million in insurance coverage. Comparing our State to others is futile because each state has different laws; the Nevada Supreme Court has held that is a person, per claim.

SENATOR HANSEN:

I am a contractor. If I were to contract with a county, I would be required to hold a \$1 million insurance policy. If I am negligent, I will be the only person

held accountable for that. Under S.B. 245, is it the taxpayer who ultimately ends up being responsible?

MR. KEMBLE:

Yes, that is correct. An insurance policy is designed to cover the insured; the taxpayers would be protected. The \$1 million insurance policy that contractors are required to carry protects taxpayers.

SENATOR HANSEN:

Contractors have a protection fund where all contractors can contribute to a catastrophic injury fund. This fund is paid for by contractor fees and not by taxpayers. We want to make people whole again; however, we cannot create policies that municipalities cannot sustain. The contractors have a sustainable and efficient homeowners fund to ensure that homeowners are made whole when contractors commit tortious acts beyond the scope of the contractor's insurance policy.

WARREN B. HARDY II (Nevada League of Cities and Municipalities; City of Mesquite):

There is a balancing act we are trying to achieve with this bill. The legal consequences of this have been covered. I served as a State Senator in the Seventy-third Session and attempted to address these issues. I introduced legislation that would have allowed local governments to declare bankruptcy. The State would take into receivership and spread the burden across the entire State. There is a reason we do not allow local governments to declare bankruptcy; there would be significant impacts on a local government's ability to become bonded.

The role of government is to minimize income and maximize output. There are different models, and there is a reason for caps. Businesses declaring bankruptcy would be different than a local government experiencing a bankruptcy. We want to help resolve the tragedy without creating a financial crisis for local governments. The biggest challenge for local governments is the uncertainty surrounding insurability. There are many problems with this bill, and we do not support S.B. 245.

JESSE WADHAMS (Las Vegas Metro Chamber of Commerce):

The cost of running governments will increase the cost of doing business with governments.

JEFF DOROCAIL (City of Las Vegas):

We oppose S.B. 245. Raising the tort cap will greatly increase the economic impact on the City of Las Vegas. The cost of services to our residents is outpacing our revenue growth. In 2018, the claim exposure for Las Vegas was in the millions. Senate Bill 245 will impact small Nevada counties. Gross negligence is a difficult legal concept. In many cases, gross negligence cases may not be resolved in pretrial motions—we would not know which tort cap applies until a verdict is returned by a jury.

ELEISSA CLAVELLE (Office of the General Counsel, Clark County School District):

We agree with accountability. We are looking at the economies of each case and the cost of litigation. Costs of litigation will be shifted to the governmental agency, in addition to the cost the agency is incurring in its own defense. The Clark County School District (CCSD) is in a budget crisis. In 2018, CCSD experienced a \$68 million budget deficit. We serve 320,000 students, have 40,000 employees and operate in excess of 360 schools. We have concerns that S.B. 245 would severely impact CCSD's ability to educate students, pay teachers and increase class sizes. We oppose S.B. 245.

KIMBERLY KRUMLAND (Clark County School District):

We oppose S.B. 245. We have an average of 582 liability claims a year that result in approximately \$3.5 million spent. An estimate from 2011 would bring those 46 claims to cost an additional \$6 million if the tort cap had been \$250,000. School districts across the Nation are experiencing increases in premiums for excess liability insurance. We have difficulty obtaining coverage at all. Our initial excess liability premium will double if S.B. 245 is passed. This money could be better spent in the classroom instead of purchasing insurance to cover tort claims. Our risk management budget is funded by a direct assessment from the general fund. This bill would take money from the classroom to pay higher insurance premiums.

SENATOR PICKARD:

Were the 46 tort claims in 2011 brought against CCSD paid at the \$100,000 cap? Did you state that if the claims in those cases were paid at \$250,000, the cost would have been closer to \$6 million?

MS. KRUMLAND:

We have found that when the tort cap increases, the amount of damages increases in order for the plaintiff to reach the cap level.

SENATOR HAMMOND:

If the liability increased to \$250,000, would there be an additional increase to insurance premiums?

MS. KRUMLAND:

The insurance premium with a tort cap at \$100,000 is available for coverage by accepting a \$3 million deductible. Our current policy would increase by 50 percent if the tort cap was increased to \$250,000. If we choose a policy with additional coverage, the premium would increase an additional \$500,000.

SENATOR HANSEN:

The goal is to make injured people whole. Based on testimony, CCSD is paying out of pocket for a \$3 million deductible; is that a collective deductible or is that a per occurrence deductible?

MS. KRUMLAND:

It is a per occurrence deductible.

SENATOR HANSEN:

Every claim paid has been paid directly from funds that could have been allocated for classrooms?

MS. KRUMLAND:

Yes, that is correct.

BRIAN MCANALLEN (City of North Las Vegas):

We have concerns with the gross negligence cap being raised, and we are concerned this bill will lead to false inflation of claims. We oppose S.B. 245.

SENATOR OHRENSCHALL:

Each case is a human being and is one of our constituents. With the cap we have in place, we are not making human beings whole again.

MR. SHARP:

This bill does not change existing sovereign immunity of the State. When the State is acting in the capacity of policymaking, this bill does not change the protection. This bill does not change the public duty doctrine and the sovereign immunity of our first responders. This bill addresses when the government is acting as a private individual and can be sued under the same circumstances.

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The State already has a claims reporting procedure. The idea of a catastrophic injury fund is a good idea. We have a reverse incentive; there are many examples of when the State refused to take accountability.

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VICE CHAIR HARRIS:

The hearing on S.B. 245 is closed, and the meeting is adjourned.

RESPECTFULLY SUBMITTED:

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Jeanne Mortimer,  
Committee Secretary

APPROVED BY:

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Senator Nicole J. Cannizzaro, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	8		Attendance Roster
S.B. 245	C	2	Nevada Justice Association	Before and After Photos
S.B. 245	D	1	Debbie Sheltra	Proposed Amendment
S.B. 245	E	1	Mary Anne Healy	Before and After Photos