

MEETING NOTICE AND AGENDA

Name of Organization: Legislative Commission's Subcommittee to Study the Statutory Limitation on Damages that may be Awarded to a Person in a Tort Action Against the State of Nevada, its Political Subdivisions or Certain Other Persons (A.C.R. 46)

Date and Time of Meeting: Friday, May 19, 2000
9:30 a.m.

Place of Meeting: Legislative Building
Room 3138
401 South Carson Street
Carson City, Nevada

Note: Some members of the Subcommittee may be attending the meeting and other persons may observe the meeting and provide testimony, through a simultaneous videoconference conducted at the following location:

Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative web site is For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."

AGENDA

I. Opening Remarks and Introductions

Assemblyman Bernie Anderson, Chairman

*II. Approval of Minutes for the Subcommittee's Meeting in Carson City, Nevada, on April 19, 2000

*III. Presentation by Staff of the Fiscal Analysis Division, Legislative Counsel Bureau, Regarding Possible Sources of Revenue for Contribution by the State of Nevada to the Special Fund Proposed in Recommendation No. 3 in the April 19, 2000, "Work Session Document"

*IV. Presentation Regarding how a Claim Would be Processed Under Recommendation No. 3 of the April 19, 2000, "Work Session Document"

Wayne E. Carlson, Executive Director, Nevada Public Agency Insurance Pool and Public Agency Compensation Trust

*V. Presentation in Response to Issues Raised at the April 19, 2000, Meeting of the A.C.R. 46 Subcommittee Regarding the Number of State Tort Cases that Potentially Would be Eligible for Compensation from the Special Fund Compared to the Total Number of Potentially Eligible Claims From Other Public Entities, and Information on the Amount of Excess Insurance Public Entities Could Obtain if the Projected \$2.2 Million in Proposed Funding for the Special Fund were Instead used to Purchase Excess Insurance

P. Mark Ghan, Solicitor General, Office of the Attorney General

VI. Public Testimony

*VII. Work Session — Discussion and Subcommittee Action on Recommendations to the 71st Session of the Nevada Legislature (see Attached "Work Session Document" for a Summary of Proposals Compiled from Previous Subcommittee Meetings and Correspondence)

VIII. Adjournment

*Denotes items on which the Subcommittee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Roxanne Duer, at 775/684-6825, as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Grant Sawyer State Office Building, 555 East Washington Avenue; and Clark County Office, 500 South Grand Central Parkway.

**LEGISLATIVE COMMISSION'S SUBCOMMITTEE
CONCERNING THE STATUTORY LIMITATION ON DAMAGES
THAT MAY BE AWARDED TO A PERSON IN A TORT ACTION
AGAINST THE STATE OF NEVADA, ITS POLITICAL SUBDIVISIONS
OR CERTAIN OTHER PERSONS
(Assembly Concurrent Resolution No. 46, File No. 140, *Statutes of Nevada 1999*)**

Work Session Document

April 19, 2000

This work session document was prepared by the staff of the A.C.R. 46 Subcommittee. It contains a summary of major recommendations which have been presented in public hearings and correspondence during the course of the study. It is designed as a working document to assist the members of the Subcommittee in making decisions during the work session.

The possible recommendations listed in this document do not necessarily have the support or opposition of the Subcommittee. These proposals simply are compiled and organized so the members may review them to decide if they should be adopted, changed, rejected, or considered further. The source of each recommendation is noted in parentheses. Any recommendations adopted by the Subcommittee will be submitted to the Legislative Commission for consideration. The recommendations, if any, will be highlighted in the Subcommittee's report, and any recommendations for legislation will be included in the report as bill draft requests (BDRs). The report will be made to the 71st Session of the Nevada Legislature.

Subsection 2 of *Nevada Revised Statutes* (NRS) 218.240 provides that an interim committee or Subcommittee appointed by the Legislative Commission may request no more than ten BDRs. However, Subcommittees may request the preparation of additional legislative measures if the Legislative Commission approves each additional BDR by a majority vote.

Threshold Issue

Under the provisions of A.C.R. 46, the Subcommittee may adopt a recommendation only if a majority of the Senators and a majority of the Assemblymen on the Subcommittee concur. Given the foregoing requirement, the Subcommittee may wish to consider at the outset whether there is sufficient support for changing the existing statutory cap prior to examining specific proposals to effectuate any change.

Recommendations for Changing the Existing Statutory Tort Damage Cap

1. Enact legislation effective July 1, 2001, eliminating the cap for damages incurred for medical expenses and lost wages but retaining the existing cap of \$50,000 set forth in NRS 41.035 until July 1, 2003, for all other types of damages (this includes, without limitation, pain and suffering, loss of consortium). Additionally, include a provision to:

- a. Increase the cap set forth in NRS 41.035 for counties with a population greater than 100,000 to:

i. **\$75,000 for incidents occurring on or after July 1, 2003; and**

ii. **\$100,000 for incidents on or after July 1, 2005; and**

b. **Increase the cap set forth in NRS 41.035 for counties with a population less than 100,000 to:**

i. **\$60,000 for incidents on or after July 1, 2003; and**

ii. **\$75,000 for incidents on or after July 1, 2005.** (Proposed by Chairman Bernie Anderson at the February 23, 2000, meeting).

2. **Enact legislation establishing a special fund for governmental entities that service a population of less than 100,000, including those governmental entities which are located within counties with a population of more than 100,000.** (Proposed by Chairman Bernie Anderson at the February 23, 2000, meeting.)

3. **Enact legislation to amend NRS 41.035 to increase the cap on damages and to create a special fund for persons injured by public agencies as follows:** (Proposed by Bill Isaef representing the Nevada League of Cities, and Wayne Carlson of the Nevada Public Agency Insurance Pool in an e-mail dated March 22, 2000, a copy of which is attached hereto as Exhibit A; supported [except as noted] by the Nevada Association of Counties per a letter from Robert S. Hadfield, Executive Director, dated March 22, 2000, a copy of which is attached hereto as Exhibit B; supported by the Nevada Association of School Boards per Bill Hoffman, representative for Nevada Association of School Boards.)

a. **Increase Tort Cap and Create Special Fund for Certain Cases.**

i. **Increase the cap set forth in NRS 41.035 and limit the amount of damages in tort actions:** For any accident or occurrence on or after October 1, 2001, except as provided in Recommendation No. 3.a.ii, an award for tort damages against a present or former officer or an employee of the state or any political subdivision, immune contractor or state legislator arising out of an act or omission within the scope of his public duties or employment may not exceed \$75,000, exclusive of interest computed from the date of judgment, to or for the benefit of any claimant, subject to a total limit of \$150,000 in the aggregate for all separate, distinct, and independent causes of action or number of state actors involved for any one person arising out of said accident or occurrence. An award may not include any amount for prejudgment interest or as exemplary or punitive damages.

ii. **Certain persons may apply for money from special fund:** For any accident or occurrence on or after October 1, 2001, a person injured in any occurrence involving a public agency, including the state or any political subdivision of the state, which results in paraplegia, quadriplegia, a persistent vegetative state, permanent total physical incapacitation from any gainful employment or death, may apply to the Special Fund for Persons Injured by Public Agencies for payment up to \$250,000 for medical expenses and loss of earnings damages combined that exceed the amount resulting from the application of the limitation on damages pursuant to NRS 41.035 concluded by settlement or judgment.

b. **Eligibility for Payment from Special Fund.**

i. **Determination of damages:** Eligibility to make application to the Special Fund for medical expenses and loss of earnings damages must be certified in writing to the Board of Trustees by the public agency in the settlement agreement or be adjudicated by the court. In the event the parties to a settlement cannot agree as to the amount of such damages, the parties may agree to petition the court for a determination of the amount of damages incurred, which determination shall be binding upon the parties. In the alternative, either party may request a jury trial to determine both liability and damages, if any. "Medical expenses and loss of earnings damages" means damages that are specifically claimed and proven and shown to have been sustained in the circumstances of the particular wrong and may include future loss of earnings and medical expenses.

ii. **Application process:** The Board of Trustees of the Special Fund shall review the application and approve or disapprove reimbursement of all or part of the unpaid medical expenses or loss of earnings damages. Applications must be filed with the Board within 30 days after a final determination of damages has been made. If reimbursement or partial reimbursement is approved, payment of such damages to the person injured must be made from the fund, to the extent money is available in the fund for this purpose. Within 30 days after the close of a fiscal year, the Board shall determine the amount of money on hand as of the close of the fiscal year. If claims against the fund in any given year exceed the amount of money available at the close of the fiscal year, the available money shall be distributed on a pro rata basis among all recipients eligible in that year. The method of determining the pro rate division of money in the Special Fund shall be fixed by regulations adopted by the Board. An applicant is eligible to receive payment from the Special Fund for an accident or occurrence only once. The determination by the Board of Trustees as to the amount of money available for reimbursement or partial reimbursement of medical expenses and loss of earnings damages is made in the sole discretion of the board and is final and binding on the applicant.

iii. The application to the Board must be in such form and contain such information as the Board requires by regulation. No application will be processed without a certification of medical expenses and loss of earnings damages by the public agency.

c. **Creation and Powers of Board of Trustees.**

i. The Board of Trustees shall consist of five members of which one member shall be from each county with a population of 100,000 or greater, two shall be from counties with a population of less than 100,000, and one shall be a representative from the State Board of Examiners. The Board shall have the same powers as the Board of Trustees for the Fund for Hospital Care to Indigent Persons as set forth in NRS 428.205. [If the state does not participate in the Special Fund as outlined in Section e below, then the proposed revisions to NRS Chapter 41 and the provisions of the Special Fund will not apply to the state and the fifth member of the Board shall be from a county with a population of less than 100,000.]

-Or-

ii. The existing Board of Trustees for the Fund for Hospital Care to Indigent Persons established pursuant to NRS 428.195 shall administer the Special Fund. The Nevada Association of Counties, under the control of the Board, shall serve as the administrative and claims agency for the Special Fund.

-And-

iii. Once the Special Fund has been initially funded, the Board shall have authority to determine future allocations of excess Special Fund Revenue to support the Fund for Hospital Care to Indigent Persons and the Fund for the Institutional Care for the Medically Indigent, based on the funding needs of all three funds. (Recommendation No. 3.c.ii and iii proposed by the Nevada Association of Counties per a letter from Robert S. Hadfield, Executive Director⁴, dated March 22, 2000, attached hereto as Exhibit B.)

d. **Reimbursement of Medical Expenses or Loss of Earnings; Board Subrogated to Right of Applicant.**

Upon payment of medical expenses or loss of earnings to the applicant, the Board of Trustees is subrogated to the right of the applicant to recover the unpaid charges from any responsible party other than the certifying public agency or the applicant to the extent of the reimbursement or partial reimbursement paid, and may maintain an independent action therefor in a manner similar to that employed by the Board of Trustees for the Fund for Hospital Care to Indigent Persons pursuant to NRS 428.245.

e. **Funding for Special Fund**

From the taxes levied pursuant to NRS 428.185 and any tax levied pursuant to NRS 450.425, the board of county commissioners of each county shall set aside money from the ad valorem tax at a rate of 0.25 cents (one-quarter of a cent).

-And-

- i. **If a permanent source of money is identified in the legislation to match the money contributed to the special fund by the earmarking of the 0.25 cents from the ad valorem tax, then the bill will be drafted so that a person injured by an employee of the state may apply for money under the special fund. This permanent source of money could include dedicating a portion of an existing state tax or creating a new tax for this purpose. [The estimated annual revenue if the state matches equally at 0.25 cents (one-quarter of a cent) is \$2,248,373.]**

-Or-

- ii. **If a permanent source of money is not identified, then the bill will be drafted so that a person injured by a state employee may not apply for money in the fund. In addition, the bill will be drafted so that the limitation on awards for damages in tort actions set forth in NRS 41.035 will remain at \$50,000 for state employees and there will be no restriction on the number of causes of action that may be brought against the state.**

STAFF NOTE: If the bill is drafted pursuant to Recommendation No. 3.e.i, the source of money to be committed must be identified before the bill may be drafted. If the bill is drafted pursuant to Recommendation No. 3.e.ii, then the different award of damages available to a person who is injured by a state employee rather than a local government employee will have to be shown to meet the rational basis test.

4. **Enact legislation increasing the tort cap set forth in NRS 41.035 for all claims to \$125,000 while continuing to allow multiple causes of action arising from the same incident. The new cap applies to all claims occurring on or after October 1, 2001. (Proposed by Bill Bradley representing the Nevada Trial Lawyers Association in a March 28, 2000, letter, a copy of which is attached hereto as Exhibit C.)**
5. **Enact legislation increasing the cap for all claims as provided in Recommendation No. 4 and in addition, authorize an interim legislative study to consider the feasibility of creating a catastrophic injury fund for claims which exceed the new statutory cap. (Proposed by J.R. Crockett, Jr., representing the Nevada Trial Lawyers Association at the January 10, 2000, Advisory Committee meeting.)**
6. **Enact legislation providing for an index in the cap as established in Recommendation No. 4 to automatically increase the cap in the future to keep pace with the cost of living based on the Consumer Price Index-All Urban Consumers (Current Series). (Proposed by J.R. Crockett, Jr., representing the Nevada Trial Lawyers Association at the January 10, 2000, Advisory Committee meeting.)**
7. **Enact legislation effective July 1, 2001, retaining the existing cap of \$50,000 set forth in NRS 41.035 but establishing a schedule providing for higher caps for certain specified injuries as follows:**

 - \$75,000 for total loss of hearing in both ears;**
 - \$100,000 for the loss of one foot, one leg, or of one hand or arm;**
 - \$200,000 for the loss of both feet or legs, or of both hands or arms;**
 - \$300,000 for the loss of vision in both eyes;**
 - \$400,000 for paraplegia or quadriplegia; and**
 - \$500,000 for death.**

Funding for the increased caps would be provided as specified in Recommendation No. 3.b. through 3.e. (Proposed by Assemblyman John C. Carpenter on April 12, 2000.)
8. **Enact a sunset provision effective at the end of four years for any change in the cap to allow for evaluation of the effects of the change. (Proposed by Senator Maurice E. Washington at the February 26, 2000, meeting.)**

Additional Options

On February 23, 2000, the Advisory Committee submitted a report concerning its two meetings which occurred on January 10, 2000, and February 16, 2000. Although the Advisory Committee was not able to reach consensus on any recommendations to present to the Subcommittee, it did present a list of options the Subcommittee could consider. These options are included here in the event the Subcommittee does not want to adopt any of the proposals set out above, but still wants to consider other options. However, more detail would be necessary before most of these options could be drafted. The list of options is attached hereto as Exhibit D.

**A.C.R. 46 ADVISORY COMMITTEE
LIST OF OPTIONS**

- 1. No change in the current statutory limitation or cap.**
- 2. No change in the current cap, but create a new fund for major injury and death cases.**
- 3. Increase the cap by:**
 - a. Immediate cost of living adjustment (COLA) from 1979 to present.**
 - b. Gradual phase-in of any increase in the cap.**
 - c. Prospective only COLA adjustment.**
 - d. Immediate COLA adjustment and thereafter COLA adjustments annually or some other period of time.**
 - e. Increasing only within counties whose population is above a certain number.**
 - f. Increasing for medical negligence cases only.**
 - g. Increasing the amount for each claim, but reducing or limiting the number of claims under which an individual may recover.**
 - h. A fixed amount, but with a sunset provision to allow study of the effects of the increase.**
 - i. Random selection of a new cap amount.**

Exhibit D