

SENATE BILL NO. 440—COMMITTEE ON FINANCE

(ON BEHALF OF THE DIVISION OF BUDGET AND PLANNING)

MARCH 28, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Creates the Silver State Health Insurance Exchange.
(BDR 57-1172)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to health insurance; creating the Silver State Health Insurance Exchange; setting forth the purposes of the Exchange; providing for the composition, appointment and terms of members and powers and duties of the Board of Directors of the Exchange; providing for the appointment and powers and duties of the Executive Director of the Exchange; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 This bill creates the Silver State Health Insurance Exchange to provide services
2 relating to the purchase and sale of health insurance by residents and certain
3 employers in this State. The Exchange is governed by the Board of Directors
4 consisting of five voting members appointed by the Governor, one voting member
5 appointed by the Senate Majority Leader and one voting member appointed by the
6 Speaker of the Assembly. The Board also consists of the directors, or designees
7 thereof, of the Department of Health and Human Services, the Department of
8 Business and Industry and the Department of Administration as ex officio
9 nonvoting members to assist the voting members by providing advise and expertise.
10 Voting members of the Board serve terms of 3 years each. The Board appoints an
11 Executive Director of the Exchange, who in turn may employ such persons as are
12 necessary and as funding allows. Among other duties, the Exchange is required to
13 create and administer a state-based health insurance exchange, facilitate the
14 purchase and sale of qualified health plans, provide for the establishment of a
15 program to help certain small employers in Nevada in facilitating the enrollment of
16 employees in qualified health plans, and perform all other duties that are required
17 of it pursuant to the federal Patient Protection and Affordable Care Act, the federal
18 Health Care and Education Reconciliation Act of 2010 and any amendments to or



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19 regulations or guidance issued pursuant to those acts. (Pub. L. No. 111-148, Pub. L.
20 No. 111-152)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Title 57 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 27, inclusive, of this act.

4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
5 *requires, the words and terms defined in sections 3 to 12,*
6 *inclusive, of this act have the meanings ascribed to them in those*
7 *sections.*

8 **Sec. 3.** *“Board” means the Board of Directors of the*
9 *Exchange.*

10 **Sec. 4.** *“Exchange” means the Silver State Health Insurance*
11 *Exchange.*

12 **Sec. 5.** *“Executive Director” means the Executive Director*
13 *of the Exchange.*

14 **Sec. 6.** *“Federal Act” means the federal Patient Protection*
15 *and Affordable Care Act, Public Law 111-148, as amended by the*
16 *federal Health Care and Education Reconciliation Act of 2010,*
17 *Public Law 111-152, and any amendments to, or regulations or*
18 *guidance issued pursuant to, those acts.*

19 **Sec. 7.** *“Medical facility” has the meaning ascribed to it in*
20 *NRS 449.0151.*

21 **Sec. 8.** *“Provider of health care” has the meaning ascribed*
22 *to it in NRS 629.031.*

23 **Sec. 9.** *Except as otherwise provided in section 22 of this act,*
24 *“qualified health plan” has the meaning ascribed to it in § 1301 of*
25 *the Federal Act.*

26 **Sec. 10.** *“Qualified individual” means a person, including,*
27 *without limitation, a minor, who:*

28 1. *Is seeking to enroll in a qualified health plan offered to*
29 *persons through the Exchange;*

30 2. *Resides in Nevada;*

31 3. *At the time of enrollment is not incarcerated, unless the*
32 *person is incarcerated pending the disposition of charges; and*

33 4. *Is, and is reasonably expected to be, for the entire period*
34 *for which enrollment is sought, a citizen of the United States or an*
35 *alien lawfully present in the United States.*

36 **Sec. 11.** *“Qualified small employer” means a small employer*
37 *that chooses to make all of its full-time employees eligible for one*
38 *or more qualified health plans offered through the Exchange to*
39 *assist qualified small employers in Nevada in facilitating the*



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1 *enrollment of their employees in qualified health plans offered in*
2 *the small group market, if the employer:*

3 *1. Has its principal place of business in Nevada and chooses*
4 *to provide coverage through the Exchange to all of its eligible*
5 *employees, regardless of where those employees are employed; or*

6 *2. Regardless of the location of its principal place of business,*
7 *chooses to provide coverage through the Exchange to all of its*
8 *eligible employees who are principally employed in Nevada.*

9 **Sec. 12.** *“Small employer” has the meaning ascribed to it in*
10 *NRS 689C.095.*

11 **Sec. 13.** *The Silver State Health Insurance Exchange is*
12 *hereby established to:*

13 *1. Facilitate the purchase and sale of qualified health plans*
14 *in the individual market in Nevada;*

15 *2. Assist qualified small employers in Nevada in facilitating*
16 *the enrollment and purchase of coverage and the application for*
17 *subsidies for small business enrollees;*

18 *3. Reduce the number of uninsured persons in Nevada;*

19 *4. Provide a transparent marketplace for health insurance*
20 *and consumer education on matters relating to health insurance;*
21 *and*

22 *5. Assist residents of Nevada with access to programs,*
23 *premium assistance tax credits and cost-sharing reductions.*

24 **Sec. 14.** *1. The Exchange shall:*

25 *(a) Create and administer a state-based health insurance*
26 *exchange;*

27 *(b) Facilitate the purchase and sale of qualified health plans;*

28 *(c) Provide for the establishment of a program to assist*
29 *qualified small employers in Nevada in facilitating the enrollment*
30 *of their employees in qualified health plans offered in the small*
31 *group market;*

32 *(d) Make only qualified health plans available to qualified*
33 *individuals and qualified small employers on or after January 1,*
34 *2014; and*

35 *(e) Unless the Federal Act is repealed or is held to be*
36 *unconstitutional or otherwise invalid or unlawful, perform all*
37 *duties that are required of the Exchange to implement the*
38 *requirements of the Federal Act.*

39 **2. The Exchange may:**

40 *(a) Enter into contracts with any person, including, without*
41 *limitation, a local government, a political subdivision of a local*
42 *government and a governmental agency, to assist in carrying out*
43 *the duties and powers of the Exchange or the Board; and*



1 (b) Apply for and accept any gift, donation, bequest, grant or
2 other source of money to carry out the duties and powers of the
3 Exchange or the Board.

4 3. The Exchange is subject to the provisions of chapter 333 of
5 NRS.

6 **Sec. 15. 1.** The governing authority of the Exchange is the
7 Board, consisting of seven voting members and three ex officio
8 nonvoting members.

9 2. Subject to the provisions of subsections 3, 4 and 5:

10 (a) The Governor shall appoint five voting members of the
11 Board;

12 (b) The Senate Majority Leader shall appoint one voting
13 member of the Board; and

14 (c) The Speaker of the Assembly shall appoint one voting
15 member of the Board.

16 3. Each voting member of the Board must have:

17 (a) Expertise in the individual or small employer health
18 insurance market;

19 (b) Expertise in health care administration, health care
20 financing or health information technology;

21 (c) Expertise in the administration of health care delivery
22 systems;

23 (d) Experience as a consumer who would benefit from services
24 provided by the Exchange; or

25 (e) Experience as a consumer advocate, including, without
26 limitation, experience in consumer outreach and education for
27 those who would benefit from services provided by the Exchange.

28 4. When making an appointment pursuant to subsection 2,
29 the Governor, the Majority Leader and the Speaker of the
30 Assembly shall consider the collective expertise and experience of
31 the voting members of the Board and shall attempt to make each
32 appointment so that:

33 (a) The areas of expertise and experience described in
34 subsection 3 are collectively represented by the voting members of
35 the Board; and

36 (b) The voting members of the Board represent a range and
37 diversity of skills, knowledge, experience and geographic and
38 stakeholder perspectives.

39 5. A voting member of the Board may not be a Legislator or
40 hold any elective office in State Government.

41 6. While serving on the Board, a voting member may not be
42 in any way affiliated with a health insurer, including, without
43 limitation, being an employee of, consultant to or member of the
44 board of directors of a health insurer, having an ownership



1 *interest in a health insurer or otherwise being a representative of a*
2 *health insurer.*

3 *7. The following are ex officio nonvoting members of the*
4 *Board who shall assist the voting members of the Board by*
5 *providing advice and expertise:*

6 *(a) The Director of the Department of Health and Human*
7 *Services, or his or her designee;*

8 *(b) The Director of the Department of Business and Industry,*
9 *or his or her designee; and*

10 *(c) The Director of the Department of Administration, or his*
11 *or her designee.*

12 **Sec. 16.** *1. After the initial terms, the term of each voting*
13 *member of the Board is 3 years.*

14 *2. A voting member of the Board may be reappointed to the*
15 *Board.*

16 *3. The appointing authority who appoints a voting member of*
17 *the Board may remove that voting member if the voting member*
18 *neglects his or her duty or commits misfeasance, malfeasance or*
19 *nonfeasance in office.*

20 *4. A vacancy on the Board in the position of a voting member*
21 *must be filled in the same manner as the original appointment.*

22 *5. Upon the expiration of his or her term of office, a voting*
23 *member of the Board may continue to serve until he or she is*
24 *reappointed or a person is appointed as a successor.*

25 **Sec. 17.** *1. The Board shall elect a Chair and a Vice Chair*
26 *from among its members.*

27 *2. The terms of the Chair and Vice Chair are 1 year.*

28 *3. The Chair and Vice Chair may be reelected to one or more*
29 *terms.*

30 *4. If a vacancy occurs, the members of the Board shall elect a*
31 *replacement Chair or Vice Chair, as applicable, for the remainder*
32 *of the unexpired term.*

33 **Sec. 18.** *1. Except as otherwise provided in subsection 2,*
34 *the voting members of the Board shall serve without*
35 *compensation.*

36 *2. If sufficient money is available from federal grant funds or*
37 *revenues generated by the Exchange, each member is entitled to*
38 *receive the per diem allowance and travel expenses provided for*
39 *state officers and employees generally while attending meetings of*
40 *the Board or otherwise engaged in the business of the Board.*

41 **Sec. 19.** *1. The Board shall meet:*

42 *(a) At least once each calendar quarter; and*

43 *(b) At other times upon the call of the Chair or a majority of*
44 *the voting members.*



1 2. A majority of the voting members of the Board constitutes
2 *a quorum for the transaction of business.*

3 3. A member of the Board may not vote by proxy.

4 **Sec. 20.** 1. *The Board may appoint subcommittees and*
5 *advisory committees composed of members of the Board, former*
6 *members of the Board and members of the general public who*
7 *have experience with or knowledge of matters relating to health*
8 *care to consider specific problems or other matters within the*
9 *scope of the powers, duties and functions of the Board.*

10 2. *To the extent practicable, the members of such a*
11 *subcommittee or advisory committee must be representative of the*
12 *various geographic areas and ethnic groups of this State.*

13 3. *A member of a subcommittee or an advisory committee will*
14 *not be compensated or reimbursed for travel or other expenses*
15 *relating to any duties as a member of the subcommittee or*
16 *advisory committee.*

17 **Sec. 21.** *The Board and any subcommittee or advisory*
18 *committee appointed by the Board shall comply with the*
19 *provisions of chapter 241 of NRS.*

20 **Sec. 22.** 1. *The Board shall:*

21 (a) *Adopt bylaws setting forth its procedures and governing its*
22 *operations;*

23 (b) *On or before June 30 and December 31 of each year,*
24 *submit a written fiscal and operational report to the Governor and*
25 *the Legislature, which must include, without limitation, any*
26 *recommendations concerning the Exchange;*

27 (c) *On or before December 31 of each year, prepare a report*
28 *for the public summarizing the activities of the Board and the*
29 *contributions of the Exchange to the health of the residents of*
30 *Nevada during the previous year;*

31 (d) *Provide for an annual audit of its functions and*
32 *operations;*

33 (e) *Submit all reports required by federal law to the*
34 *appropriate federal agency and in a timely manner; and*

35 (f) *If the Federal Act is repealed or is held unconstitutional or*
36 *otherwise invalid or unlawful, define by regulation "qualified*
37 *health plan" for the purposes of this act.*

38 2. *The Board may:*

39 (a) *Adopt regulations to carry out the duties and powers of the*
40 *Exchange;*

41 (b) *Prepare special reports concerning the Exchange for the*
42 *Governor, the Legislature and the public; and*

43 (c) *Contract for the services of such legal, professional,*
44 *technical and operational personnel and consultants as the*



1 *execution of its duties and powers and the operation of the*
2 *Exchange may require.*

3 *3. The Board is subject to Legislative and Executive Branch*
4 *audits.*

5 **Sec. 23.** *1. The Board shall appoint an Executive Director*
6 *of the Exchange.*

7 *2. The Executive Director:*

8 *(a) Is in the nonclassified service of the State;*

9 *(b) Is responsible to the Board and serves at the pleasure of the*
10 *Board;*

11 *(c) Must have experience in the administration of health care*
12 *or health insurance; and*

13 *(d) Is responsible for the administrative matters of the Board.*

14 *3. Subject to the limits of available funding, the Executive*
15 *Director may appoint and remove such employees of the*
16 *Exchange as are necessary for the administration of the*
17 *Exchange.*

18 *4. Employees of the Exchange appointed pursuant to*
19 *subsection 3 are in the nonclassified service of the State.*

20 **Sec. 24.** *1. The Board and the Department of Health and*
21 *Human Services shall ensure that the Exchange coordinates with*
22 *Medicaid, the Children's Health Insurance Program and any*
23 *other applicable state or local public programs to create a single*
24 *point of entry for users of the Exchange who are eligible for such*
25 *programs and to promote continuity of coverage and care.*

26 *2. As used in this section, "Children's Health Insurance*
27 *Program" has the meaning ascribed to it in NRS 422.021.*

28 **Sec. 25.** *The Department of Health and Human Services, the*
29 *Division of Insurance of the Department of Business and Industry*
30 *and any other relevant state agency shall work with and provide*
31 *support to the Exchange as it carries out its duties and powers,*
32 *including, without limitation, entering into agreements to share*
33 *information and intergovernmental agreements with the*
34 *Exchange.*

35 **Sec. 26.** *1. If the Executive Director determines that the*
36 *current expenses of the Exchange exceed the amount of money*
37 *available because of a delay in the receipt of money from federal*
38 *grants or a delay in the receipt of revenue from other sources, the*
39 *Executive Director may request from the Department of*
40 *Administration an advance from the State General Fund for the*
41 *payment of authorized expenses.*

42 *2. If the Director of the Department of Administration*
43 *approves a request made pursuant to subsection 1, he or she shall*
44 *notify the State Controller and the Fiscal Analysis Division of the*
45 *Legislative Counsel Bureau of the amount of advance approved.*



1 **3. Upon receiving notification pursuant to subsection 2, the**
2 **State Controller shall draw his or her warrant for payment of the**
3 **approved amount.**

4 **4. An advance made pursuant to this section must not exceed**
5 **25 percent of the revenue expected to be received from any source**
6 **other than legislative appropriation during the fiscal year in which**
7 **the request is made.**

8 **5. Any money which is advanced pursuant to this section**
9 **must be repaid by the Exchange to the State General Fund not**
10 **later than August 31 immediately after the end of the fiscal year**
11 **during which the advance is made.**

12 **Sec. 27. Nothing in this act, and no action taken by the**
13 **Exchange pursuant to this act, shall be construed to preempt or**
14 **supersede the authority of the Commissioner to regulate the**
15 **business of insurance within this State.**

16 **Sec. 28.** NRS 233B.039 is hereby amended to read as follows:

17 233B.039 1. The following agencies are entirely exempted
18 from the requirements of this chapter:

19 (a) The Governor.

20 (b) Except as otherwise provided in NRS 209.221, the
21 Department of Corrections.

22 (c) The Nevada System of Higher Education.

23 (d) The Office of the Military.

24 (e) The State Gaming Control Board.

25 (f) Except as otherwise provided in NRS 368A.140, the Nevada
26 Gaming Commission.

27 (g) The Division of Welfare and Supportive Services of the
28 Department of Health and Human Services.

29 (h) Except as otherwise provided in NRS 422.390, the Division
30 of Health Care Financing and Policy of the Department of Health
31 and Human Services.

32 (i) The State Board of Examiners acting pursuant to chapter 217
33 of NRS.

34 (j) Except as otherwise provided in NRS 533.365, the Office of
35 the State Engineer.

36 (k) The Division of Industrial Relations of the Department of
37 Business and Industry acting to enforce the provisions of
38 NRS 618.375.

39 (l) The Administrator of the Division of Industrial Relations of
40 the Department of Business and Industry in establishing and
41 adjusting the schedule of fees and charges for accident benefits
42 pursuant to subsection 2 of NRS 616C.260.

43 (m) The Board to Review Claims in adopting resolutions to
44 carry out its duties pursuant to NRS 590.830.

45 **(n) The Silver State Health Insurance Exchange.**



1 2. Except as otherwise provided in subsection 5 and NRS
2 391.323, the Department of Education, the Board of the Public
3 Employees' Benefits Program and the Commission on Professional
4 Standards in Education are subject to the provisions of this chapter
5 for the purpose of adopting regulations but not with respect to any
6 contested case.

7 3. The special provisions of:

8 (a) Chapter 612 of NRS for the distribution of regulations by
9 and the judicial review of decisions of the Employment Security
10 Division of the Department of Employment, Training and
11 Rehabilitation;

12 (b) Chapters 616A to 617, inclusive, of NRS for the
13 determination of contested claims;

14 (c) Chapter 703 of NRS for the judicial review of decisions of
15 the Public Utilities Commission of Nevada;

16 (d) Chapter 91 of NRS for the judicial review of decisions of the
17 Administrator of the Securities Division of the Office of the
18 Secretary of State; and

19 (e) NRS 90.800 for the use of summary orders in contested
20 cases,

21 ➤ prevail over the general provisions of this chapter.

22 4. The provisions of NRS 233B.122, 233B.124, 233B.125 and
23 233B.126 do not apply to the Department of Health and Human
24 Services in the adjudication of contested cases involving the
25 issuance of letters of approval for health facilities and agencies.

26 5. The provisions of this chapter do not apply to:

27 (a) Any order for immediate action, including, but not limited to,
28 quarantine and the treatment or cleansing of infected or infested
29 animals, objects or premises, made under the authority of the State
30 Board of Agriculture, the State Board of Health, or any other agency
31 of this State in the discharge of a responsibility for the preservation
32 of human or animal health or for insect or pest control;

33 (b) An extraordinary regulation of the State Board of Pharmacy
34 adopted pursuant to NRS 453.2184; or

35 (c) A regulation adopted by the State Board of Education
36 pursuant to NRS 392.644 or 394.1694.

37 6. The State Board of Parole Commissioners is subject to the
38 provisions of this chapter for the purpose of adopting regulations but
39 not with respect to any contested case.

40 **Sec. 29.** On or before July 1, 2011:

41 1. The Governor shall appoint two voting members of the
42 Board of Directors of the Silver State Health Insurance Exchange to
43 terms commencing July 1, 2011, and expiring June 30, 2012.

44 2. The Governor and the Speaker of the Assembly shall each
45 appoint one voting member of the Board of Directors of the Silver



1 State Health Insurance Exchange to terms commencing July 1,
2 2011, and expiring June 30, 2013.

3 3. The Governor shall appoint two voting members of the
4 Board of Directors of the Silver State Health Insurance Exchange,
5 and the Senate Majority Leader shall appoint one voting member of
6 the Board of Directors of the Silver State Health Insurance
7 Exchange, to terms commencing July 1, 2011, and expiring June 30,
8 2014.

9 **Sec. 30.** On or before December 31, 2011, the Board of
10 Directors of the Silver State Health Insurance Exchange shall adopt
11 a plan for the implementation and operation of the Silver State
12 Health Insurance Exchange and shall submit the plan to the
13 Governor and the Legislature.

14 **Sec. 31.** Until an Executive Director of the Silver State Health
15 Insurance Exchange is appointed pursuant to section 23 of this act,
16 the Director of the Department of Health and Human Services is ex
17 officio responsible for the administrative matters of the Board of
18 Directors of the Silver State Health Insurance Exchange.

19 **Sec. 32.** This act becomes effective upon passage and approval
20 for the purpose of appointing voting members of the Board of
21 Directors of the Silver State Health Insurance Exchange and on
22 July 1, 2011, for all other purposes.

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