SENATE

COMMERCE AND LABOR

MINUTES OF MEETING
Monday, February 7, 1977

The meeting of the Commerce and Labor Committee was held on February 7, 1977, in Room 213 at 1:35 P.M.

Senator Thomas Wilson was in the chair.

PRESENT: Chairman Wilson
Vice Chairman Blakemore
Senator Ashworth
Senator Bryan
Senator Close
Senator Hernstadt
Senator Young

ALSO PRESENT:

See Attached List

Chairman Wilson advised that no action would be taken during this meeting on the bills under consideration.

S.B. 3 AUTHORIZES APPOINTING AUTHORITIES TO MAKE TEMPORARY LIMITED APPOINTMENTS OF HANDICAPPED PERSONS CERTIFIED BY NEVADA INDUSTRIAL COMMISSION (BDR 23-215)

The first witness was Mr. John Reiser, Chairman of the Nevada Industrial Commission, who advised that this bill's purpose is to allow the N.I.C. counsellors to certify disabled individuals for State employment under what is known as the 700 Hour Law Provision. He advised that N.I.C. is working with a number of State agencies, and will eventually work with all State agencies, to return injured workers to work in a minimum amount of time, and to help employ injured workers from other areas in the State, in State employment whenever possible under the 700 Hour Law.

This bill would allow the Rehabilitation Staff to certify individuals as being eligible for the 700 Hour Law Provision and provide additional tools to help rehabilite injured workers.

CHAIRMAN WILSON asked Mr. Reiser to explain the 700 Hour Law. - It is a provision that allows handicapped persons to be placed on eligibility lists without taking the normal examinations and to go through a 700 hour training program in which to qualify for these positions. (Statute NRS 284.327)

SENATOR YOUNG asked what number of people would be affected by this bill. Mr. Reiser responded that virtually every injured worker that has a re-employment problem would be. He indicated that out of the 42,000 injured workers this past fiscal year, approximately 2,000 workers have had some problem in returning to work, and these are the individuals that account for about one-half of the total $70 million liability.

He continued that the Bureau of Vocation and Rehabilitation does the certification at this time. This bill would allow N.I.C. to have that same certification responsibility and authority so that individuals would not go from the N.I.C. counsellor to the Bureau of Vocation and Rehabilitation, and then back to the N.I.C. counsellor, before visiting Job Placement. Mr. Reiser explained that this would not change the numbers helped, but merely change the administrative mechanism and allow quicker placement capability.

When asked if this would give handicapped persons priority over someone who takes the test and is certified, Mr. Reiser replied that they are made eligible along with those who take the test, allowing the hiring agency to decide whether or not to hire the 700 Hour Law person, or other individuals on the list. He stated the item that does give them priority is that N.I.C. is able to subsidize the hiring of these people. Example: If an individual is receiving temporary total disability of $800.00 per month, and it is estimated that that would go on for three months, N.I.C. can pay the State agency to return this individual to work sooner in a training capacity than might otherwise be possible.

SENATOR YOUNG asked if this results in people being employed who could not pass the test, or must they also pass the test? The response was that the 700 Hour Law is an on-th-job training program, thus eliminating the need to take the test. It is below the Grade 28 level and allows an individual to have a period of training prior to meeting the necessary entry level requirements.

SENATOR BRYAN asked that if an individual is handicapped and makes application for employment exactly what the 700 Hour Law enabled this person to do, and what benefits he would derive v.s. an individual coming in off the street seeking employment. Mr. Reiser indicated that the benefit would be that they can be placed on a job and given 700 hours of training to qualify them for that position, when in fact, they might not otherwise meet the minimum entry level requirements.

Mr. Reiser told the committee that the 700 Hour Law would address itself to any disability that would be a significant detriment to employment; and that the aim is to get these people into State employment without the necessity of meeting initial requirements, and to give them 700 hours of on-the-job training.

SENATOR ASHWORTH asked if there is an evaluation made and by whom. Mr. Reiser indicated that an evaluation is made by the agency that hires the individual, and that he must meet productivity requirements.

SENATOR HERNSTADT requested information as to the economical impact this would have. Mr. Reiser stated this simply makes a procedure which is in effect now, more efficient, and N.I.C. will be able to certify directly rather than writing up a program with a State agency, sending the program and the individual's file to the Bureau of Vocational Rehabilitation for certification, having the file, with certification returned, and then having the counsellor talk once again to each employer advising that the individual is ready to begin the 700 Hour Law Program. The impact is simply promoting savings and is positive.

SENATOR BLAKEMORE said that he felt this was merely a carry on of the British Columbia Plan to rehabilitate and return people to work. Mr. Reiser advised that both labor and management concurred with this plan in response to the Senator's query.

The committee was advised that the rehabilitation center in Las Vegas will be completed around the end of this year and would be a natural completion of that rehabilitation process.

SENATOR YOUNG asked what percentage of the 8500 employees might be employed in the 700 Hour Program. Mr. Reiser replied that there are about 9,000 individuals that are injured temporarily or totally disabled out of the 270,000 in the State. Approximately 2,000 of those are eligible for some form of rehabilitation service so that there would be less than 100 of those in the total state which would be candidates for the 700 Hour Law.

Under questioning Mr. Reiser confirmed that his department had met with State Personnel and agreed to deletion of the following words on page 1, lines 21 and 22 "with the concurrence of the Nevada industrial commission".

Further, Mr.Reiser indicated that he believed they would be unable to cut even one position at Vocation Rehab by shortcutting part of the certification procedure.

SENATOR WILSON asked the purpose of the amendment and was informed that the rules and regulations are established by the Chief and he will have the input of both the N.I.C. and the Bureau of Vocation and Rehab. Therefore, the inclusion of the phrase "with the concurrence of the Nevada Industrial Commission" adds nothing.

The second witness to appear before the committee on this bill was Mr. Roy Dowling, Chief of the Bureau of Vocational Rehabilitation who was appearing at the request of Mr. Frost. A copy of the letter from Mr. Frost to Senator Wilson is attached for your information.

Mr. Dowling advised Senator Young that the amount of work actually involved is a technical certification process, and that the preparation of the documents, etc. are done by the N.I.C., and because of the wording of the present statute, requires certification by one of his personnel, making it merely a sign off. Therefore, they would not be able to eliminate a position within his group.

SENATOR HERNSTADT asked if there had ever been any conflict between N.I.C. and the Vocational Rehabilitation Department. Mr. Dowling responded that he was sure there had been at the counsellor level, but was unaware of any that had not been adequately resolved.

SENATOR BRYAN asked if it would not be possible, by giving N.I.C. the ability to certify the same as Vocational Rehab, that someone who could not get certified by Rehab, could then go and become certified by N.I.C. Mr. Dowling answered that it would be possible - but he was not certain how likely it would be.

SENATOR WILSON asked about the criteria for certification. Mr. Dowling responded that the purpose of the 700 Hour Law is to replace the written/oral examination portion of the State Personnel examination, and go directly to the probationary period which is also a portion of the examination for employment. The certification means that a rehabilitation counsellor has thoroughly evaluated an individual and certifies to the Personnel Division that the individual is job ready for a specific position. They will accept that certification in lieu of either the oral or written examination portion of the process, and place them at the head of the eligible list which then is certified to the hiring agencies.

SENATOR ASHWORTH asked who supervises and monitors a person while on the 700 Hour Program, and which organization has the best ability to say who should be certified - Rehab or N.I.C.

Mr. Dowling indicated that the supervisor within the agency who hires the individual decides whether or not his performance on the job is adequate at the end of the probationary period, and whether they want to hire him as a permanent employee. He indicated the probationary period varies with the classification of the job and could be six months or one year.

He told the committee that the 700 Hour Law allows an individual to be certified by the Personnel Division in lieu of that first half of the examination, which is the oral or written portion. However, the individual must go through a probationary period which is the 700 hours.

SENATOR ASHWORTH asked if a person, under this act, would never have to take an examination, and was told that it is possible, as the examination is included in the 700 hours of standard or better performance on the job.

The Senator further inquired as to the opportunity for a handicapped person to have a position in an agency in the State of Nevada conceivably without ever having an examination, in comparison with someone who may have taken the test. He was told that it is possible, but the certification process is where the Rehab counsellor thoroughly evaluates an individual's ability and may use numerous kinds of tools to do that evaluation, including simulated work experience.

Under questioning Mr. Dowling informed the committee that the Personnel Division would establish what criteria they would accept as adequate certification to waive the oral or written examination.

The third witness to appear was Mr. Jim Wittenberg of the Personnel Division. (Joined Mr. Reiser & Mr. Dowling at the Witness Table)

SENATOR BRYAN referred back to Mr. Reiser's testimony in which he indicated in answer to Senator Wilson's question that the regulations that prescribe the criteria for eligibility are promulgated by the Chief. He reiterated that the Chief prescribes the regulations, and that the criteria is not promulgated by the Rehab Division or by N.I.C. as proposed in the bill. Both Wittenberg and Riser responded affirmatively.

Mr. Wittenberg advised that to confuse the issue, the standards for certification are developed by Rehab. He indicated they thought this could be worked out administratively, and does not have to be prescribed in the statute. He indicated that on the first occasion there were problems

they would be sure they did agree, or that the standards were consistent. He indicated that this will be worked out.

SENATOR ASHWORTH expressed concern that the individual coming from the 700 Hour Program does not have to take the test and others do. He asked how you decided which person to choose. Mr. Wittenberg advised that the key lies in what the Rehab conseller does. He is not going to certify someone for a position that does not have minimum qualifications, and physical qualifications also.

SENATOR WILSON quoted Line 13 "All such handcapped persons shall possess the training and experience necessary for the positions for which they are certified". He stated that in effect they are being certified before they possess the abilities - that the certification suggests that in 2 months of work on the job they will, in fact, possess the training and experience. Mr. Reiser responded affirmatively.

Mr. Reiser offered the following clarification: The Rehab center and the evaluation units that are established right now and the Bureau of Vocational Rehabilitation evaluate these people completely. They determine what the aptitude and capabilities are and once that determination is made, they may work for a month or two in the evaluation center to be brought up to the very minimum qualification for a particular job.

SENATOR WILSON asked the significance between lines 8 and 13. "Such certified handicapped persons shall be placed on appropriate eligible lists as defined in NRS 284.250, but they shall not be place on such lists for positions in the classified service above a class grade which is equal to the majority of trainee or entry level classes in the professional series as determined by the Personnel Division".

Mr. Wittenberg responded that the grade or level that that refers to is an entry level professional which is a Grade 28 typically. He indicated the individuals are classified from the standpoint of qualifications. In other words they have to meet the minimum requirements for the position.

In answer to a further question from SENATOR WILSON, Mr. Wittenberg indicated that once they are classified they enjoy the normal rights and benefits of classified service in government. He said they become classified the day they are appointed under the 700 Hours. He indicated that they would be subject to discharge for poor performance, etc. but they must go through a probationary period.

SENATOR BRYAN made reference to Subsection 2 of Section 1 which reads: "Chief will promulgate these regulations". He asked Jim Wittenberg to respond to this provision. Mr. Wittenberg responded that the issue of certification of being handicapped is the standard of certification that is Rehab's responsibility. He indicated that they did not delve into the degree of seriousness of the handicap and if it is warranted to be certified under the 700 Hour Law. That responsibility is Rehab's. He indicated his group set the standard in terms of the qualifications necessary to do the job.

SENATOR BRYAN pressed that it seemed to him to suggest that Wittenberg should be the Chief, promulgating the standards for the handicapped 700 Hour Program. Mr. Wittenberg indicated that they have never interpreted it that way.

SENATOR YOUNG asked how much time is generally required for training under the 700 Hour Law and was informed that in most cases almost the entire 700 hours.

Mr. Wittenberg stated that approximately 2 1/2% to 3% of the total 8,500 employees are considered handicapped. Less than 1/2 were appointed under the 700 Hours. Many people who are eligible for the 700 Hour Law take and compete in the examination, and are being able to take the type of tests they have available. There are some types of individuals with handicaps that are unable to take the tests - such as a sightless person.

Mr. Wittenberg indicated that the percentage of turndown or denials after the 700 hours was very low, but was unable to give an exact figure.

At this point in the meeting SENATOR WILSON informed the audience of a new policy. All agencies which come before the Commerce and Labor Committee are being held responsible for telephoning or notifying by letter, all interested parties that they are aware of, who may be affected by legislation which the Agency sponsors. Each agency, division or department head coming before the committee and sponsoring legislation must comply. When they appear in committee chambers they must submit a list as an exhibit so that the committee can be sure the notice has gone out.

The next witness was Mr. Frank Darr of the Southern Nevada Homebuilders. He testified that the bill seems to give a distinct advantage to what might be select people that come along and say they have been chosen under this program and therefore have seniority when it comes time to get a job with a State agency.

Mr. Darr asked for clarification on what was to be gained out of this bill - and if there is any gain, do we really need it.

S.B. 4 REPEALS PROVISION LIMITING PAYMENT OF INDUSTRIAL INSURANCE COMPENSATION FOR HERNIAS (BDR 53-216)

Mr. Reiser advised that S.B. 4 repeals the restrictive language under the hernia coverage and requires that hernias be treated just like any other industrial injury that arises out of the course of employment. The Commission has the responsibility for directing medical care and seeing that it is the best care possible. There are provisions in the hernia statutes, such as the one that requires surgery within one year of the disability, which present problems. There are cases where a physician asks that surgery not be done immediately, or even within one year, because of non-industrial problems such as diabetes, heart disease, etc. In this type of case, N.I.C. has had to waive the requirement rather than jeopardize the health of the individual.

He indicated that it is very difficult to determine what is non-industrial and industrial in hernias, because people work in heavy labor for 20 years and are going to gradually weaken that weakness they were born with, and it is very difficult to point to any particular instance which may have caused the hernia. However, previous legislators felt that there should be some accident that occurred on the job in order to justify industrial insurance coverage.

SENATOR WILSON quoted the Statute as follows: "Provides that such an injury or hernia would be compensated as a temporary total disability, and as a permanent partial disability, depending upon the lessening of the injured individual's earning capacity"...in section 3 "in all cases coming under subsection 2, for which compensation and accident benefits are to be allowed, it must be proven: a. That the immediate cause, which calls attention to the presence of the hernia, was a sudden effort or severe strain or blow received while in the course of employment b. That the hernia occurred immediately following the cause. c. That the cause was accompanied, or immediately followed, by severe pain in the hernial region. d. That the above facts were of such severity that the same were noticed by the claimant and communicated immediately to one or more persons". He stated this language is an attempt to build into the law some proximity between the industrial occupation and the injury the hernia suffered, Further, the bill would eliminate that and he expressed concern as to why N.I.C. wanted to eliminate the entire section and what the implications might be.

Mr. Reiser replied that the reason they wished to eliminate it was in subsection 4: "a. injured employee and his employer shall give notice of the injury to the commission 30 days after the immediate cause. b. The injured employee undergoes an operation for the correction of this condition within one year after the hernia was sustained, etc.". There are restrictive provisions, that in the opinion of N.I.C., doctors, attorneys, and commissioners have penalized the honest individual and rewarded the one who comes in with the provisions listed in the statutes.

SENATOR ASHWORTH inquired as to what determination would be made on the type of disability and Mr. Reiser stated that it would be handled under the general determination of temporary total disability and permanent partial disability. In almost all cases, unless there are severe complications, a hernia results in no permanent partial disability. When there are complication, there is a permanent partial disability involved. In the next section 616.605 (Permanent Partial Disability: Compensation) the hernia would be treated just like any other industrial injury.

Mr. Reiser indicated that he does not believe there will be any additional cases, and that with the change there will be an elimination of the amount of litigation that has been going on. He stated they would perform an investigation and take statements from people who may have witnessed the incident, or the statement of the individual himself, to determine whether or not it arose out of the course of employment. The investigations would include obtaining medical records that reflect the individual's situation prior to the alleged injury.

He told the committee that if this provision of the law was repealed in its entirety there are other provisions in the industrial act which will enable the physicians and administrators to sufficiently administer the act to prevent any possible abuse.

The second witness was Mr. Jack Kenney of the Southern Nevada Home Builders. He suggested the law be put on a two year trial basis and the committee instruct N.I.C. to report back to them at that time.

S.B. 5 REQUIRES ACCEPTANCE OF TIME DEPOSIT CERTIFICATES FROM EMPLOYERS AS SUBSTITUTE FOR CASH PAYMENT OF INDUSTRIAL INSURANCE PREMIUMS (BDR 53-219)

Mr. Reiser advised the committee that S.B. 5 is a housekeeping issue that notifies employers that they are entitled

to substitute time deposit certificates for cash as an advance deposit. Assemblyman Robinson proposed that N.I.C. (in Assembly Bill 14) pay interest on cash deposits. This is a substitute that was recommended by the commission and the labor management group to keep N.I.C. from getting into the commercial banking and savings and loan business directly. N.I.C. is accepting these under authority given in the past and this simply puts it in the statute so that all employers know they can use this type of deposit in lieu of cash.

The interest earned would then go to the benefit of the employers. He indicated to Senator Blakemore's query that only saving certificates or time deposit certificates issued by a bank or savings and loan association in Nevada would be accepted.

S. B. 6 CLARIFIES REFERENCE TO ISSUING AUTHORITY FOR SUBPENA IN CASE INVOLVING INDUSTRIAL INSURANCE (BDR 53-220)

Mr. Reiser advised that this was a housekeeping bill. He stated that the present law permits commissioners, inspectors, or examiners to issue subpenas. N.I.C. wants to restrict this to an Appeals Officer or the Commission, creating tighter control. He indicated they have not had any problems on the subpena authority.

SENATOR BRYAN informed the committee that the Attorney General's office has prepared an omnibus subpena bill which sets forth certain uniform procedures for agencies in contested hearings under 233 B . It also addresses the policy questions as to what level should the subpena power be made available to State agencies before they reach the contested level. He suggested that they might want to consider this bill (S.B. 152-BDR 18-111) a context of that overall omnibus proposal.

The second witness to testify was Mr. Frank Darr of the Southern Nevada Home Builders. Mr. Darr felt that the position should be proven prior to subpenas being issued. He stated further in response to a question from Senator Young, that he believed there had been instances of abuse but had no way to prove it.

He informed the committee that his entire board and legislative committee (50-60 people) were unanimous against this bill, and wanted to restrict it further. They did not want a subpena issued for a blank reason and reiterated that probable cause should be shown.

S.B. 7 EXTENDS INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASE COVERAGE (BDR 53-232)

Mr. Reiser submitted a letter addressed to Mr. Art Palmer, Director of the Legislative Counsel Bureau, from Mr. Richard Robinson of the National Conference of State Legislatures, that deals with this and other essential recommendations that the N.C.S.L. is working on and is being used to judge the performance of State Workman's Compensation systems. (Copy attached) The letter is dated November 22, 1976, and was filled out by the Nevada Industrial Commission at the request of the Legislative Counsel Bureau. It explains why N.I.C. is asking that farmers and ranchers be included in the compulsory coverage. Also submitted was a copy of a report entitled "Report To The President And The Congress Of the Policy Group Of The Interdepartment Workers Compensation Task Force", dated January 19, 1977. (Copy attached)

He advised that we have met all the important essential recommendations and that these four are those that the Legislature has not chosen to adopt in the past. This same type of legislation was introduced and considered by both the 1973 and 1975 legislators.

The State position, according to Mr. Reiser, is that we would like to take care of our own unique Nevada problems, rather than having standards imposed on us that may not give the flexibility needed.

He stated he was recommending that the legislators adopt this statute which would bring farmers and ranchers into compulsory coverage.

He indicated a position opposing the Federalization of the Federal standards had been taken by both labor and management. The latest Federal bill introduced by Dominick Daniels, he said, indicates that we would be required to continue with our State law and any employer that did not meet the Federal standard would have to obtain addional coverage and meet the Federal standards as well as the State standards.

He recommended that the Nevada Legislature issue a resolution that states their position.

Mr. Reiser indicated that the arguments in favor of this bill are that farming and ranching shouldn't be singled out. He stated it was a hazardous occupation, and most responsible farmers and ranchers in the State are electing coverage at the present time. He indicated that the Farm Bureau and the Cattlemen's Association, as well as other groups, encourage members to take out Workman's Compensation to protect their employees, and that their position is that they want it to remain elective rather than compulsory. The argument is that if Worker's Compensation is a right,

and is compulsory on other employers in the State, then farmers and ranchers should also provide this protection as a matter of law. At last count N.I.C. had almost 1,000 farmers and ranchers covered. There are, he said, many small farmers and ranchers that are engaged in farming part-time or full time that are electing not to cover their employees. Mandatory coverage would include part-time personnel. He stated that any employee in the State now is covered except for the elective provision which includes agriculture, theatrical, and the casual labor exclusions in this bill.

SENATOR YOUNG asked if there had been a request from any group to make this coverage mandatory and Mr. Riser replied there had been no such request to his knowledge.

In the absence of coverage, an injured employee can sue the employer. Generally the employer tries to do something about the injury if he doesn't have mandatory coverage, according to Mr. Reiser.

SENATOR BRYAN asked if the three sisters rule (fellow servant rule, assumption of risk, and contributory negligence) applies. Mr. Reiser answered in the affirmative stating the farmer and rancher has his defences when the employee brings suit, and that the other employers do not.

SENATOR YOUNG asked if the other exclusions should not be eliminated on stage performers. Mr. Reiser advised that theatrical employees have chosen not to have Workman's Compensation because their salaries are at a level where they would not like to be covered. They have disability income protection that far exceeds any benefits from Workman's Compensation. He further stated that there should be little change in N.I.C. if this bill was passed other than having to cover more employees and employers.

In regard to coverage on household help, Mr. Reiser told the committee that in 1975 N.I.C. did ask for such coverage and the Legislature indicated that they did not consider that type of employment an industry or trade like farming.

Assemblyman Dean Rhoades, of District 33, Elko, Nevada, asked to testify. He stated that he is a rancher and has as high as 30 men working during the summer. He stated he had elected to carry N.I.C. but that many of his neighbors had private coverage. He expressed his opinion that S.B.7 was a restriction on private industry, and then indicated that he and his neighbors are opposed to this bill.

The next witness was Mr. DeLoyd Satterthwaite of Elko County. He informed the committee that he is associated with the

Ellison Ranching Company, and was speaking also for the Nevada Wool Growers Association. He indicated that his groups are strongly opposed to this bill as it eliminates their free choice. He indicated they had private insurance and could get it at a much lower rate than that provided by N.I.C.

SENATOR HERNSTADT asked why the agriculture industry should be a privileged industry and allowed to purchase private insurance. Mr. Satterthwaite replied that he thought all businesses should have the right to buy on a competitive market. He felt that if an individual had the freedom to be competitive with private insurance and N.I.C., he might be getting better coverage. He felt the choice of coverage should be your own.

S.B. 8 MAKES VARIOUS CHANGES TO NEVADA INDUSTRIAL INSURANCE ACT (BDR 53-242)

Mr. Reiser informed the committee that this bill clarifys the language regarding the commission's right to recover from an uninsured employer and prevents other employers from having to subsidize an uninsured employer. It makes it mandatory that the uninsured employer pay the incurred cost of a particular claim without the commission having to prove negligence.

SENATOR CLOSE was told that if N.I.C. brings a suit but does not recover the money from the employer that N.I.C. would still pay the claim. Mr. Reiser indicated that they had been very successful in collecting against uninsured employers. He stated they had even been allowed to pay such claims off on a monthly basis in order to keep the employer in business.

SENATOR BRYAN commented that as he read subsection 2 of section 1, you are deleting the language that provides in part: "any employers who have failed to provide mandatory coverage required under the provisions of this chapter shall not escape liability in any action brought by the employee or the commission by asserting any of the defenses enumerated in subsection 3 or NRS 616.375 and the presumption of negligence set forth in that subsection is applicable". Assuming that the employee elected to bring suit, an option which he assumed is presently his under the law now, are we not deleting that language then repealing the presumption of negligence which attaches to the employer by reason of his failure to obtain industrial insurance coverage?

Mr. Reiser answered that the law continues to have in it the loss of the defenses and there is no presumption of negligence now. That that is what the intent of this bill is - to presume negligence if an individual fails to carry the compulsory coverage. There is no presumption of coverage

now - the employer simply loses his three defenses.

SENATOR BRYAN continued that his understanding of the present law is that there is a presumption of negligence and further, on page 2, it states that if the commission brings the action, all they need to establish is: (a) The employer failed to provide the coverage required under this chapter; (b) The employee's injuries arose out of and in the course of his employment; and (c) The employee has elected to receive compensation under this chapter and compensation is due to him in a certain amount. SENATOR BRYAN then asked Mr. Reiser to address the problem of the employee.

Mr. Reiser answered that the employee brings suit, and the employer has lost his defenses. He also stated that he didn't see in the law any presumption of negligence.

SENATOR BRYAN referred him to line 15 on page 1: "the presumption of negligence set forth in that subsection is applicable".

SENATOR ASHWORTH asked if the intent of the bill is for the commission to be involved in all of these industrial accidents, and recover the money from the uninsured employer, and take the ability of the employee to bring action himself. Mr. Reiser replied negatively, stating that the intent was for the actions allowed by the employee under 616.375 to remain-the employee has the right to sue his employer if he choses to do so.

SENATOR WILSON quoted line 5 and 6 on page 1: "the employee may elect to receive compensation under the provision of this chapter by: filing a written notice". Mr. Reiser indicated that this was correct - if the employee doesn't make that election he can still sue the employer.

SENATOR WILSON: "not withstanding the fact that you repealed the language which presume negligence on the part of the employer". Mr. Reiser commented that they had not intended to do that, and Senator Bryan was right in that they had done something they did not intend to.

Mr. Reiser cited the procedure followed in collecting from an employer, stating that the employer is notified, and most arrange to make payment; if an employer fails or refuses to pay, they would then sue under a common law doctrine, and for the incurred cost of the claim.

Further, this law will eliminate any question of common law defense. He is presumed to have broken the law, and in fact, if he breaks the law, and doesn't carry compulsory coverage he is responsible for that employee - no common law - no defense action permitted.

Mr. Reiser indicated that he did not see much impact - but if any, it would be favorable to other employers.

SENATOR YOUNG asked if there had been some legal questions raised or lawsuits. Mr. Reiser stated this was to prevent any legal questions on lawsuits.

SENATOR YOUNG pressed for clarification of Section 2, page 2, line 23: "A supplier of accident benefits whose fee or charge is not paid in full or is disallowed" Mr. Reiser indicated that he had a suggested amendment from the Hospital Association recommending language on line 24 to add after the words "whose fee or charge 'for treatment of an industrial injury' is not paid in full or is disallowed by the commission, etc." The problem lies in where an individual says he is insured under N.I.C. and the hospital or doctor provides the coverage for him and it is later disallowed. The reason for the amendment is because we are talking strictly about industrial injuries. In the case of industrial injuries N.I.C. does apply the usual and customary fee program to things like lab work, x-rays, etc. If N.I.C. allows the maximum under the usual customary program, and the hospital bills the patient for an additional $10.00 or $15.00, over and above what N.I.C. allows, there have been cases where the hospital has taken or threatened action against the individual employee. This clarifys the point that the action should be brought against the industrial commission rather than against the injured worker on whose behalf N.I.C. has made payment. The supplier is entitled to a hearing before the commission concerning the amount of payment or disallowance.

Respectfully submitted,

Lyndl L. Payne

Lyndl Lee Payne, Acting Secretary

APPROVED:

Thomas Wilson, Chairman

Peter Newman of the Nevada Trial Lawyer's Association stated they oppose S.B. 8 on most of the same reasons which have been mentioned by the astute members of the Committee. Also because it is poorly drafted and he believes it is going to cost the State more money because it is going to have to pay benefits which it doesn't now have to pay. He feels it will preclude the doctor in the hospital from payment under the cases Senator Young mentioned and that the impact of this bill will remove the incentive for employers in this State to carry industrial insurance. He stated he objects to the language that enforces, as Mr. Reiser said, the irrevocability of the election and would suggest an amendment to the existing law that the word irrevocable be changed to revocable. His reasoning for this was because many times an injured person doesn't realize the seriousness of the injury for some months, particularly in the case of a back injury, makes an assignment and then is injured by an uninsured employer.

SENATOR HERNSTADT stated his understanding was that if the employee makes the election then they pay according to their normal procedures, they don't pay any more, they don't pay any less and they can probably get a summary judgment under the items on page 2 under lines 3 to 7 which would eliminate a lot of extra litigation. The employee, in the case of the uninsured employer, has two elections, one to elect to take N.I.C. and the other to sign off his benefits if he feels he has been properly taken care of and if he doesn't sign off his benefits then he can continue to press his claim with N.I.C., so he doesn't sign away his treatment, his treatment might go on for 3 or 4 years.

SENATOR CLOSE asked if there would be a time frame within which the employee would have the right to make an election and Mr. Reiser replied the employee could have as long as he wants at the present time, that he would be notified that he had a right to either sue his employer or a right to elect benefits from the Workmens Compensation Board.

SENATOR WILSON asked how much time is given the normal claimant before he has to file his claim and Mr. Reiser replied he is supposed to file it immediately but generally is given 30 days.

SEN. YOUNG asked if there were any other states where this assignment is revocable after a certain period of time and Mr. Reiser stated he couldn't answer that question as the other states are so different from Nevada's system.

Senate

SENATOR YOUNG asked as just in the way of history, how many suits would you say last year you filed in the same judgment? Mr. Reiser answered probably one every two or three months.

Riley M. Beckett, General Counsel with the Nevada Industrial Commission stated that since he has been with the commission there has been three or four actions brought where there was an injured employee with an uninsured employer and on all of them so far the employer has signed an agreement with the commission to pay dollar for dollar everything that had been expended on the claimant. He pointed out one section that he felt is missed as far as emphasis which he feels is important regarding a change to 616.410, because if an injured employee is to receive medical benefits, their recourse is against the N.I.C., if they feel that we are paying too small then they should be able to bring action against us and collect the difference and that was the intent of the amendment on 616.410; that as Mr. Reiser has pointed out, he had talked with the hospital association and they wanted to make clear that this would not preclude them from going against an employee where the injury was found to be non-industrial because there are cases where a person files an N.I.C. report and it was found after subsequent investigation that there was no industrial injury, then their recourse would be directly against the claimant.

Fred Hillerby with Nevada Hospital Association expressed his concern that they wanted to be sure that if the person presented himself as an N.I.C. case and they were not, that there was still a recourse from the employee, and the other situation is where disparity developed between the fee schedule and the actual charges, the way the law was written before, it was apparent that perhaps there was some legal recourse there and they did get a legal opinion as an association, not that they wanted to pursue the employees, but we would like to go on record that under this concept of the workmens compensation the employee should not be responsible for his own medical bills, but where the disparity gets larger between the fees that are paid and the actual charges, there were some problems and I discussed it with John Reiser today and we've come up with an agreement that these fees will be reviewed at least on an annual basis.

Senate

S.B. 9 REQUIRES APPLICANT FOR CONTRACTOR'S LICENSE TO SUBMIT STATEMENT THAT HE HAS APPLIED FOR INDUSTRIAL AND OCCUPATIONAL DISEASE INSURANCE. (BDR 54-243)

Mr. John Reiser stated this bill is designed to help us police the anti-coverage provision and see to it that every contractor starting business in the State does know about the requirement for every employee to be covered and the fact that it does apply for such coverage and carry the coverage provisions for employees.

SENATOR BRYAN asked if Mr. Reiser had inquired as to procedural applicants, for example, a person may make an application to obtain a contractor's license and that application may require some investigation on the part of the State Contractor's Board and the way this bill has developed is the surety requiring that application be accompanied by statements from the Nevada Industrial Commission to the fact that the applicant has applied for industrial occupational insurance so if someone files an application for industrial insurance, do you simply keep the application on file or do your require them to put up some kind of initial deposit or administratively, how do you handle this?

Mr. Reiser replied that this has been brought to their attention and they don't want to insist on coverage immediately, that there are two ways that the people can take care of the requirement, there is a minimum premium provision whereby the contractor could take out the minimum premium coverage which is $25.00 per year deposit and most employers that are considering coming into Nevada do this, they go ahead and take the minimum premium and then report payroll as soon as they go into business. This law would not require that because there are contractors who come in without any employees, they are simply working for themselves, and all this would require is that they come in and fill in an application that they do not have any employees and that they will take out coverage as soon as they hire an employee.

SENATOR BRYAN stated that it seemed to him that with reasonable enterprise on the part of the agency, couldn't they simply contact the State Contractor's Board or have some kind of informal understanding with them to periodically send in a list of the new licensees?

Senate

Mr. Reiser replied that was exactly what they intend to do with this provision. SENATOR BRYAN asked "do you need the law to help you, are you having difficulty getting cooperation from the contractors and Mr. Reiser replied,"yes, not from the Contractors Board, but that they are having difficulty with out-of-state contractors and new contractors that will come in and business for two weeks and then leave the State, its very difficult for us."

SENATOR BRYAN stated the Contractors Board could inform us that there are a lot of cases where out-of-state contractors come into Nevada for two or three weeks and don't make application to the Contractors Board but that is your dilemma and their dilemma and this bill would not solve that situation. Mr. Reiser agreed but added that it will solve the situation of the new contractor that applies for a contractor's license that he will have to be notified of that mandatory coverage so there will be no excuse on his part to say he wasn't aware he was supposed to have coverage.

SENATOR BRYAN inquired that before we get involved in changing procedures as far as handling the Contractors Board applications for State licensing, has the possibility been explored of having the Contractors Board notify whenever they issue a contractor's license. He also added that as far as ascertaining who has been licensed, there is a newspaper where all licenses that are issued appear daily and you can extract that information from the paper.

Mr. Reiser stated that their experience is that the Contractors Board has been very cooperative but this bill would simply be an additional tool for us to make sure the Nevada Industrial Commission coverage has been applied for and for them to help us through the law.

SENATOR HERNSTADT asked why they limited this just to contractor's licenses, if they want a cross-check, why not say anyone obtaining a business license and then have some provision where you get copies of these business license applications and cross-check them? Mr. Reiser replied that they are doing that, asking for all information on new business licensing in the State but the problem with that is the policing function, there are so many different licensing agencies in the State that it is difficult to work with every one of them so they want to try it with the contractors first before they know if it will work on a cooperative basis.

SENATOR HERNSTADT asked that if it works with the contractors then the N.I.C. might expand it to which Mr. Reiser replied yes.

SENATOR BLAKEMORE mentioned a possible problem if they are going on the assumption that when a man applies for a license that the license is going to be granted, and that is not always the case to which Mr. Reiser replied that they are only requesting they apply for coverage, not that they even take it out, but just so they know that the coverage is a mandatory requirement of the law and if they aren't granted a contractor's license then they don't ever pay a premium.

Jack Kenny of Southern Nevada Home Builders stated they were not opposed, they think there would be some benefits but are concerned about the mechanics and agreeing with Senator Bryan statement to the effect there might be an easier way to do it rather than make this into an NRS. Upon further questioning Mr. Kenny stated they do not object to the bill.

S.B. 10 REVISES PROVISIONS ON OCCUPATIONAL SAFETY AND HEALTH BY ADDING TO POWERS OF REVIEW BOARD AND EXTENDING PROCEDURE FOR COLLECTION OF FINES. (BDR 53-244)

Mr. Reiser stated that this Bill is a request of the Occupational Safety & Health Department and the Board gives them the authority to administer oaths, take depositions, certify oaths and issue subpoenas; that this board is an independent board from the Commission and has called up witnesses without having the authority to.

SENATOR WILSON asked what the responsibility of the review board is and Mr. Reiser replied that they review all of the appealed terminations of the Department of Occupational Safety and Health and in effect is an independent appeals board similar to the appeals officer that hears the appeals on claims.

SENATOR BRYAN suggested they might check Senate Bill 152 and the Deputy AG who is working with the Judiciary Committee on it to which Mr. Riser replied that he would.

Senate

Jack Kenny (So. Nev. Home Builders) stated they would like to go on record as having discussed S.B. 10 in a large group and they are philosophically opposed to appointed boards that have the right to make regulations that have the full force and effect of law, that they feel this is an extension of powers they now have in terms of subpoenas, the bill doesn't give any reason, as they read it, to compel attendance of witnesses, it appears to be a very open ended provision and they query Mr. Reiser why this is necessary, has there been a procedure problem?

Mr. Reiser replied there have been questions of subpoena authority and that the commission does have the authority to subpoena witnesses if necessary. The point that the attorney representing the OSHA review board made is that the board is an independent commission and should not be dependent upon us for that subpoena authority and we agree that the authority should be held by the review board appeals officer as it presently exists. He added that most employers and labor prefer having it administered on a State level rather than federal.

S.B. 11 EXTENDS DEFINITION OF CASUAL EMPLOYMENT. (BDR 53-288)

SENATOR WILSON asked what the significance is of whether or not employment is in fact "casual" and Mr. Reiser replied that this bill is intended to cover the "baby sitting" and casual employment, casual labor is excluded from mandatory coverage and will expand the exclusion in effect and give home owners the right to hire baby sitters, casual type labor and people mowing lawns and it would extend it to 30 days rather than 10 and $500 rather than $100, that they have had questions from a number of home owners as to whether they should be carrying workmens compensation coverage and we advise them yes, they should on an elective basis to protect themselves but it isn't a mandatory requirement unless they go over this casual labor definition.

SENATOR BRYAN asked if this then has a reverse thrust of the earlier measure, S.B. 7, only broader and more extendable and Mr. Reiser replied yes.

After further discussion regarding the time limitation of 10 days or 30 days, a year or 5 years, a calendar year or a fiscal year, Mr. Reiser stated he would request proposed amendments to S.B. 11 from counsel.

Senate

Robert Gwinn, Consultant for Nevada Motor Transport and Automobile Dealers Association stated he was responsible for this bill but was testifying as an individual, that he carries NIC insurance but was concerned about his neighbors who might employ someone for 3 or 4 days at a time and he had read the law to the effect that "casual" refers only to employment where the work contemplated is to be completed in not less than 10 days. Mr. Gwinn continued at length regarding the penalties of misdeamor and criminal offense if you do not carry NIC insurance bringing to the attention of the Committee that it is a widespread problem confronting the people of Nevada.

SENATOR HERNSTADT queried whether a homeowner's policy would be sufficient coverage to which SENATOR BRYAN stated that apparently the employer has committed a misdeamor even if he has homeowner's coverage only, if what Mr. Gwinn is saying is true, he must have NIC coverage. Mr. Reiser advised that at the present time it was their interpretation that the homeowner is not required to carry workmens compensation.

SENATOR WILSON suggested it be spelled out so its clear, agreeing that it is ambiguous and should have a definition to which Mr. Beckett replied section 616.060 which defines persons excluded might clarify it. SENATOR WILSON questioned whether that was conjunctive or disjunctive and Mr. Beckett replied it was conjunctive. SENATOR BRYAN stated he read it as conjunctive, that there are two independent requirements to bring the person within the exclusion, one that the labor be casual and that it not be in the course of the trade, business, profession or occupation of the employer, that the latter part was applied to the homeowner but not the former. SENATOR WILSON stated they were hung up on the vagaries of the definition of casual and Mr. Beckett agreed and suggested this would be an appropriate time for the legislature to clarify it. SENATOR WILSON asked for some amendatory suggestions and requested that if they had any problems in using the disjunctive instead of the conjunctive that they ought to clarify that as well.

S.B. 12 CLARIFIES NEVADA INDUSTRIAL COMMISSION'S RIGHT OF SUBROGATION. (BDR 53-444)

Mr. Reiser stated this bill relates to California Supreme Court decision, Witt v. Jackson, that holds if the worker's

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employer is contributorially negligent in an accident involving a third party, that it will be imputed to the employer's worker's compensation insurer to deny the insurer the right to reimbursement from any recovery and if Witt v. Jackson rationale is applied in Nevada it would defeat NIC's lien on a third party recovery.

Mr. Beckett stated that this is probably one of the most important NIC bills, the reason why it is a source of income to the NIC as both employers do not have to pay and the employees benefit from the lien as defined in 616.560 which specifies that if an injured employee is injured by a third party (meaning other than his employer or fellow servant), he then has a legal recourse to sue that person. He stated further that in the case of Witt v. Jackson the California Supreme Court said where an employer is found to be negligent that the lien is defeated and there is no double recovery by the employee, that this is a California case but the rationale that was used there has been followed in Nevada.

SENATOR BRYAN state that he was not sure he followed this comparative negligence interpretation that you're giving us, say you have a lawsuit against a third party tort-feasor and you cannot pay as a party defendant employer in the action and assuming the court makes the determination that there was some degree of culpability with the employer itself, the court concludes that the employer who was not a party defendant, was in fact 51 percent negligent and the third party tort-feasor is 49 percent, how is the jury instructed with respect to the award of the fee? As your bill is presently drafted, wouldn't you be able to assert the full claim and Mr. Beckett replied yes.

SENATOR BRYAN asked if the policy question that Senator Wilson was addressing was a correct policy judgment? Mr. Beckett replied it was his contention that it is on the grounds that the rationale that the majority of the courts have followed, they're bringing in an outside party to this action allowing the defendant to assert negligence other than what he is culpable of for his defense, and normally in that case you are actually adding another defense to his arsenal that he would not normally be entitled to. They said that under the Act, the provisions provide that the employer will not be at all considered in this matter and that is why you have the exclusive remedy provision because why allow his actions, even though he can't be sued individually, to be brought in in aid of defense of the defendant

and they bring out the fact that its a statutory right created by the Legislature to allow him to sue third parties and therefore he has to comply specifically with the statutes and that isn't in there so he's not entitled to do it. Mr. Beckett continued basically they agree with this bill and would like the Committee to consider two amendments. To make it a little stronger he suggested adding to line 14 after the italics on the bill: "No negligence of the injured person's employer or fellow employee is admissible in evidence in an action brought by the injured person against a third party tort-feasor unless it is clear that such negligence constitutes an intervening and superceding act sufficient to have become the sole proximate cause of the injured person's injury." And the other amendment I drafted you might consider adding at line 20 the following language: "Provided that the employer of the injured person is free of negligence."

Virgil Anderson, representing Triple A stated he felt the Committee had touched upon some of the concerns that they have, mainly the shifting of the full costs of whatever savings there will be to the liability carriers and they think that in principle that is wrong, that an employer that is negligent either in furnishing a vehicle or some other circumstances resulting or concurrently resulting in the injury of the employee that there should be a right of reimbursement in these cases back to the fund. In any event, if there is a savings to the fund we feel that it will have to be picked up on the auto side of the liability carrier, putting a premium or at least not imposing any responsibility on the employer for their own negligence. He added that the Witt v. Jackson case was decided in California prior to the adoption of the doctrine of comparative negligence there and how it is being applied there he doesn't know but he feels the Committee's comments on comparative negligence have some application here, that where the employer has been negligent there should not be any rights of subrogation

SENATOR YOUNG asked if the comparative negligence law of California is the same as Nevada to which Mr. Anderson replied no, they have a pure form of comparative negligence there by virtue of court decision, perhaps its 73 or 74 so that in effect a plaintiff could be 99 persent contributorily negligent and still have the right to recover, so applying Witt v. Jackson to that concept of comparative, there would be no right of subrogation there.

Senate

S.B. 13 CREATES NEVADA INDUSTRIAL COMMISSION LABOR-MANAGEMENT ADVISORY BOARD. (BDR 53-445)

Mr. Reiser stated that the Labor Management Advisory Board has been responsible for the success that has been achieved along with the legislators that passed their recommendations. They feel they have eliminated a type of political situation that exists in Ohio and the State of Washington in which the funds are a billion and a half dollars in deficit status in Ohio and over a hundred million dollars in deficit in Washington. We have been required to put costs on ay benefits that have been proposed, they have been discussed at your request in depth by labor and management representatives before any recommendation has been made to the Legislature in the past, and we think that that type of board of directors policy making is necessary in order to keep exclusive industrial commision responsive to labor and management in the State and therefore we are strongly recommending that the informal Labor Management Advisory Board be formalized in statutory status.

SENATOR ASHWORTH asked if this is a request from the Federal Government and Mr. Reiser replied no, the Federal Government is looking at Nevad because we have been able to obtain a balanced program. SENATOR ASHWORTH asked if the same members of this board advise unemployment too and Mr. Reiser replied no, they are not the same members, some of the members are on both boards but generally there are two separate boards.

SENATOR ASHWORTH said the governor is asking to combine all of these boards and I notice here that the governor feels the members of the NIC Labor Management Board volunteer both times and don't you think they could give you just as good advice if it wasn't statutorily made into law. Mr. Reiser replied yes, the question is whether or not future commissions will ask for advice from labor and management and its very important that they do obtain input before making recommendations on policy matters, things like the rehabilitation center, the statutory recommendations that have been made in the past have all been made after consideralbe study by labor and management representatives and they were a much better product as the result of that input.

SENATOR YOUNG asked if there was any opposition to this bill and Mr. Reiser said not that he had heard, that every one from the governor to the legislators to labor-management he

Senate

has not heard one voice of opposition to which SENATOR ASHWORTH said he opposes it. SENATOR HERNSTADT asked why this advisory board of very responsible people running a great operation are not elected officials, in other words shouldn't you and the other NIC commissioners be elected? Mr. Reiser replied he felt that this is the very reason for asking for a board like this because it is a technical area, should have some people with a good understanding of insurance practices and principles in order to be responsible. There was a problem in Ohio where the chairman was a representative of labor and didn't pay attention to the cost implications of policy and legislative changes and as a result the fund was in a great deal of trouble because of that lack of understanding of cost implications that benefit increases.

SENATOR WILSON asked if there was any reason for having them werve fixed terms in opposed to the pleasure of the Governor? Mr. Reiser replied that the members that are on the board have a great deal of expertise with 28 years experience in dealing with Nevada Legislators and 14 years serving on the Labor Management Board, the commissions do change with political appointments and its very important to have people with continued experience.

SENATOR CLOSE said ten members is a very good board and we have traditionally tried to reduce the number of members of the board, is there some reason why you retain that number? Mr. Reiser replied because we have a good representation of major industry employee groups. Part of our criticism in the past is that we are the least understood agency in our State government. We feel it is important to have a large group that spends time looking at the fiscal figures and understands the reserving techniques and that do follow on a meeting two or three times a year to study the major impact of legislation and the changes that are occurring. We have a group that has a tremendous knowledge in terms of their many years of serving on this board and it would be a real loss of resource to have any one of them not serve, they don't always show up for labor management meetings but generally we get 8 out of 10 members at every meeting and we feel its very important to have that kind of representation. He added that the Governor may remove any of these members for good cause when questioned by SENATOR ASHWORTH in regard to lack of attendance, et cetera.

Jack Kenny said he would like to start in with a little bit of history about this bill. He has a 1974 list of the board members with no disclaimer that this board was even appointed. Some of the members are still on this Committee that were then and we were afforded every chance to try to change them but in my personal opinion the die was cast and now we have been trying to solve this problem and we feel it goes a little further than the bill as presented, that Mr. Reiser just presented, S.B. 13, we would like to see S.B. 13 either held or killed and we have another bill that has a BDR 53-687 that I have here that I haven't had a chance to talk to the Chairman about. SENATOR WILSON asked if he had a copy of it. Mr. Kenny said yes, several.

Jack Kenny continued to say that he felt with close scrutiny by people who know the accounting business it will show that Mr. Reiser's balance sheet has huge reserves that he didn't have a few years ago, that to be able to produce a reserve it has to run to at least the profit side of your balance sheet before it can become a liability. What we're saying is simply we don't mind paying our fair share but we don't want to pay any more than our fair share and we have no way to have a double check on NIC at the present time, so we would like very much for this legislation to be considered, it has been drafted and it covers a lot of the problems that the Committee has addressed itself to earlier today.

SENATOR WILSON requested Mr. Kenny to leave the draft with the secretary and the Committee will take it up at a separate time.

S.B. 120 EXCLUDES CERTAIN SKI PATROLMEN FROM MANDATORY INDUSTRIAL INSURANCE COVERAGE. (BDR 53-322) (Requested by Sen. Sheerin)

Jim Hubbard, Assistant Far West Director of the National Ski Patrol System stated this particular amendment is a law in California and basically it deals with the problem of volunteers performing a service for other agencies or for a private employer, in this case ski area operators. A volunteer patroler probably should be defined as one who performs first aid and rescue services on the ski hill, avalanche rescue participation and basically performs a rescue service on the ski hill for which he is not paid for monetarily. The normal benefits he derives from this service is his ability to ski on the hill in exchange for performing a service; he receives complimentary lift pass. There are two types of patrolers on the hill, the volunteer and the paid professional patrolers. The number of

skiers increases dramatically on weekends, five to ten times as many people, so under the forest service regulations a ski area is required to maintain a certain number of patrol for a certain number of skiers and it becomes financially impossible for a ski area to maintain enough qualified people to patrol on weekends and still maintain that staff during the week.

SENATOR HERNSTADT asked assuming this bill goes through, what if one of these volunteers gets severely injured while trying to help another skier, how would that person be compensated? Mr. Hubbard replied that they advise their volunteers that they are not covered under any health or accident policy and that it is up to the volunteer to cover themselves.

SENATOR HERNSTADT then asked what if the individual volunteer is willing to patrol for free meals and lodging and passes but wants coverage. Mr. Hubbard replied that if he wanted coverage they would suggest he become professional or carry their own coverage.

SENATOR SHEERIN stated he wanted to indicate his support for it, that he feels it is necessary for ski resorts to have these non-professional patrolers to continue because the resorts are not going to be able to afford NIC for them. The expense would be too great and the result would be that we wouldn't have any volunteer ski patrols.

Mr. Hubbard added the wording of the bill should be changed to ski patroler who receives no compensation for services as approximately 25 percent of the ski patrolers are women who can outski and outperform us most of the time.

Kenneth Jones stated he has been identified with the ski industry for some 27 years as a patroler, instructor and head instructor and has helped organize the patrols in most of the areas around here, served six years as Eastern CR regional director and as such has worked very close with management and has been involved in the insurance industry for 28 years and based upon his experiences he recommends the passage of this bill with the changes and wording as recommended.

S.B. 170 REVISES PROVISIONS ON OCCUPATIONAL SAFETY AND HEALTH (BDR 53-221)

SENATOR WILSON stated that this bill was added late to the agenda and asked how much notice was received on it.

Mr. Reiser stated that he asked the labor management group and a number of others in the State to contact interested parties on all 12 of these bills.

SENATOR ASHWORTH suggested that since the hour is late and there is another Committee meeting that several of us would like to attend, may we reschedule this one for another hearing when we have some of the mining people here.

SENATOR WILSON continued the hearing on S.B. 170 to a future Committee meeting.

There being no further business, the meeting was adjourned at 6:05 P.M.

Respectfully submitted,

Donna M. Blodgett

Donna M. Blodgett, Secretary

APPROVED:

Thomas r. C. Wilson, Chairman

SENATE

HEARING

COMMITTEE ON COMMERCE AND LABOR

Date Monday, Feb. 7, 1977 Time 1:30 p.m. Room 213

Bill or Resolution to be considered	Subject
S.B. 3	Authorizes appointing authorities to make temporary limited appointments of handicapped persons certified by Nevada Industrial Commission. (BDR 23-215)
S.B. 4	Repeals provision limiting payment of industrial insurance compensation for hernias. (BDR 53-216)
S.B. 5	Requires acceptance of time deposit certificates from employers as substitute for cash payment of industrial insurance premiums. (BDR 53-219)
S.B. 6	Clarifies reference to issuing authority for subpena in case involving industrial insurance. (BDR 53-220)
S.B. 7	Extends industrial insurance and occupational disease coverage. (BDR 53-232).
S.B. 8	Makes various changes to Nevada Industrial Insurance Act. (BDR 53-242)
S.B. 9	Requires applicant for contractor's license to submit statement that he has applied for industrial and occupational disease insurance. (BDR 54-243)
S.B. 10	Revises provisions on occupational safety and health by adding to powers of review board and extending procedure for collection of fines. (BDR 53-244)
S.B. 11	Extends definition of casual employment. (BDR 53-288)
S.B. 12	Clarifies Nevada Industrial Commission's right of subrogation. (BDR 53-444)
S.B. 13	Creates Nevada Industrial Commission Labor-Management Advisory Board. (BDR 53-445)
S.B. 120	Excludes certain ski patrolmen from mandatory industrial insurance coverage. (BDR 53-322)
S.B. 170	Revises provisions on occupational safety and health. (BDR 53-221)

MIKE O'CALLAGHAN
GOVERNOR

STATE OF NEVADA
NEVADA INDUSTRIAL COMMISSION

JOHN R. REISER
CHAIRMAN

[redacted]LAUDE EVANS
COMMISSIONER REPRESENTING LABOR
JAMES S. LORIGAN
COMMISSIONER REPRESENTING INDUSTRY

2-9-77

ADDRESS ALL CORRESPONDENCE TO
NEVADA INDUSTRIAL COMMISSION

REPLY TO

515 East Musser Street
Carson City, NV 89714

March 1, 1977

Senator Thomas R. C. Wilson
Nevada State Legislature
Legislative Building
Carson City, NV 89701

Dear Spike:

We have reviewed the amendments proposed in the hearing on SB 11 and are in agreement with the proposed amendments. According to my notes, you agreed to amend NRS 616.030 to read as follows:

"Casual" refers only to employments where the work contemplated is to be completed in not exceeding 20 working days or part thereof each calendar quarter, without regard to the number of persons employed, and where the total labor cost of such work is less than $500 in any calendar year.

I believe you also agreed to amend NRS 617.030 to read as follows:

"Casual" refers only to employments where the work contemplated is to be completed in not exceeding 20 working days or part thereof each calendar quarter, without regard to the number of persons employed, and where the total labor cost of such work is less than $500 in any calendar year.

Sincerely,

John R. Reiser
Chairman

JRR:dl

MIKE O'CALLAGHAN
GOVERNOR

STATE OF NEVADA

NEVADA INDUSTRIAL COMMISSION

JOHN R. REISER
CHAIRMAN

[redacted]UDE EVANS
COMMISSIONER REPRESENTING LABOR
[redacted]ES S. LORIGAN
COMMISSIONER REPRESENTING INDUSTRY

ADDRESS ALL CORRESPONDENCE TO
NEVADA INDUSTRIAL COMMISSION

REPLY TO
515 East Musser Street
Carson City, NV 89714

February 9, 1977

Senator Thomas Wilson
Chairman Senate Committee on
Commerce and Labor
P. O. Box 2670
Reno, NV 89505

Dear Senator Wilson:

Based on the input that we have received from your committee members and those who attended the February 7, 1977 hearing, we recommend the following:

(1) Amend Senate Bill 3 to delete "with the concurrence of the Nevada Industrial Commission" on page 1, lines 21 and 22.

(2) Amend Senate Bill 152 to delete Sections 30, 31, 32 and 33. Senate Bill 6 and Senate Bill 10 will produce a better result.

(3) Amend Senate Bill 8 to delete Section 1. Add "for the treatment of an industrial injury" after change on page 2, line 24.

(4) Amend Senate Bill 11 to add "consecutive" after the word less on line 3 and to add "in any calendar year" after $500 on line 5.

(5) Amend Senate Bill 7 to delete "domestic" on line 8 and on line 15.

I talked to Bob Stoker of the State Contractor's Board and he agreed that it would be helpful to have the Senate Bill 9 provision in the statute.

Please call me if you have any questions on the above suggestions.

Sincerely,

John

John R. Reiser
Chairman

JRR:dl

SENATE COMMERCE AND LABOR COMMITTEE

ROOM # 213
DAY _____ DATE 2-7-77

NAME	ORGANIZATION	ADDRESS	PHONE NUMBER
*NOTE: PLEASE PRINT ALL THE INFORMATION CLEARLY.			
W. H. Wing	Nevada Mining Ass	Reno	
Gordon H. Rice	Lawyer	214 Stewart, Reno	329-010
Marie D. Rice	Housewife	216 Stewart Reno	329-150
Roy Dowling	Chief Rehabilitation Div.	C.C.	885-4440
DeLoyd Satterthwaite	Nev. Wool Growers	Tuscarora, Nev.	Toll station Elko 65-49
Easton D. Blackburn	TIMET	267 Atlantic Henderson Nev. 8901	
Michael J. Grover	TIMET	603 Cameo Cir. Henderson Nev	
J. Holloway Hawes	Nev. St. AFL-CIO	Carson City	882-1126
Dave Foley	— — —		
Chris Lanphere	Rehabilitation		
Barbara Heuzman	Develop. Disability		
John Gianotti	Harrah's		
Ed Bowers	Gaming Ind Assoc.	410 S. Carson	883-6546
Ken Jones	N-S P S	112 W Telg	882-2131
Jim Joyce	Home Builders	1316 W Fourth St	882-0540
Fred Hillerby	Nevada Hosp. Assoc.	1450 E 2nd	322-6905
John Coffin	Lawyer	210 S. Sierra Reno	329-1162
Peter Neumand	Lawyer	136 Ridge - Reno	786-3750
L. Frank Orr	Joint Executive	5017 Alta - L.V.	870-7299
John Reiser	NIC	C.C.	885-5284
Dale M. Beckett	NIC	C.C.	885-5377
John Kirk	Cokenour Co	4600 Kietzke Reno	826 6600
Jack Kenney	So Nev Home Builders	2330 Maryland Pkwy	452-7714

Name	Organization	Address / Phone
WALLIE WARREN	N.B.A. SP Co.	1 E. 1st RENO
[redacted] DELCARLO	FNB	RENO NV.
✓ Jim Wittenberg	Per Diem	
✓ Dean A. Brooks	Leg.	Tuscarora
✓ DeLoyd Sallenthwaite	Rancher	Tuscarora nev

STATE OF NEVADA
DEPARTMENT OF HUMAN RESOURCES
ROGER S. TROUNDAY, DIRECTOR
MIKE O'CALLAGHAN, GOVERNOR
DEL FROST, ADMINISTRATOR

REHABILITATION DIVISION
ADMINISTRATIVE OFFICE
KINKEAD BUILDING, FIFTH FLOOR
505 EAST KING STREET
STATE CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

February 4, 1977

Senator Thomas Wilson
Chairman, Senate Committee on Commerce & Labor
P. O. Box 2670
Reno, NV 89505

SB 3

The State Personnel Division has been coordinating discussion between Nevada Industrial Commission and the Rehabilitation Division relative to the provisions contained in SB 3. The concern being discussed by both agencies is the question of whether Nevada Industrial Commission Rehabilitation Counselors possess the competencies necessary for certifying handicapped clients under the State's 700 Hour Law Program. In addition, there was concern over language which required that the Chief of the Personnel Division who is authorized to promulgate rules do so with the concurrence of the Nevada Industrial Commission.

After lengthy discussion and consideration it is my understanding from the Personnel Division that the Nevada Industrial Commission has provided them with written assurance that employees certifying handicapped clients under the 700 Hour Law will possess graduate level training in the field of Rehabilitation counseling. It is further my understanding that the Personnel Division joins the Rehabilitation Division in opposing language requiring that the Chief of the Personnel Division promulgate rules with the concurrence of the Nevada Industrial Commission. It is our feeling that the law authorizes the Chief to promulgate rules which must be reviewed and approved by the Personnel Advisory Commission and that this process should take place without the unnecessary approval of any line agency. Line agencies have ample opportunity to contribute their input to both the Chief and the Personnel Advisory Commission during the rule making process.

Since the Rehabilitation Division's major concern over the provisions of SB 3 which related directly to the competencies of employees making the certification and because that issue has now been resolved through the assurance that those employees will possess the necessary competencies, the Rehabilitation Division is now in a position to advocate passage of SB 3. We support the measure; how-

ever, with the understanding that we are joining both the State Personnel Division and the Nevada Industrial Commission in asking that your Committee strike the requirement that the Chief of Personnel promulgate rules "with the concurrence of NIC."

It would be appreciated if you would consider this letter as the Rehabilitation Division's official testimony on SB 3 and review it at the time that your Committee hears the bill. Thank you for your consideration.

DEL FROST, ADMINISTRATOR

DF:mf90

cc: Jim Wittenberg
John Reiser
Roger Trounday

Nevada Industrial Commission
Form G2L

INTEROFFICE MEMORANDUM

TO: SENATOR SPIKE WILSON

FROM: JOHN REISER, CHAIRMAN, NIC

SUBJECT: SENATE BILL 3

ACCOUNT NO.

CLAIM NO.

DATE: FEBRUARY 4, 1977

Please request the Counsel Bureau to amend SB 3 as follows:

Lines 21 and 22 - delete "with concurrence of the Nevada Industrial Commission".

You have the bill scheduled for hearing on February 7.

JRR/RSH/dkc

National Conference of State Legislatures

Office of State Federal Relations

Seventeenth Street, N.W. Suite 602 Washington, D.C. 20036 202/785-5614

President Tom Jensen House Minority Leader Tennessee

Executive Director Earl S. Mackey

November 22, 1976

Arthur J. Palmer, Director
Legislative Counsel Bureau
State Capitol
Carson City, Nevada 89701

Dear Mr. Palmer:

Over a year ago, the National Conference of State Legislatures adopted a policy position urging all legislators to take action towards bringing state workers' compensation programs into conformance with appropriate standards recommended by the National Commission on State Workmen's Compensation laws in 1972. Since then, a number of states have addressed the task of complying with those guidelines. As chairman of the Workers' Compensation Task Force, I have been asked by the NCSL to conduct a nationwide study into the efforts of the various states towards conformance.

Our Washington office has suggested that you would be the appropriate representative of your state to supervise the preparation of the responses to the enclosed questionnaire. If you can see that it is referred to someone on your staff for completion and returned to me at the address below by the end of the year, we would be most appreciative. Your responses, and those from the other 49 states, will be compiled into a report to be issued by the NCSL in early 1977. In order for this report to be as complete as possible, and to assist our Washington staff in best representing our interests on Capitol Hill, it is essential for all states to reply to the questionnaire. You are the only person in your state to whom we are mailing a questionnaire. If you feel that someone else should supervise its preparation would you please forward it to him and advise me of his name and address.

Part I of the questionnaire concerns the extent to which your state presently complies with the 19 essential recommendations of the National Commission. It could possibly be best answered by someone having some expertise with the workers' compensation laws of your state such as your Legislative Counsel, Attorney General, or Industrial Accident Board. Part II is more subjective and should be answered by someone familiar with policy decisions in your Legislature. This study is concerned with the future role of the federal government in workers' compensation and how the states intend to oppose that intervention in this traditional area of state responsibility. The spokesperson for your state should be

familiar with local attitudes towards compliance with the guidelines.

All completed questionnaires, and any questions regarding them, should be directed to the Honorable Richard Robinson, Chairman, Workers' Compensation Task Force, National Conference of State Legislatures, c/o Assembly Post Office, State Capitol, Sacramento, California 95814.

On behalf of the NCSL, I would like to thank you for your efforts in ensuring the success of our study.

Sincerely yours,

Richard L. Robinson

RICHARD ROBINSON

RR:ds
Enclosures

State of VEVADA

Prepared by JOHN R. REISER
CHAIRMAN, NIC

National Conference of State Legislatures

Questionnaire on Workers' Compensation

PART I

Attached is a summary of the 19 essential recommendations established by the National Commission on State Workmen's Compensation Laws in 1972. Also attached is a chart for your state prepared by the American Mutual Insurance Alliance listing whether or not, in the opinion of the Alliance, your state presently complies with each recommendation. Please review this chart to verify its accuracy and indicate whether: (check one)

✓ (a) The chart appears to be correct.

_____ (b) The chart appears to be incorrect in the following respects: _____

COMPLIANCE WITH 19 ESSENTIAL NATIONAL COMMISSION RECOMMENDATIONS 1/1/76

STATE - NEVADA

Recommendation		Yes	No
R2.1	Compulsory Coverage	X	
R2.2	No Numerical Exemptions	X	
R2.4	Agricultural Employers		
	Payroll exemption -- $1,000 annually		X Excluded
	No exemptions 7/1/75		X
R2.5	Household and Casual Workers		
	Payroll exemption - $50 calendar quarter 7/1/75		X Excluded
R2.6	Government Employees Mandatory	X	
R2.7	No Exemptions by Class		Casuals, theatric X employees
R2.11	Claim in State of Injury, Employment or Hire		X
R2.13	Full Occupational Disease	X	
R3.7	Temporary Total 66 2/3% of Wages	X	
R3.8	Maximum Temporary Total		
	66 2/3% State Average Weekly Wage	X	
	100% 7/1/75	X	
R3.11	Definition Permanent Total		
	that used in most states	X	
R3.12	Permanent Total		
	66 2/3% of wages	X	
R3.15	Maximum Permanent Total		
	66 2/3% State Average Weekly Wage	X	
	100% 7/1/75	X	
R3.17	Unlimited Total Disability	X	
R3.21	Death 66 2/3% of Wages	X	
R3.23	Maximum Death		
	66 2/3% of State Average Weekly Wage	X	
	100% 7/1/75	X	
R3.25	Death Benefits		
	For Life or Remarriage	X	
	2 Year Dowry	X	
	Child Until 18	X	
	While Dependent	X	
	Until 25 if student		X Until 23
R4.2	Unlimited Medical	X	
R4.4	No Time Limit Subsequent Medical	X	

PART II

(please use extra sheets if necessary)

A. To the extent that your state does not comply with all of the 19 essential recommendations, please indicate for each noncomplying recommendation whether there has been any legislative attempt during the past two years to place your state in full or substantial compliance. (For brevity, please refer to each recommendation by the code number shown on the attached sheet.)

R2.4 Agricultural Employers

R2.5 Domestics

R2.7 Casuals, Theatrical Employees

R3.25 Certain dependent children to age 25.

B. For each attempt at compliance which you have identified above, why was it not successful?

R2.4 Compulsory agricultural coverage legislation was introduced, but not enacted in 1973 and 1975. Legislators representing agricultural interests wished to maintain elective coverage for agricultural employment.

R2.5 Domestics - legislation to require compulsory coverage of domestics (see attached)

C. To the extent that your state does not comply with all of the 19 essential recommendations, what is your assessment of the likelihood that legislative proposals to mandate

B. (continued)

R2.5 was introduced, but not enacted in the 1975 session of the Nevada Legislature. Legislators believed that this coverage should continue to be available on an elective rather than on a compulsory basis.

R2.7 Nevada labor and management representatives recommended against compulsory coverage for casual and theatrical employment because these employees can now be covered on an elective basis and many theatrical employees in Nevada do not wish to be covered by worker's compensation coverage.

R3.25 The 1975 Nevada legislation increased the child's death benefit from age 18 to 22 if a student in accordance with the National Workers Compensation Task Force recommendation.

full or substantial compliance would be successful in your state within the next two years? For each noncomplying recommendation, please elaborate on the reasons why you feel your state would either accept or reject compliance.

R2.4 Agricultural Employment - A bill will again be introduced in the 1977 session to extend compulsory worker's compensation coverage to agricultural employment.

D. Has any estimate been made by your state, or any insurance company or insurance rating organization of the costs associated with bringing your state into full compliance with the 19 essential recommendations? If so, for eacn noncomplying recommendation, what were the amounts of money involved?

Nevada has complied with each of the 19 essential recommendations that require rate increases. The only recommendations that Nevada does not comply with are those extending compulsory coverage. Nevada legislators believed that the Task Force recommendations superseded the Commission recommendations so the age 22 rather than age 25 was enacted.

E. If during the past 2 years your state has enacted legislation to increase compliance with the 19 essential recommendations, what has been the effect of that legislation on workers' compensation insurace premium rates? Please be specific and, if possible, identify only that portion of a

rate increase attributable to the compliance legislation and not increases occasioned by inflation and medical care cost adjustments.

1975 - 15% increase

F. During the last two sessions of Congress, measures were introduced to require states to conform their workers' compensation programs to the recommendations made by the National Commission. Although none of these measures was enacted, it is likely that they will be reintroduced next session. What is the consensus in your state concerning: (a) the likelihood of success of a federal standards bill during the next session of Congress, and (b) whether continued noncompliance with the 19 essential recommendations by your state and others will increase pressures to enact a federal standards bill? Nevada opposes enactment of federal legislation and believes that this state has demonstrated that it is willing and able to achieve improvements that are in the best interests of Nevada labor and management. A few of the National Commission recommendations have proven to be very unworkable administratively as demonstrated by the Ohio experience.

All completed questionnaires, and any questions regarding them, should be directed to:

Hon. Richard Robinson, Chairman
Workers' Compensation Task Force
National Conference of State Legislatures
c/o Assembly Post Office
State Capitol
Sacramento, CA 95814

Telephone inquiries may be directed to:

Carlyle R. Brakensiek, General Counsel
Workers' Compensation Subcommittee
Assembly Finance, Insurance and Commerce Committee
Sacramento, CA
(916) 445-9160

R2.1 - We recommend that coverage by workmen's compensation laws be compulsory and that no waivers be permitted.

R2.2 We recommend that employers not be exempted from workmen's compensation coverage because of the number of their employees.

R2.4 We recommend a two-stage approach to the coverage of farmworkers. First, we recommend that as of July 1, 1973, each agriculture employer who has an annual payroll that in total exceeds $1000 be required to provide workmen's compensation coverage to all of his employees. As a second stage, we recommend that, as of July 1, 1975, farmworkers be covered on the same basis as all other employees.

R2.5 We recommend that as of July 1, 1975, household workers and all casual workers be covered under workmen's compensation at least to the extent they are covered by Social Security.

R2.6 We recommend that workmen's compensation coverage be mandatory for all government employees.

R2.7 We recommend that there be no exemptions for any class of employees, such as professional athletes or employees of charitable organizations.

R2.11 We recommend that an employee or his survivor be given the choice of filing a workmen's compensation claim in the State where the injury or death occurred, or where the employment was principally localized, or where the employee was hired.

R2.13 We recommend that all States provide full coverage for work-related diseases.

R3.7 We recommend that, subject to the State's maximum weekly benefit, temporary total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage.

R3.8 We recommend that as of July 1, 1973, the maximum weekly benefit for temporary total disability be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.

R3.11 We recommend that the definition of permanent total disability used in most States be retained. However, in those few States which permit the payment of permanent total disability benefits to workers who retain substantial earning capacity, we recommend that our benefit proposals be applicable only to those cases which meet the test of permanent total disability used in most States.

R3.12 We recommend that, subject to the State's maximum weekly benefit, permanent total disability benefits be at least 66 2/3 percent of the worker's gross weekly wage.

R3.15 We recommend that as of July 1, 1973, the maximum weekly benefit for permanent total disability be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.

R3.17 We recommend that total disability benefits be paid for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time.

R3.21 We recommend that, subject to the State's maximum weekly benefit, death benefits be at least 66 2/3 percent of the worker's gross weekly wage.

R3.23 We recommend that as of July 1, 1973, the maximum weekly death benefit be at least 66 2/3 percent of the State's average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State's average weekly wage.

R3.25 We recommend that death benefits be paid to a widow or widower for life or until remarriage, and in the event of remarriage we recommend that two years' benefits be paid in a lump sum to the widow or widower. We also recommend that benefits for a dependent child be continued at least until the child reaches 18, or beyond such age if actually dependent, or at least until age 25 if enrolled as a full-time student in any accredited educational institution.

R4.2 We recommend there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.

R4.4 We recommend that the right to medical and physical rehabilitation benefits not terminate by the mere passage of time.

COMMENTS

R2.1 The state is shown as in compliance if the law is compulsory even though an employee may elect not to be covered as in the case of an executive officer.

R2.2 The numerical exemption shown is the number of employees an employer may have and not be subject to the workers' compensation law.

GOVERNOR'S MESSAGE

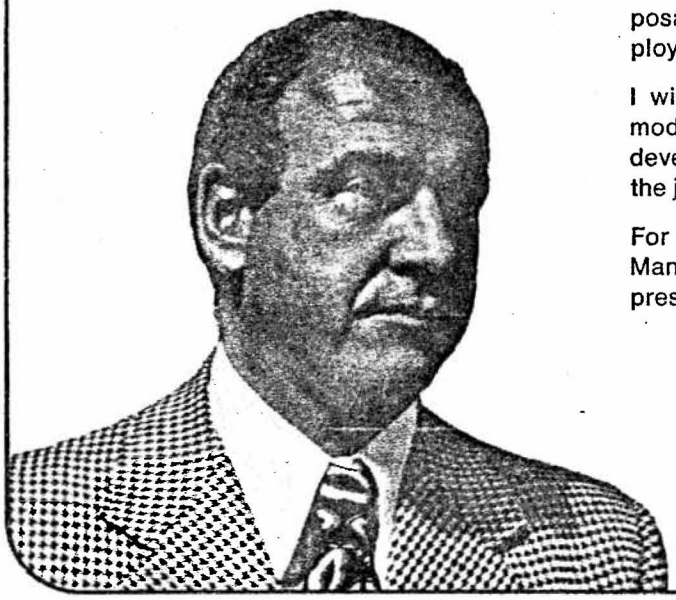
Nevada continues on a planned program to improve its worker's compensation system. Recent legislative action has made our benefits more adequate and equitable.

Coordination of the office of the State Inspector of Mines and the Department of Occupational Safety and Health by the Commission now provides broad coverage to protect virtually all employees in Nevada.

Through legislation supported by the Governor's NIC Labor-Management Advisory Board, the Department of Industrial Rehabilitation is now authorized to use every tool at its disposal to return a handicapped employee to productive employment.

I will continue to support programs that are essential to a modern worker's compensation program with emphasis on developing the abilities of those who have been injured on the job.

For all of the volunteer efforts on the part of the NIC Labor-Management Advisory Board members, I again wish to express my appreciation.



Mike O'Callaghan

Governor of Nevada

MEMBERS OF THE LABOR-MANAGEMENT ADVISORY BOARD OF THE NEVADA INDUSTRIAL COMMISSION

Labor		Management	
Mr. Louis Paley Executive Secretary-Treasurer Nevada State AFL-CIO	329-1508	Mr. Wallie Warren First National Bank Building	322-6996
Mr. Mike Pisanello, Representative Culinary Workers, Local 226	385-2131	Mr. William Campbell Resort Owners Association	735-2611
Mr. Tom Jones, Representative United Steelworkers of America Local 233	235-7741	Mr. E. D. Blackburn Titanium Metals Corporation	564-2544 Ext.3333
Mr. Mike Chadburn Secretary-Treasurer Building & Construction Trades Council	452-8799	Mr. Rowland Oakes Associated General Contractors	329-6116
Mr. Harold Knudson, Secretary No. Nevada Central Labor Council	322-7447	Mr. Max Blackham Personnel Administrator Kennecott Copper Corp., Inc.	235-7741

workers' compensation:

Is There A Better Way?

PAUL B. COSSABOON
WORKERS' COMPENSATION ADVISOR

U.S. DEPARTMENT OF LABOR, REGION IX
450 GOLDEN GATE AVE., RM. 10064, SAN FRANCISCO, CA. 94103
(415) 556-8754

a report
on the need for reform
of state workers' compensation

SB 7-Rees

REPORT TO THE PRESIDENT AND THE CONGRESS

OF THE POLICY GROUP

OF THE INTERDEPARTMENTAL WORKERS'

COMPENSATION TASK FORCE

January 19, 1977

J. Robert Hunter
Acting Federal Insurance Administrator
Federal Insurance Administration
Department of Housing and Urban Development

Dan L. McGurk
Associate Director for Human and Community Affairs
Office of Management and Budget

William A. Morrill
Assistant Secretary for Policy and Evaluation
Department of Health, Education, and Welfare

John C. Read
Assistant Secretary for Employment Standards
Department of Labor

Murray S. Scureman
Deputy Assistant Secretary for Domestic Commerce
Department of Commerce

Abraham Weiss
Assistant Secretary for Policy, Evaluation and Research
Department of Labor

INTRODUCTION

This is the official report of the policy group of the Interdepartmental Workers' Compensation Task Force. At the time of the establishment of the Interdepartmental Workers' Compensation Task Force, it was expected that this report would be submitted by the spring of 1976.

The research studies and findings which, along with the results of technical assistance, were to be the basis of the recommendations contained in this report were unfortunately considerably delayed. As a consequence, this report is based only upon initial findings from draft reports and surveys which will not be completed for several months. The policy group feels, nevertheless, that it is important that a report and recommendations be prepared for the President and Congress, based on the two-year Task Force's findings.

Although the Policy Group takes full responsibility for the findings and recommendations in this report, they could not possibly have completed it without the dedicated work, creative ideas, experience, and analysis of the staff which carried out most of the work of the Inter-agency Task Force. Mr. J. Howard Bunn, Jr., as Executive Director of the Task Force, Dr. Ronald Conley, as Research Director, and Thomas C. Brown, as Technical Assistance Director, were clearly key in this effort. Justine Farr Rodriguez was the major drafter and editorial craftsman. The advice and assistance of Barry Chiswick, John Noble, Howard Clark, Louis Santone, Lloyd Larson, June Robinson, and Tom Arthur were also invaluable and necessary to the completion of this report.

The Policy Group hopes that these efforts will assist the States in improving and strengthening the diverse workers' compensation systems in the United States. We hope that this report, and the information which has been gathered will be the focus of discussion and additional research and action at the State level. We expect the strengthened Interdepartmental effort at the Federal level to monitor activity and assist States in adapting to the ever increasing challenge of the workers' compensation system.

WORKERS' COMPENSATION: Is There A Better Way?

A sharp reordering of priorities and a new mode of operation will be necessary if workers' compensation is to achieve its traditional goals. Without such changes in emphasis, workers' compensation is in danger of becoming more expensive, less equitable, and less effective. This is the key conclusion of an Interdepartmental Policy Group that has been providing technical assistance to States and conducting basic research into workers' compensation over the past two and a half years.

This report is made to the President and the Congress, to State administrations and State legislatures, to employers and employees, insurers, lawyers, physicians, and concerned citizens. The introduction sets out the main conclusions of the Policy Group and the principles that provide a framework for reform. The next section briefly summarizes the background of the Policy Group's activities, and then assesses the progress which has been made by the States since the Report of the National Commission on State Workmen's Compensation Laws, and the major problems which remain. Then we set out our recommendations for reform, and the steps necessary to get these reforms underway.

Main Conclusions

From a broad perspective, workers' compensation clearly fills an essential function. Although both public programs and private fringe benefits have expanded considerably, no program or combina-

tion of programs on the immediate horizon seems likely to replace or outmode workers' compensation. Moreover, it is important to establish whether the potential advantages inherent in combining the objectives of workers' compensation within one program can be reached.

Secondly, a program so affected by local employment conditions and local services, and requiring so much interaction with claimants probably is more effectively managed at the State level. On balance, the Group recommends giving the States a while longer to strengthen their workers' compensation systems. Legislation to Federalize the system is not warranted at this time.

However, the Policy Group feels that State progress must be both assisted and monitored by the Federal Government. In making its recommendations, the Group has tried to give special attention to the problems which have slowed the pace of reform so far. Our attention is directed as much to effective implementation of reforms as to the principles which should guide them.

In support of accelerated progress, the Policy Group recommends that the technical assistance effort be increased significantly in size -- making experts on workers' compensation available on a consulting basis to States which seek assistance. Further, we recommend that the Federal Covernment offer an appreciable amount of short-term grants to States interested in installing State data systems or implementing particular administrative reforms. A more active and effective role for State workers' compensation agencies is central to our recom-

mendations for re-orienting the workers' compensation system.

Our overall assessment of the system today is mixed. We believe that the medical only and temporary disability claimants are handled well. These cases represent about 95 percent of those in the system.

However, we are deeply concerned about the permanent disability, work-related death, and occupational disease cases. Although the permanent disability and death cases constitute only about five percent of workers' compensation claims, they are responsible for about 50 percent of the benefit payments. With respect to these cases, we find excessive litigation, long delays in payment, high subsequent rates of persons without employment, and little relationship between the benefits awarded and the actual wage loss.

A major part of the problem is caused by a settlement system which focuses on terminating the liability of carriers and employers, either by compromise and release, or by a lump sum or "weeks of benefits" arrangement which attempts to foretell the amount of wage loss that will be sustained by a person with a specific type and degree of impairment. Studies for the Task Force indicated that such estimates are subject to large error.

Principles for Reform

This analysis leads to one of the main recommendations of the Policy Group. We propose that compensation for wage loss be separated from any other benefits provided by workers' compensation, and that these wage-replacement benefits be paid as wage loss accrues.

In one stroke, this recommendation greatly increases both the equity and the adequacy of benefits. Compensation will be directly related to the losses as they occur, and so long as compensation is not arbitrarily limited in amount or duration, benefits will continue in parallel with need. Moreover, without the reliance on future estimates of losses, determination of the amount of benefits should be accomplished with much less controversion.

With wage loss as the main element of compensability, there is increased incentive for the system to help claimants meet one of the other goals of workers' compensation — rehabilitation and re-employment. In effect, experience rating becomes net of the re-employment experience of claimants, because those without jobs — or with lower income — are drawing benefits, and those who have returned to work at their former earnings are not.

The third principle we have adhered to is internalization of the costs of work-related injuries and diseases. This principle is supported by recommendations for broad coverage of employees, full coverage work-related injury and disease, and adequate benefit levels. It is intended to provide incentives for employers to seek and implement measures to make the workplace safer and more healthful.

With these interrelated principles, we are attempting to start the workers' compensation system in a constructive direction, harnessing the need to control the costs of the system to the social objectives of prevention and re-employment, rather than the present litigation.

In making these recommendations, the Policy Group is going beyond the previous standards for measuring State reform progress. Although we endorse the 19 essential recommendations of the National Commission, we believe that they represent a too limited approach. Some of the reforms we recommend will not be easy for the States to undertake. State governments, insurance carriers, employers and others will have to assume new roles and make substantial breaks with deeply ingrained practices and concepts. Many States will need to further amend their workers' compensation statutes to accomplish these reforms.

We recognize that systemic changes are very difficult to undertake, and that their results are not always predictable. But from the national perspective, we are convinced that some of the problems of workers' compensation are severe enough to threaten the future of the system unless the States set in motion some reforms that are more thorough than would come from enacting the 19 essential recommendations of the National Commission, and nothing more.

Traditional System in a Modern Context

Workers' compensation was the first social insurance system in the United States. It developed as a consequence of the high rate of industrial accidents in the nineteenth and early twentieth centuries. When these resulted from employer negligence, and this could be proven in court, the worker and his family received reparations.

In all other cases — when employer negligence could not be proven, when the employee or a fellow worker caused the injury through lack of training, fatigue, or carelessness, when there were multiple causes, or when all precautions were taken and the unexpected happened — the injured employee and his family got nothing. Few workers could prevail against the legal expertise that the employer could bring into the courtroom.

This led to the proposal that the right to tort action against employers on the grounds of negligence be exchanged for workers' compensation benefits for all injury "arising out of and in the course of employment". The costs of all work-related injuries were to be allocated to the employer, not because of any presumption that he was to blame for every individual injury, but because the inherent hazards of employment were a cost of production. This no-fault approach spread rapidly: between 1911 and 1920, all but six States passed workers' compensation statutes.

Since that time, many other social insurance systems have been established to deal with related problems. Private fringe benefits have expanded. Many changes have taken place in the U.S. economy, its labor force, and production technology. And our knowledge of the complex relationships, both in technology and in social systems has increased.

Thus, more than half a century later, far from settling into routine, workers' compensation is under criticism for some notable failures and is in the midst of controversy. Can the entire cost of work-related injury

and disease be internalized? Can protection be provided to part-time or intermittent workers? Can the conflict be resolved between delivering adequate benefits to the injured and controlling the growing cost and abuse of the system? Can the record of rehabilitation and re-employment be improved? Can employers be given stronger incentives to maintain a safe and healthful workplace? Are litigation and administration costs too high? What are the effects of adversary versus inquiry methods of determining benefits? What should be done about the problem of "permanent partial disability"?

Workers' compensation is unique in drawing together in one system attempts to deal with all of these issues. From this perspective, it is not surprising that calls for changes in this very complex system have come from many sides, that a great many actions to improve the system have been taken at the State and Federal levels, and that consideration of substantial further change is underway.

The National Commission and the Policy Group

At the Federal level, the antecedents to this report began with the Occupational Safety and Health Act of 1970, which established the National Commission on State Workmen's Compensation Laws. The Commission, appointed by the President, was composed of knowledgeable people with a variety of viewpoints on workers' compensation. The Commission held 13 days of hearings with more than 200 witnesses in nine cities, contracted for numerous studies, surveys and reports, and employed a full-time staff of 30. They published a Compendium on Workmen's Compensation, which pro-

vided a comprehensive review of issues and information, and three volumes of Supplemental Studies.

In July 1972, the National Commission issued a Report making 84 recommendations. Of these the Commission identified 19 as essential to a modern workers' compensation system, and urged the States to implement these promptly. The Commission recommended that the President appoint a follow-up commission to provide encouragement and technical assistance to the States, and to develop supplemental recommendations — particularly in the areas of permanent partial disability and the delivery system, which the Commission had not been able to examine thoroughly.

The Administration responded by establishing an Interdepartmental Policy Group to review the recommendations of the National Commission. In May 1974, the Secretaries of Labor, Commerce, and Health, Education and Welfare, and the Federal Insurance Administrator transmitted to the President and published a White Paper on Workers' Compensation which summarized that review. This generally supported the 19 essential recommendations of the Commission, and also noted the need for cost-of-living adjustments to long-term benefits and for major improvements in State data systems. To encourage State efforts to improve workers' compensation, the White Paper recommended formation of a task force, reporting to the Policy Group, to provide technical assistance. Concurrently with this plan of action, the White Paper proposed and described in detail a major program of research to be undertaken by a research unit within the task force.

Seven technical assistance advisers work directly with States out of the U. S. Department of Labor Regional Offices. They furnish assistance to State workers' compensation administrators and private groups with an interest in workers' compensation reform. The task force described and interpreted for the States five objectives, which closely resemble the National Commission's 19 essential recommendations. Examples of assistance provided include estimating the costs of specific reforms, encouraging development of advisory groups, and drafting legislative language that would meet task force objectives.

The regional advisers are backed up by an experienced group of workers' compensation specialists, headed by Lloyd Larson, on loan to the task force from the U. S. Department of Labor. This group helps to formulate proposals for meeting objectives, and in addition, closely monitors and documents State legislative developments.

A conference on compensation for occupational disease, organized by June Robinson of the task force staff, was held and the papers and proceedings were published.

Six research surveys commissioned by the task force and one by the National Science Foundation have generated new information about the workers' compensation system and its beneficiaries. Fifteen experts have prepared draft analytical reports for the task force, using information from these surveys and other available sources. Analytical reports cover the following subjects: occupational disease, litigation, data systems, permanent partial disability, financing workers' compensation, re-employment,

program interrelationships, efficiency, state agency operations, rehabilitation, benefit adequacy, coverage, product liability and workers' compensation, experience rating, and promptness of benefit payments. Unfortunately, time has not permitted complete analyses of the reports, most of which are still not finalized. As soon as these are complete, a research report will be published, and the data made available to researchers. A technical assistance report including details on the progress and lack of progress for the States since the Report of the National Commission will also be published.

An Assessment of Progress

The following briefly summarizes those findings. Since the National Commission's 1972 Report, State compliance with the 19 essential recommendations has increased from an average of eight per State to 11 1/2 — a 44 percent improvement. Significant gains have been made in raising weekly benefit maximums to the recommended levels. Gains have also been made in worker coverage. In 1976, New Hampshire complied with 18 1/2 of the 19 essential recommendations, and 12 States complied with more than 14.

Our assessment of the progress which has been made by the States shows that they have put forth considerable effort to improve their workers' compensation systems. In the 1976 legislative year alone, approximately 100 amendments were made to the workers' compensation laws of 45 States. This is a substantial acceleration in the pace of improvement from the 1960s, prior to the National Commission Report.

On the other side, many States have far to go to meet the essential recommendations of the Commission. In fact, 16 States still meet fewer than 10 of the 19 essentials. Some of this delay has been due to the recession in economic activity which turned the attention of legislatures, business and labor to other matters. Employers have tended to balk at expanding coverage and benefits unless and until solutions are found to the excesses and abuses of permanent partial disability which the Commission did not have time to address. The pattern of compliance implies that some States disagree with some of the recommendations, or find compliance particularly difficult.

On the basis of the information from the task force — the technical assistance, the consultations, the surveys, and analyses — the Policy Group has assessed the progress of the States in improving workers' compensation, and the problems yet to be overcome. This assessment was made against the five major objectives set out by the National Commission:

* Broad coverage of employees and of work-related injuries and diseases. Protection should be extended to as many workers as feasible, and all work-related injuries and diseases should be covered.

* Substantial protection against interruption of income. A high proportion of a disabled worker's lost earnings should be replaced by workmen's compensation benefits.

* Provision of sufficient medical care and rehabilitation services. The injured worker's physical condition and earning capacity should be promptly restored.

* Encouragement of safety. Economic incentives in the program should reduce the number of work-related injuries and diseases.

* An effective system for delivery of the benefits and services. The basic objectives should be met comprehensively and efficiently.

Broad Coverage: While there has been definite progress in compliance with the National Commission recommendations on coverage, the numbers and types of workers protected by workers' compensation is unsatisfactory. The number of States having compulsory coverage laws and prohibiting waivers increased from 18 to 31 between December 1972 and July 1, 1976. During the same period, States with no numerical exemptions increased from 30 to 38, and six States reduced their numerical exemptions without entirely eliminating them. Special occupational exemptions, such as for logging and sawmilling, or for work in charitable or religious organizations, were eliminated in nine States. About 30 States added additional groups of employees to their coverage.

On the other hand, coverage of farm workers has improved only slightly, with the number of States meeting the 1975 standard of the National Commission increasing from seven to 13. Still less progress has been made in covering household and casual workers, partly because of the problems of providing insurance for such coverage at reasonable rates. New Hampshire and California are the only States which meet the National Commission recommendations to cover such workers on the same basis as for Social Security; as of January 1, 1977, both these States comply with all the essential recommendation related to employee coverage.

The Social Security Administration periodically estimates the percentage of actual to potential coverage. These estimates include only workers who are covered under the law and whose employers have secured their compensation liability either through insurance or self insurance, thereby assuring coverage in practice. In 1972, the estimate showed 84% of the potential workforce to be covered. This had risen to 88% in 1975.

There is wide variation among States in the proportion of the workforce covered. While 17 States and the District of Columbia covered more than 90 percent of their workforce in 1975, five States covered less than 70 percent of their workers. Comparable figures for December 1972 were eight States with coverage above 90 percent and 11 States below 70 percent.

Therefore, significant numbers of workers are without workers' compensation coverage. It is estimated that 793 thousand employees lack coverage because of the exclusions of small firms, 541 thousand because of agricultural exemptions, and 902 thousand because they were household workers. The potential hardships imposed by lack of coverage may be great. A disproportionate number of uncovered workers have few assets to fall back on, little likelihood of other fringe benefits, and little ability to withstand a period of no earnings without having to rely on public income maintenance.

A related recommendation of the National Commission was that workers should have the option of filing claims in the State where the injury occurred, where the contract of hire was signed, or where the employment was principally localized. Tracking progress in achieving this objective has been difficult because much depends upon a multitude of court decisions in the various States. However, it appears that as of July 1, 1976, 27 States met this standard, compared with 12 in 1972.

A second major kind of broad coverage recommended by the National Commission was "full coverage" of work-related injuries and diseases, defined as coverage not limited to a list or schedule of specified diseases. Since 1972, eight States enacted full coverage of occupational diseases, raising the number of States with full coverage to 49. However, many State laws still limit considerably the compensability of diseases which "arise out of and in the course of" employment. The arbitrary nature of these limitations, which was of concern to the National Commission, is of continuing concern to us.

For example, twenty States provide full coverage only for those diseases "peculiar to the worker's occupation". But current knowledge indicates that there are few, if any, diseases of mankind that can occur only because of an activity or an exposure at work, though there are some which are typically contracted due to risks most often found in the workplace. Many diseases can be caused by more than one agent or by agents which may be found both in the workplace and elsewhere. Many States exclude "ordinary diseases of life," which is another variation on the notion that the disease should be "peculiarly" job-related, rather than the specific case of the disease being related to the particular exposure of that individual. Most States exclude infectious diseases.

Thirty-nine States have "by accident" clauses that are applied to occupational diseases. An accident is defined as an unexpected, undesigned, and unlooked for mishap, or an untoward event which can be reasonably located as to the time when or the place where it occured. The exposure, not the outcome, is the accident which must be documented. The nature

of contraction of occupational disease is difficult to relate to such a requirement, and the National Commission recommended that such language be eliminated. Some States require that the toxic materials or working conditions which cause a disease must be responsible independent of any other cause.

At least 15 States have time limitations that bar occupational disease claims unless the claimant can prove that his exposure to a hazard at the workplace occurred over a specified minimum period of time. At least 19 States, including most of those using a minimum exposure rule, also have laws that bar claims for diseases caused by hazards encountered in the workplace more than a specified number of years earlier. Several States also have requirements regarding the minimum duration of on-the-job exposure in that State. In addition, States typically require that workers notify employers of claims within some time period. In 13 States, this period begins at the time the hazard was encountered; in 9 of these, the time period is one year or less. Recently, States have been moving toward broader statutes of limitations which start at the time the claimant knows or "should have known" of the existence and potential compensability of the disease. In 17 States, the employer must be notified within one year of such knowledge.

Many of these time limits related to hazard exposure are not based on -- and some are quite at odds with -- current medical and scientific knowledge. Many industrial chemicals and agents found in the workplace can cause respiratory and other ailments that develop slowly. Moreover, the duration of latency for any specific agent/illness combination can

vary as much as four decades. For example, exposure to asbestos can result in cancer from 4 to 50 years later. The exposure time sufficient to result in an occupational disease may also vary considerably, depending on the intensity of exposure, presence of other interacting substances, and individual sensitivities.

The data on occupational disease are so poor that the magnitude of occupational illness and its trend are really unknown. There is wide agreement among experts, however, that only a small proportion of the workers who contract an occupational disease actually file and are found compensable in the workers' compensation system.

Several estimates of occupational disease, each subject to serious criticism, but each quite different in method from the others, suggest that annual deaths from occupational disease may be at or above 100,000 a year, and incidence rates about 400,000 a year. Hundreds of toxic industrial substances have been identified, and the National Institute of Occupational Safety and Health estimates that tens of millions of workers are being exposed to substances of varying degrees of toxicity.

Yet not many victims of work-related disease receive workers' compensation. Only two percent of the cases in a survey of closed claims done for the task force were occupational disease cases (including heart attack cases) -- a disturbingly low figure, even recognizing that many diseases may not be disabling during their development. About 30,000 new occupational disease cases are now being compensated annually -- less than half the estimated number of occupational disease fatalities. Moreover, a substantial proportion of the cases receiving workers' compen-

sation for occupational disease are for short-term and often non-severe conditions such as dermatitis. A study by Discher and others for the National Institute of Occupational Safety and Health examined workers who might be exposed to work-related disease; of those identified as having such a disease, only 3 percent had filed a workers' compensation claim.

Of the occupational disease cases which are filed, two out of three are controverted — three-quarters of them over the basic issue of compensability. Fifty-six percent of these cases result in compromise and release. Litigation is involved in 90 percent of the respiratory or hearing cases, compared with 17 percent of the skin diseases.

Overcoming the problems of limited coverage and excessive litigation will be an especially difficult problem for occupational disease. There are extremely difficult conceptual and empirical problems in relating a disease to the exposure that caused it. The same disease may be caused by either an occupational exposure or a non-occupational exposure. It is usually impossible to determine with certainty which is the appropriate cause in a particular case. Or a disease may be the consequence of the interactive effects of agents to which a person has been exposed on the job or off of the job. The contribution of the occupational exposure may be small, and difficult to ascertain. Or a disease may be aggravated by the workplace exposure. The question arises in the latter two cases as to whether the entire disease should be compensated or if it should be compensated only according to the degree of aggravation caused by the workplace, or its contribution to disease

in the case of interactive factors.

Income Protection: All but two States have increased benefit levels since 1972. The number of States paying 66 2/3 percent of wages for temporary total disability increased from 29 to 47. The number paying 66 2/3 percent of wages for permanent total disability rose from 25 to 46.

Maximum benefits for total disability have also been raised. In 1972, only two States had a maximum weekly benefit for temporary total disability at or above the National Commission recommendation of 100 percent of the State's average weekly wage, and only 10 States had a maximum level of 66 2/3 percent or more. By July 1976, 22 States had achieved the objective of a maximum weekly benefit of at least 100 percent of the State's average weekly wage, and 35 had attained the level of 66 2/3 percent or more. For permanent total disability, the number of States with a maximum at or above 100 percent of the State's average weekly wage increased from two to 20.

The number of States providing payment in cases of total disability for life or for the duration of disability increased from 29 States in 1972 to 36 in 1976, increasing the application of this provision from 60 to 80 percent of the covered workforce. The remaining States restrict the aggregate amount of benefits payable for total disability either by duration or by dollar amount.

In cases involving a work-related death, 29 States now pay survivors 66 2/3 percent of the worker's wage, up from 13 States in 1972, and the maximum has reached at least 100 percent of the State's average weekly wage in 17 States compared with only one in 1972. But only four States comply with all four components of the National Commission's recommendation 3.25: benefits to the spouse for life or until remarriage, two years' benefit in lump sum in

the event of remarriage, benefits to a child to age 18 or beyond if actually dependent, and benefits to full-time student dependents until age 25. Among these components, 16 States pay children until age 18, and 15 States pay the spouse for life or until remarriage.

An annual cost-of-living adjustment for benefit levels, as recommended in the White Paper, is provided in only 15 States. These vary widely as to the types of benefits adjusted and the formulas used in computing the adjustments.

Provisions on the duration of benefits are irrelevant in practice to the cases that are settled by compromise and release, or by stipulation or other procedure which releases the carrier or employer from further liability. Surveys for the task force found that in 1973, 17 percent of all cases were so settled. But compromise and release was much more common in cases of serious injury or illness. Half of the permanent partial cases and half of the death cases were settled by compromise and release. For permanent total cases, the proportion reached 72 percent.

Such a large proportion of cases receiving lump sums in exchange for all further claims on the insurer has some important implications, particularly when considered in the light of the data collected for the task force on the proportion of workers' compensation recipients who are not employed. Two interview surveys were conducted. One by Cooper and Company interviewed claimants in four States (Illinois, Georgia, New York, California) whose cases had been settled in 1973. All levels of disability were sampled. The results of this survey showed that 24 to 39 percent of the minor permanent partial claimants, 40 to 45 percent of the major permanent partial claimants, and 66 to 100 percent of the total disability claimants were not em-

ployed at the time of the survey in 1975-76. A second survey was taken for the task force by the Maxwell School at Syracuse University following up the status of workers whose compensation cases were opened in 1970, and who were permanently impaired with an impairment rating over 10 percent. Of those who were below the age of 65, the proportion who had never worked after the injury ranged from 7 to 17 percent in the four States surveyed, and the proportion who had worked after the injury but who were out of work for all of 1974 was an additional 15 to 19 percent. Furthermore, of those employed, an unusually high 7 to 16 percent worked part-time. The proportion employed full-time in 1974 ranged from 55 to 68 percent. About 85 percent of the sample were men with a known work record; their median impairment rating was 13 percent.

One should not infer that everyone who was not employed at the time of the survey was not employed because of their industrially-caused impairment. A few may have been facing normal unemployment and be between jobs. A few may have voluntarily left the labor force in an early retirement plan, or perhaps they were living on their workers' compensation benefit (or other disability benefit) and were reluctant to return to work for fear of losing the benefit. All of these factors together are unlikely to account for more than a small percentage of the not employed. It is more likely that their injury and their workers' compensation experience detached them from the employed workforce. It is noteworthy that almost all of those persons in the Syracuse survey that never returned to work gave poor health as the reason.

Compromise and release settlements are less worrisome because of the compromise than because they release from all further responsibility the carrier, the employer, and perhaps the State agency. In effect, these settlements become a guess about the future from which some workers gain, in that their benefit is greater than their losses. Others lose, especially those with low earnings or who face prolonged unemployment. The result of such agreements is to create serious inequities in the system, and great hardship for workers who have substantial and prolonged losses of earnings.

Rehabilitation: The National Commission recommended that there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment. They also recommended that the right to medical and physical rehabilitation benefits not terminate by the mere passage of time. Six States came into compliance with each of these essential recommendations since 1972, raising the total number meeting these criteria to 45 States and 41 States respectively.

Financing medical care for injured workers has been one of the central objectives of workers' compensation, and one which the system seems to handle reasonably well. Less attention is directed at each of the steps beyond medical care, namely physical rehabilitation, vocational rehabilitation, and re-employment. Although the National Commission, recommended that the employer pay all costs of vocational rehabilitaion; that maintenance benefits be provided during this rehabilitation; that the State workers' compensation agency have a unit to oversee rehabilitation; and that each State have a broad

and well-publicized second-injury fund, it did not include any of these among the essential recommendations.

In practice, the workers' compensation system creates a conflict for the worker. In order to receive benefits, he must show that he has suffered impairment and disability. Since 39 percent of the permanent partial and 52 percent of the permanent total cases are litigated, and since average delay between start of lost time and start of payment appears to be 134 days in contested cases and over a year in the worst State, the worker's mind is on proving his case for some time. Since these are averages, nearly half of the cases must take longer -- perhaps much longer. On the other hand, rehabilitation is known to be more effective when started immediately after injury, and the mental state of the patient is very important to its success. The patient is required to focus on what he can do, and strengthen his determination to expand those capacities.

It is also clear that the workers' compensation system is not very effective at screening cases to assess the potential need for rehabilitation services -- either physical or vocational. There are some differences among States in their efforts to do this, and States with some screening have higher levels of referral to rehabilitation services. Even such referrals are insufficient to assure that claimants get the necessary services, however. In the interview survey conducted by Cooper and Company, of 251 persons with permanent disabilities who were advised that they needed rehabilitation, only 101 persons got such help, and only 81 were assisted by the State vocational rehabilitation agency, the carrier or the employer. Further, only 17 received any job training, and only 9 received placement assistance.

It is impossible to say how many more persons should receive job training or placement assistance. In the Cooper interview survey, roughly 25 percent of the persons with minor permanent partial cases (paying benefits of less than $2,500) and about 40 percent of the major permanent partial cases were not employed at the time of the survey. In the follow-up survey conducted by Syracuse University, four years after their cases had been opened, 25 percent of interviewees of working age were not working, and one-third of these had never worked since their injury. Of those interviewed, 85 percent were men and they had an average impairment rating of 13 percent. If these data are confirmed through additional scrutiny and analysis, they are very relevant to the issue of proper rehabilitation and re-employment.

Safety: With respect to improving the safety and healthfulness of the workplace, the National Commission made four recommendations. They recommended that a standard workers' compensation reporting system be devised which would mesh with the forms required by the Occupational Safety and Health Act of 1970 and permit the exchange of information among Federal and State safety agencies and State workers' compensation agencies. This is the keystone, not only to safety, but to improved delivery of workers' compensation, and will be discussed below.

The National Commission also recommended that insurance carriers be required to provide loss prevention services which would be audited by the State workers' compensation agency, that experience rating be extended to as many employers as practicable and that the relationship between the experience of an employer and that of other employers in its insurance classification be reflected more equitably in the employer's insurance rate. It

appears that more employers are now in experience rating categories than in 1972 because their premiums are above the minimum level for such rating.

The incidence of occupationally-related injuries and illnesses per 100 full-time workers rose slightly in 1973 and then fell in the next two years. For the private sector as a whole, the rate was 10.9 in 1972 and 9.1 in 1975, the latest year available. Similar declines occurred in manufacturing and contract construction. In manufacturing, the rate was 15.3 in 1972 and 13.0 in 1975. In construction, the figures were 19.0 and 16.0, respectively. The incidence of lost workdays, which reflects the more serious injuries and illnesses, has been stable at 3.3 for both 1972 and 1975 in the private economy. These statistics do not show the incidence of work-related illness, to the extent that this relationship is not recognized at the workplace.

A more difficult problem is recognition of toxic or hazardous substances and combinations of substances in time to prevent illness. As noted in the discussion of occupational disease, this will require a more intensive effort to trace the epidemiology and etiology of disease, and the limits to the intensity and duration of exposure. Under the Toxic Substances Control Act of 1976, the Federal Government is authorized to regulate the manufacturing, processing, distribution, and use of chemical substances which present an unreasonable health hazard or risk to the environment. Chemical manufacturers and processors are required to report to the Environmental Protection Agency adverse health and environmental data, and the number of workers exposed to certain chemicals. The Occupational Safety and Health Administration is issuing regulations on exposure to and awareness of hazardous substances in the workplace.

Delivery System: Workers' compensation is characterized by the lack of an effective delivery system. Far from being a non-adversary system, as currently practiced, workers' compensation has replaced litigation over who is at fault with litigation over what is at fault and what the effects of the accident will be.

Notwithstanding its no-fault characteristics, the system as presently constituted is an adversary, third party system which expends too much of the premium dollar in friction costs incident to the delivery of benefits and other purposes entirely alien to the reparation of the accident victim. The rate making process relative to the construction of manual rates contemplates an expense component in the rates of about 40 percent which allows only about 60 percent of the premium dollar for workers' compensation benefits, from which, however, must be deducted the amounts injured workers must pay their own lawyers. The latter amounts have been estimated at about eight percent of the benefits so that it appears that about 52 percent of the premium dollar goes to the claimant as benefits. The most recent data indicate an insurance loss adjustment expense factor of about 9 percent of premiums. Thus the total for adjudication of claims amounts to about 17 percent of benefits.

As noted above, two out of five permanent partial and death cases are litigated. One out of two permanent total cases are litigated. This proportion increases to four out of five permanent total cases when the employer self-insures. The proportion of contested cases of all types varied widely among States in the closed claim survey from no reported cases to 38 percent of all cases involving a compensable

temporary disability, permanent disability, or death.

Delays in receipt of benefits are substantial. In uncontested cases, our research indicates that the mean time from the start of lost time to the date of first check was 33 days. In contested cases, the mean time was 134 days. Here too the differences among States were very substantial. In uncontested cases, the range was from 14 to 81 days. In contested cases, the range was from 25 to 368 days. In cases of work-related death, the delays in payment average 136 days for uncontested cases, and 544 days for contested cases. It appeared to require an average of 282 days from the start of lost time to the time of filing a request for a hearing and another 134 days before the hearing was held, or a total of 1 1/4 years -- and this does not count appeals.

The hub of the workers' compensation system is the insurance carrier. This is the only publicly-mandated system which is run on an actuarially sound basis, and roughly 65 percent operated by the private sector. As such, it is very important that the insurance carriers share a perception of the system which will help to achieve its social objectives, and that the incentives for carriers and employers support that perception.

The State governments are responsible for overseeing the system. The National Commission made many recommendations to strengthen the professionalism and processes of State agencies. Some States have been much more active than others in both oversight and improvement of workers' compensation, as well as more effective in those operations carried on by the State itself. For a system with such diffuse responsibility to work well, a State agency must take an active part in informing all parties of their rights and responsibilities and carefully monitor the system.

The paucity of data that State agencies have to help them evaluate and manage the program is linked to the current orientation toward case settlement rather than case management. The State agency survey for the task force revealed that most State agencies know how many cases they handle, but know little about the types of cases, types of settlements, time lags, and other data for an assessment of the effectiveness of the system in meeting the five objectives discussed by the National Commission. The data collected by the National Commission and by the task force, while very useful, is no substitute for systematic collection of the information required for ongoing management of workers' compensation.

Program Interrelationships

Since the workers' compensation system spread so swiftly through the States half a century ago, many other social insurance systems have been enacted, and employee "fringe benefits" have expanded considerably. The relationships among these should be clear and fair. Three kinds of problems can occur: overlaps, in which some people get additional benefits, gaps, in which a person finds himself unable to get any benefits, and spillovers, in which costs which should be covered by one program are absorbed by others.

The interview survey conducted by Cooper and Company indicates that the problem of overlaps is significant. Of all respondents, 37 percent said that they received benefits related to their injury or illness from at least one other source and 18 percent from at least two other sources. The proportion receiving such benefits from one other source included 20 percent of the temporary total cases, 25 percent of the minor permanent partial cases, 42 percent of the major permanent partial cases, 60

percent of the permanent total cases, 75 percent of the work-related deaths, and 49 percent of the occupational disease cases.

The largest overlap is with Social Security disability insurance benefits. Of 1036 people sampled, 124 received such benefits, including half of all permanent total cases, and one sixth of all major permanent partial cases. The next largest overlap was with Social Security survivor's benefits. Seven out of ten survivors who received workers' compensation benefits also got these. Only 14 of the respondents received Social Security retirement benefits.

With respect to other public programs, 33 of the respondents received unemployment insurance, 25 got Medicare, 30 got public assistance, 7 got Medicaid, and 7 got Supplemental Security Income.

A substantial number of the respondents received income from private insurance, financed by their employers or themselves. These included 34 each with group health insurance and short-term disability insurance, 33 with individual accident and health policies, 28 with group life insurance, and 21 with veteran's benefits. 21 respondents reported receipts from a lawsuit against their employer.

Gaps between workers' compensation and other programs occur when there are disputes as to the work-relatedness of an injury or illness. Many medical, disability, and automobile insurance policies exclude coverage of work-related cases, and until the dispute is resolved, neither carrier pays. There is a waiting period before application for Social Security disability insurance can be made; Supplemental Security Income requires both an income and an asset test. Unemployment Insurance requires an active search for work. Sometimes, therefore, none of these

is applicable to the injured worker.

Possible spillover of costs of injuries and occupational diseases can partly be assessed by examining the data on overlaps with public programs, including Social Security disability insurance and survivor's benefits. However, the total is higher than this, because many workers who should be covered by workers' compensation are not, many illnesses which are work-related are not so identified, many lump sum settlements run out. In these and similar cases, workers receiving other benefits would not be known to be spilling over from workers' compensation. The identified cases, and the general magnitude of the unidentified cases, clearly amount to a very appreciable spillover into other public programs.

Specific Recommendations

Broad Coverage: In accordance with the principles discussed above, we believe that workers' compensation should be extended to all employees, and that every practical means should be employed to make this effective. We reaffirm the National Commission recommendations that coverage should be compulsory and no waivers should be permitted. Coverage should be extended to all classes of employees, to all occupations and industries without regard to hazard, to government employees, and to farmworkers. Each of these recommendations has been adopted by at least 13 and as many as 48 States.

A major problem in practice is the extension of coverage to certain household and casual workers, and to intermittent and seasonal workers on farms that do not have employees year-round. This problem occurs not so much because of the casual attachment of the worker to the workforce, as because these workers are hired by employers who are not usually employers, and therefore do not have the knowledge of employment requirements or the insurance coverage usual among employers. The high turnover of many casual workers, and the paperwork involved for employers also discourage compliance.

The two States which now require coverage of household and casual workers who earn more than $50 a quarter from any employer do so through riders on other insurance policies. It is much too soon to assess just how this will work out. But it is clear that many of those who hire such workers will be unaware of required coverage, and assuring compliance will be difficult. The potential cost to any employer who fails to secure liability through insurance is very substantial.

Another option would be to establish a special fund in each State, run either by the State workers' compensation agency or by the insurance carriers providing workers' compensation in that State. The fund would sell coverage to any employer of such hard-to-cover workers. With such a fund, coverage could realistically be extended to all household and casual workers who earn more than $200 a quarter -- the approximate amount a worker would earn working one day a week at the minimum wage. The State could make arrangements for workers' compensation forms to be distributed with all Social Security tax forms to such employers. All employers paying more than $200 a quarter to a worker would be required to send the form to the special fund, either noting that they were covered by another insurance policy and identifying that policy, or, sending their premium to the fund. This arrangement would not cover workers whose earnings from each employer were less than $200, unless they worked for a temporary help agency, cooperative, or similar unit.

The special fund could also guarantee benefits to workers' compensation claimants who were in danger of not receiving benefits because their employer did not insure his workers' compensation liability, or because the carrier or self-insured employer became bankrupt. In addition to premiums, the fund would be financed partly by fines levied on those who failed to obtain coverage. These could range in size from twice the premiums which would otherwise be paid in those instances when the employer was unaware of his liability to substantial penalties for employers who deliberately failed to secure their liability. The fund could also be financed by assuming the workers' litigation rights against any

insolvent insurer or employer, and if necessary by an assessment on workers' compensation premiums.

While we are not anxious to delay coverage for these workers any longer, such a phase-in process may ultimately secure more coverage more quickly than mandating a precipitous and impractical extension that can cause insurance availability problems. For example, coverage might first be mandated for farms which use more than 500 man-days quarterly, and then extended to all farms paying more than $200 a quarter to a worker.

To be sure that all workers have a jurisdiction in which they can file claim for a work-related injury or disease, we recommend that all States cover workers whose employment is principally localized in that State for injuries or illnesses which occur or to which they are exposed in any other State or location, provided that it was in the course of the employment so principally localized. If the worker is not covered by the workers' compensation system in the State where his employment is principally localized, he should be able to file claim in the State where the injury or disease occurred, or finally, in the State where he was hired.

We recommend coverage of all work-related diseases, and we are strongly opposed to arbitrary barriers to compensability. This coverage should extend to all illness "arising out of and in the course of employment". To help extend coverage, we make several recommendations.

Some States may wish to define disease as a component of injury as is done in the Model Act published by the Council of State Governments.

This says: "Injury means any harmful changes in the human organism arising out of and in the course of employment, but does not include any communicable disease unless the risk of contracting such disease is increased by nature of employment." As the National Commission recommended, the "by accident" phrase should be eliminated as a requirement for compensability. This criterion is not really applicable to the contraction of disease. Requirements that the illness be "peculiar to the workers' occupation", or that the "ordinary diseases of life" be excluded do not accord with current medical and scientific evidence.

Nearly all diseases which can be caused by agents found in the workplace can also be caused by the same or other agents found elsewhere. This means that it will continue to be necessary to show in each case that the worker has a specific disease, and that there is a reasonable medical certainty or a high probability given the exposure in the workplace that the disease is work-related. This assessment will often be very difficult to make, but at least the whole focus is on the relationship between the workplace exposure and the disease rather than extraneous factors.

In making these difficult determinations, the goal should be to minimize the total number of cases which are misclassified — both the cases which are classified as work-related which may not be, and the cases which are classified as not work-related but which may be. Toward this end, we suggest that work relationships be determined by the expert panel proposed hereafter under the following guidelines:

1. When the disease has been diagnosed, and there is reasonable medical certainty that it is work-related; that is, when the etiology of the disease is known; or

2. When the disease has been diagnosed, the worker can show that there is epidemiological evidence that the incidence in his occupation, industry, or plant significantly exceeds the incidence in the population, and the employer fails to show that the employee's illness is not due to exposure in the workplace; or

3. When the disease has been diagnosed, contributing causes from outside the workplace are present, but it can be shown that agents or exposures in the workplace constituted a substantial factor in causing the worker's illness, and the risk of contracting the disease is increased by the nature of employment.

The first criterion is the usual one at present, in which the worker must show the work-relatedness of a disease, the etiology of which is known. The second requires the worker to show that he or she has a disease which is likely to be work-related, and makes this rebuttable if the employer can show that the necessary exposure is unlikely to have occurred. This shift in the burden of proof in these particular circumstances is meant to place the burden on the party in a position to gather the necessary evidence as to the agents or exposures which were present, namely the employer. The third criterion is meant to screen out minor workplace aggravation of non-work-related illness, and focus the resources of workers' compensation on those cases in which the workplace contribution is substantial.

We cautiously recommend this approach to the States. We urge that State agencies and their expert panels exercise great care when using presumptions to assure that the rights of all parties are protected. This would be especially necessary if the States act to limit litigation over compensability in work-related disease cases as we recommend.

In order to expand knowledge of the etiology of disease, we recommend that the Secretary of Health, Education, and Welfare take the lead in a Federal effort to add to the list of potentially significant occupational diseases for which there is documented etiology. Better statistics are needed on the number of workers exposed to various toxic agents, and evidence on the precise relationships among intensity of exposure, duration of exposure, other substances which may interact with the agent under study, and the varied sensitivities of individuals. The Federal Government should also undertake a substantial effort to coordinate collection and analysis of data on the epidemiology of diseases which might be work-related. Agencies which collect and use such data,such as the National Institute for Occupational Safety and Health, other National Institutes of Health, the National Center for Health Statistics, the Social Security Administration, the Occupational Safety and Health Administration and the Environmental Protection Administration, should participate in this endeavor.

Further, this research and analysis about diseases which are known to be or potentially may be work-related — and the means by which hazards can be mitigated — should be made widely available to workers, employers, State workers' compensation agencies, State occupational safety and health agencies, physicians, and researchers. We urge unions, employers' associations, State agencies, and medical and scientific associations to join in this effort to spread information. In particular, we hope that medical societies will encourage specialization in this highly technical area, and will keep their members informed of current developments.

Hospitals and physicians should get work histories as well as medical histories. Workers should have access to employer information on the nature

and intensity of their exposures to hazardous substances, and to the results of any physical examinations. When exposures to hazardous substances occur, a registry should be established by the employer to maintain the record. Insurance carrier records should be available to researchers under conditions preserving the confidentiality of individual records on payment of the costs of access.

To provide clear information and equitable decisions in this difficult area for workers and employers, we recommend that each State establish a panel of experts, including or using the advice of physicians, industrial hygienists, and epidemiologists, to determine the compensability of occupational disease cases in that State. The findings of this panel of experts should be binding as to all questions of fact or causation except for questions of law. This approach should increase the consistency and fairness of the decisions on compensability of disease.

We recommend elimination of existing State legal compensability restrictions based on exposure criteria that are unrelated to medical and other scientific evidence, including restrictions on duration of exposure, recency of exposure, and whether exposure was in the State where the claim is made. Because such evidence is continually being expanded, schedules of exposure requirements necessary to show that a particular disease is work-related should be kept by the State's panel of experts that determine compensability and should be frequently updated. Time limits within which claims must be filed should start at the time the claimant knows or should have known of the existence and potential compensability of the disease.

Claimants with work-related disease should receive benefits at the

same level and of the same duration as those with work-related injuries. Their benefits should be based on their most recent earnings, or, if the disease has diminished their earnings prior to the claim, on the average of their last five years of earnings.

No waivers of workers' compensation should be permitted for any pre-existing condition when employees are hired. When the exposures which caused the disease have been incurred in the employ of more than one employer, we believe that the most easily administered approach to assessing liability is the "last employer principle." An alternative which has many advantages is to have the State second injury fund contribute toward the benefits. That fund might then levy a special assessment on the former employers of that worker in whose employ he was subject to significant hazardous exposure, apportioning the assessment for the second injury fund according to the exposures received in the course of such former employment.

Finally, we recommend that the Social Security Administration develop the data and analyses necessary to assess the extent to which claims for disability insurance from people with specific diseases are coming disproportionately from certain industries, occupations, or companies. Where this is shown to be the case, legislation should be developed for consideration by the Congress to assess a variable surcharge on the employers' share of the payroll tax to finance this excess incidence of disease.

Income Protection: We recommend that the main focus of compensation for work-related injury and disease should be replacement of a substantial portion of lost earnings. Focus on that objective has been lost in the

present system, partly due to the confusion as to the purpose of compensation for permanent partial disability, and partly due to the great prevalence of compromise and release settlements for the more severe cases.

To provide this focus, we recommend that replacement of wages lost due to any work disability resulting from an impairment be separated from any indemnity which might be paid for impairment — that is any anatomic or functional abnormality or loss after maximum medical rehabilitation has been achieved.

The task force found the system for compensating permanent disability, and particularly permanent partial disability, to be inequitable and to cause great hardship for some claimants while providing windfalls to others. Degree of impairment or impairment modified by other factors such as age and occupation do not seem to be good predictors of the amount of earnings which will be lost.

Loss of earnings may take three forms: a reduction in earnings among disabled persons who are later reemployed, intermittent unemployment, and continuous unemployment. For claimants with reduced earnings but steady employment, long-run supplementation of pay is needed, not benefits defined in terms of weeks of pay. For claimants with intermittent unemployment, the second or third spell of unemployment will likely find the injured worker dependent on other funds. For claimants with continuing unemployment, benefits are likely to be inadequate. Most permanently impaired workers who get back to work on a regular basis, may well return to their pre-injury earnings.

Under present practice, to say that a worker has a 10 percent impairment is not to say that his or her earnings will decrease 10 percent or even

that those earnings will decrease less than those of a worker with a 30 percent impairment. Rather it may be that the worker with a 10 percent impairment has a substantial chance of no loss of earnings beyond the recovery period, and some chance of being unemployed. A worker in this category probably has a somewhat better chance of being employed than one with a 30 percent impairment. Thus, if all workers in a category receive the same settlement, those who subsequently find employment may be overcompensated for their earnings loss, while those who are without employment are undercompensated.

To deal with the problem of the unpredictability of the effects of an injury or disease, we recommend that wage loss be compensated as it accrues. Compensation should continue until the worker returns to his old job, gets another job, or it is determined to the satisfaction of the State workers' compensation agency that he or she is employable but refuses to work. If a worker can only work part-time or at a less remunerative job, benefits amounting to two-thirds of the difference between his new earnings and his old (or the maximum earnings compensable under the State law) should continue to be paid.

In cases of minor impairment, after the worker returns to work at or above his old earnings, the case could generally be closed (subject to reopening) with the permission of the State workers' compensation agency. This would normally be granted routinely unless there were a reasonable chance that the minor impairment would lead to compensable wage loss. However, in cases of major impairment, after the worker returns to work, if he might have trouble getting another job because of his impairment should he become unemployed again, the case would remain open, subject to reacti-

vation upon request of the claimant. In implementing this system, we recommend that the terms permanent partial disability and permanent total disability be eliminated.

Since the principle of substantial replacement of lost earnings as they accrue cannot be met if lump sum or compromise and release settlements occur, we recommend that such settlements be strongly discouraged. If permitted at all, their use should be limited to a very small number of unusual cases, where the agency, carrier, and claimant find substantial benefits for the claimant's future employment and employability would result. This should require written approval by the State workers' compensation agency, following high-level review.

As the National Commission recommended, benefits should be 66 2/3 percent of the worker's wage, up to a maximum of 100 percent of the State's average weekly wage. Because workers' compensation is not a welfare system but social insurance, and because it is given in exchange for the right to tort action, this maximum should continue to increase, as the Commission recommended, up to 200 percent of the State's average weekly wage.

We recommend that long-term wage replacement benefits to disabled workers or survivors be increased annually in proportion to the increase in the State's average weekly wage, and that the pre-injury wage be similarly escalated in all calculations. We urge that State insurance regulatory authorities carefully review and control proposed trend or projection factors in respect to such escalation provisions and that alternative methods of funding increments be explored. This recommen-

dation would apply to all new cases entering the workers' compensation system.

Cases already receiving long-term benefits should also be adjusted to current wage levels. It is difficult to know how the cost of such payments should be allocated, however. States which decide to enact such adjustments, may wish to provide part or all of the funding.

In addition to the wage replacement benefits, we recommend that employers be required to continue to pay Social Security taxes on such wage replacement benefits, and likewise continue to contribute, based on those benefits, to any company or industry retirement plan. At the time of retirement, then, we would recommend that workers' compensation wage replacement be superseded by retirement benefits. If a retiree returns to work, he should be covered by workers' compensation for that job, but should not receive both workers' compensation and retirement income based on the same work experience. Similarly, we recommend that the employer continue any health insurance coverage on the same basis as during employment during the time the employee is without a job which would provide access to group health insurance.

States may also wish to require indemnity to workers for non-wage losses over and above the wage loss compensation discussed above. If so, we suggest that the State set a maximum value on based on "the whole man", and divide that into a ten-point scale according to the degree of impairment. One-tenth of the "whole man" amount would be paid for each point on this schedule. The schedule should be comprehensive, including all injuries and disease that the State decides should be

compensable beyond wage replacement. Because the wage replacement is handled separately, and because we recommend that the maximum amount of indemnity for impairment be kept well below amounts awarded in court cases in instances of tort action for negligence, this schedule, although still based on difficult value judgments, should be easier to construct than current injury schedules.

Recommendations for benefits in instances of work-related death also involve difficult value judgments. On consideration, we recommend that they follow the same general pattern set forth above for wage replacement. The spouse of the deceased worker would receive benefits amounting to 66 2/3 percent of the worker's weekly wage up to the State's maximum benefit. Workers' compensation should also finance any necessary training, placement assistance, or child care to help the spouse find employment, appropriate to the new circumstances, and should supplement the spouse's earnings up to the level of the worker's earnings, as escalated by the State's average weekly wage. In other words, the spouse would receive exactly the same treatment as a worker with a major permanent impairment, including the opportunity to reactivate the case at any time upon loss of employment. This would be an incentive for the spouse to work, but we are not recommending that the spouse be required to work.

When there are young children or other dependents who require care, the spouse would have the choice of continuing to stay home and care for such dependents, or going to work and receiving a supplemental dependent care allowance. The spouse would also receive any indemnity for the whole man that the state may have established. (The difficult problem of benefits to children and other dependents following remarriage of the spouse needs further study.)

Rehabilitation and Re-employment: We believe that re-employment should be regarded as a major goal in workers' compensation and pursued vigorously. Positive steps to help workers return to work, rather than litigation and compromise and release, should be the thrust of efforts to minimize the costs of compensation. The shift to replacement of wages as wage-loss accrues, recommended above, lays the groundwork for this new emphasis. Other recommendations designed to reduce litigation and improve the delivery system will support this new thrust.

We recommend also that the carrier/employer have the primary responsibility for developing and implementing a physical and/or vocational rehabilitation plan for any claimant whose prospect for re-employment and return to former earning capacity would be thereby significantly improved. The carrier/employer should be fully liable for all rehabilitation costs, including maintenance and necessary travel and expenses.

The State workers' compensation agency should oversee rehabilitation and re-employment. It should be responsible for screening injury reports, physician's reports, periodic reports of continuation or resumption of wage replacement benefits, and case re-openings. It should encourage rehabilitation, review plans which are filed, resolve disputes between carriers/employers and claimants as to what constitutes appropriate rehabilitation, and, when the carrier/employer is unable to develop a suitable plan, refer the case to the State vocational rehabilitation agency, with the costs charged to the carrier/employer.

The key element is re-employment itself. We recommend that employers make every effort to rehire the employee on the same job, an equivalent job, or a job within the capacities of the worker, if such jobs are reason-

ably available, or to give the employee priority if such job becomes available. When a job with the same employer is not available, the employer and carrier should help the employee to find a job elsewhere. Whenever possible, it may be desirable to identify the job into which the employee will be hired prior to starting vocational training. Possibilities for job redesign to fit the capacities of the impaired worker should also be considered. Discharge or discrimination against workers who file a workers' compensation claim should be prohibited.

In support of re-employment, we recommend that all States have broad second injury funds, not limited to specific impairments or to persons whose impairment before employment or re-employment was severe or major. These second injury funds should be widely publicized and adequately financed, and should be actively coordinated with efforts to place workers' compensation claimants.

When a worker with temporary disability is not rehired or given a bona fide job offer, he should receive placement assistance and up to 60 additional days of workers compensation, provided he is actively engaged in job search. He may choose between workers' compensation and unemployment insurance, but in no case should he recieve both. In cases of permanent disability, where the injury appears to have a minor effect on employability, three months of stable employment should be required before the carrier/employer can petition the State workers' compensation agency to close the case. As recommended above, all cases of permanent disability, where it appears that the disability would have a significant effect on employability if the worker were to become unemployed should be subject to reactivation whenever the worker loses a job and is unable

to find a new one because of his impairment. We recommend that State agencies have simple procedures for status change within an open case (i.e., reducing wage replacement if the worker gets a part-time or lower paying job, eliminating them if he is hired at the pre-injury wage, or re-starting them if he becomes unemployed) that would minimize use of formal hearings. Notice should be sent to the agency for review, but no prior approval should be required unless the claimant objects to the change.

The benefit recommendations we have made provide workers with incentives to return to work, both because benefits do not replace all of lost earnings and because we recommend that workers be permitted to keep one-third of a dollar of benefits for each $1 of earnings up to the worker's former earnings. However, when suitable employment is available, if the employee refuses to return to work, the carrier/employer should be permitted to petition the State workers' compensation agency for permission to end wage-replacement benefits.

Safety: The first line of defense in containing the cost of workers' compensation -- even before the effort to rehabilitate and re-employ workers -- is the prevention of injuries and illness. Workers' compensation, improved in accordance with our recommendations, would support this goal by internalizing the costs of work-related accidents and disease, and by properly rating employers. These costs provide financial incentives for employers to seek ways to make the workplace safer and more healthful -- to invest in safer machinery, provide protective equipment, train workers in proper proceedures, reduce exposures to hazardous substances,

and even change the method of production or the product itself.

In principle, to the extent that the costs of accidents and illness are not internalized in the costs of production, employers will under-invest in safety and health. Moreover, again in principle, internalizing costs should be one of the best ways of encouraging prevention, because the effect is to leave the employer free to decide on the best methods of prevention and thereby to encourage innovation which may develop methods more effective than any of the current means of prevention.

In practice, it is not known how effective such incentives are. One argument has been that so little of the current cost of work-related injuries and disease is now internalized, that the workers' compensation premium rates are below the "attention threshhold" of many employers. Our recommendations on coverage of all employees, effective coverage of occupational disease, compensating wage loss as it accrues, and increasing maximum benefits should go far to correct this problem.

Experience rating should be extended to small as well as large firms. In addition, we recommend that both premium rates and dividends be related to the safety, health, and re-employment experience of the employer. The replacement of lost wages as they accrue makes the relevant experience automatically net of success in re-hiring or placing workers. Dividend payments should reinforce this by rewarding those employers with improvements in safety and/or good re-employment records.

Insurers should also increase their assistance to employers in the area of prevention. Employers should receive copies of the survey of the workplace at the time the insurance contract is drawn. And the insurance industry is in a position to do more analysis of accident and disease pat-

terns, and provide this information to employers.

The Occupational Safety and Health Administration can supplement these prevention incentives and activities in several key ways. OSHA can focus its inspections on those employers who have a particularly poor prevention record, pulling down the experience for that industry. And OSHA can give particular attention to hazardous substances which may result in long-latency diseases, where the unknown magnitude of the problem or the conversion to present-value, tend to undermine the prevention incentives inherent in workers' compensation.

Although we did not substantively address the relationship of workers' compensation to product liability and other third party problems, we believe the relationship needs further examination. This view is shared by some of the participants of the Interagency Task Force on Product Liability, who believe that a significant part of the product liability problem could be addressed by improvements in the workers' compensation system. The Product Liability Task Force will release its final report within the next few weeks.

Delivery System: Many of the recommendations we have made with respect to the other objectives of the system are expected to improve the delivery of workers' compensation. The separation of wage replacement from other compensation, and the payment of wage replacement as it accrues should simplify the determination of the amount of benefit payable. The National Commission recommendation, which we strongly endorse, that both compromise and release settlements and lump sum payments be strongly discouraged and subject to approval by the State workers' compensation agency, should help to ensure that the wage replacement objective is met. The separate and simplified scales

for indemnity of impairment should make the determination of such benefits easier and more equitable.

The recommendation that extraneous requirements for the determination of the work-relatedness of disease be removed, the specific statement of the criteria for work-relatedness, the increasing research in disease etiology and epidemiology, and the proposed determination of the compensability of occupational disease by State panels of experts should make such determinations more equitable and, we hope, simpler.

We hope that the above recommendations will discourage litigation over the extent of disability and over compensability of disease. We further hope that energies devoted to cost containment in the system can be harnessed toward the socially desirable objectives of re-employment and improving the safety and healthfulness of the workplace. The incentives for this shift are provided by linking both experience rating (automatically) and dividends (by discretion) to these objectives.

To further improve the promptness of benefits, and to clear small medical-only and short-term cases from the workers' compensation system, we recommend that State agencies encourage employers to self-insure or merge with non-work-related coverage, the first few hundred dollars of medical coverage and the first few days of illness. Judging from experience with non-work-related benefits, such cases can be effectively handled by the employer himself. If the limits are low, assurance of reliability of the coverage would not need to be as stringent as for employers who self-insure all or most of their workers' compensation liability. Any case which went beyond the dollar and/or time limits, or in which the claimant requested such protection could be immediately

reviewed by the State agency. In all other cases, only the usual accident reports would be filed.

We further recommend that State agencies explore the possibility of permitting employers with extensive fringe benefits to combine their work-related and non-work-related medical and/or wage replacement coverage. Such combination would require the employer to prove to the State agency that the workers' compensation protections had been provided, and would probably require special assurance of follow through for long-term benefits and long-latency disease manifest after the employee may have left the firm. On the other hand, we recommend that employers who self-insure should be required to carry insurance on excess risk, and perhaps to contract claims management and adjustment for long-term cases. Oversight of self-insurers is necessary, and perhaps they should be encouraged to reserve their liability by a tax credit such as that for insurance carriers.

We believe that it is vitally important for State agencies to take a much more active role and to considerably strengthen their administration of workers' compensation. Included in this recommendation are the following:

— State agencies should mount a vigorous program to inform workers, employers, insurers, physicians, and others about the workers' compensation system, including their rights and responsibilities,

-- State agencies should identify firms that do not have satisfactory workers' compensation coverage and bring them into compliance,

-- A State fund should be available to provide hard-to-get coverage and guarantee benefits against lack of security or bankruptcy,

-- A State panel of experts would determine the compensability of work-related disease,

-- A unit should be established within the State agency which would initiate contact with the worker on the first report of injury or illness, provide him with information on the system, help him to file his claim, and repeat contact to see whether he needed further help,

-- The above unit should be available by telephone to answer any queries about the system, and should have ready access to information about specific cases in order to provide prompt specific answers,

— Carriers/employers should be required to begin payment within 15 days or to send the State agency an explanation for the delay,

— If a hearing is requested or necessary, it should be held within 45 days from the time of the accident, unless the State agency grants an extension,

-- Carriers/employers should be able to begin payment of workers' compensation claims immediately, subject to agency review,

-- Changes in status should also be on a notice-and-review basis unless the claimant wishes pre-review or the status change is a case closing,

-- Legal fees should be regulated, and generally should be based on work done; agencies should review the appropriateness of contingency fees to a system replacing wages as wage-loss accrues,

— In cases of frivolous defense, legal fees and/or penalties should be assessed against the carrier/employer, which should not be included in the experience base for rate-making,

-- The State agency should also review medical care, physical and vocational rehabilitation, and re-employment plans and issues, and help the worker to make informed choices among services,

— State agencies should cooperate with State and Federal safety and

nealth agencies in identifying hazards and improving prevention, To finance this more active role for the State workers' compensation agencies, we recommend that all taxes on workers' compensation premiums and on self-insurers be reserved for financing the administration of the system, and not be returned to general revenues.

We recommend that State workers' compensation agencies take strong steps to develop information systems that will provide the information necessary for good management. We also recommend that the long-run goal be to develop a single information system that will meet the needs of both workers' compensation and the Occupational Safety and Health Act.

As intermediate steps, we recommend that the Basic Administrative Information System developed by the International Association of Industrial Accident Boards and Commissions and the Model Data System developed for the task force be reviewed to reach a concensus on common definitions and uniform basic tabulations. We also recommend that the Federal Government fund pilot projects in three States to establish an MDS system. All States should be encouraged to initiate an MDS system combining workers' compensation and OSHA data after the pilot projects have refined the system.

Program Interrelationships

We recommend that workers who apply for Social Security disability insurance and who are recipients of workers' compensation benefits be permitted to receive the higher of the two benefit levels, but not more than they would receive on one program alone. If the disability insurance payment is higher, workers' compensation benefits should be supplemented up to the level the worker would get on disability insurance alone.

We recommend that survivors in cases of work-related death who apply for Social Security survivor's benefits similarly be permitted to receive the higher of the two benefit levels, but not more than they would receive on one program alone. If the Social Security benefit is higher, workers' compensation should be supplemented up to the level the survivors would get on Social Security alone.

We recommend that unemployment compensation not be available to recipients of workers' compensation wage replacement benefits and vice versa.

In the long-run, we recommend that workers' compensation wage replacement benefits be superseded by Social Security and other retirement benefits at the age of 65. In preparation for this, we have recommended that employers continue to pay Social Security taxes on workers' compensation wage replacement benefits. The question of who should pay the employee's share must have further study. For the present, we recommend that Social Security retirement benefits be supplemented by workers' compensation up to the level of the workers' compensation benefits alone, if those benefits are higher. The full change-over should take place when those who have had Social Security and other retirement contributions paid on their workers' compensation benefits reach the age of 65. Retired persons who return to work should be covered by workers' compensation, but should not be able to receive both benefits based on the same work experience.

Implementation

The Policy Group of the Interdepartmental Workers' Compensation Task Force believes that the problems in workers' compensation are due as much to the structure and management of the system as they are to the adequacy of benefits. More and more may be less the answer than better and better. This is in contrast to the National Commission which emphasized the importance of improving benefit levels and extending coverage to uncovered workers. Although we concur with the thrust of the nineteen essential recommendations of the National Commission, we believe it is time to move beyond these recommendations and endeavor to improve the efficiency of workers' compensation programs, and their effectiveness in attaining their fundamental objectives.

Perhaps the most important of our recommendations is that the administration of the system by State agencies and carriers must be strengthened. This is prerequisite to our most fundamental recommendation: refocusing the system on wage replacement benefits for permanently impaired workers and placing greater emphasis on rehabilitation and re-employment.

We see an important Federal role in implementing the recommendations in this report. We recommend continuation of a Federal Interdepartmental Policy Group to analyze and monitor State programs and to undertake additional research. We recommend a strengthened technical assistance role by the Labor Department to assist States in improving their programs with special emphasis on improving

administration in order to take on some of the additional burdens which we are recommending. Another responsibility of the Policy Group would be to facilitate public discussion of this report, as well as the final research reports, and make further recommendations.

We expect also that the Federal Government will give assistance to States in implementing a wage replacement approach to paying benefits. Improved State administration will be necessary if these models are to be feasible. As more States focus on actually measuring and replacing wage losses, their experience should be made available to other States through Federal technical assistance. Federal financial assistance should be made available to assist States to adopt improved data systems and to improve the administration of their programs.

In case of those States which are not ready at this time to go completely to a wage replacement system, we believe there are beneficial interim steps that should be taken which can later integrate into a future complete wage replacement system. Some of those interim steps are:

- § Active case management, particularly for severe injury and disease cases,
- § Implementation of a more complete data system,
- § Reduction in the number of lump sum settlements, and compromise and release agreements
- § Reducing the impact of litigation through regulation of legal fees and severe restriction of contingency fees,

- § Focus on re-employment of injured and diseased workers, preferably with their previous employer,
- § A more discriminating experience rating system taking into account reemployment history as well as safety,
- § Better information for use by State medical panels of experts for determining compencability of occupational diseases,
- § Extending coverage to as many workers as can feasibly be handled administratively,
- § Integration of workers' compensation with our other social insurance systems, thereby better internalizing in workers' compensation the costs of accidents and injuries, and reducing the burden on the other systems.

Adoption of the recommendations in this report will require increased attention to the administration of the system and probably increase State administrative costs. We recommend that administrative costs be financed by a tax surcharge on workers' compensation premiums or their equivalent in the case of self-insurers. In many States, considerable revenue is derived from these means; however, these revenues are sometimes added to the general revenues of the State.

The intent of the recommendations in this report is to correct serious deficiencies in workers' compensation. They represent a challenge, yet one that must be met if the system is to achieve its objectives. We hope and expect that the insurance industry will rise to meet the challenge, and work cooperatively with the States in improving the system. If workers' compensation is to move toward greater equity,

greater efficiency, and more complete coverage for those [redacted] injured and diseased from their work, cooperation among the Federal Government, State governments, and the private sector will be necessary.

THE COMMISSION

John R. Reiser was appointed chairman of the Nevada Industrial Commission on February 1, 1972. A native of Madison, Wisconsin, he received a bachelors degree from Arizona State University, Tempe, Arizona, and a masters degree from the University of Pennsylvania. He had also received the Chartered Life Underwriter designation. His University of Pennsylvania graduate studies were completed under a S.S. Heubner Foundation Fellowship.

He worked in the insurance industry as a claims adjustor for General Insurance Company of America, Temple City, California; in the rating department for the Hartford Insurance Group, Phoenix, Arizona; and as an actuarial analyst for the State Compensation Fund of Arizona.

The Chairman of the Commission has served as a member of the Board of Graders, as editorial consultant, and as director of curriculum development for the American College of Life Underwriters. He was assistant professor of insurance and finance at the University of Nevada, Reno, at the time of his appointment as Chairman of the Nevada Industrial Commission.

Claude S. "Blackie" Evans was appointed Commissioner Representing Labor on September 16, 1971 and reappointed on September 16, 1975. A native of the mid-west, he was born in Joplin, Missouri and came to Nevada after graduating from high school in Galena, Kansas in 1953. An 18 year employee of Titanium Metals Corporation of America, at Henderson, Nevada, he had achieved the position of training operator at the time of his appointment to the commission.

He has served the United Steel Workers of America, local 4856, in all capacities from committee member to president. He was elected Vice President in 1962 and President in 1963, 1965, 1967 and 1970. On the International Union level, he has held the positions of Organizer and Coordinator of District 38 (15 Western States). In 1968, he was appointed to the AFL–CIO Committee on Political Education.

James S. Lorigan was appointed Commissioner Representative of Employers on August 1, 1973. Commissioner Lorigan is a native of San Francisco, California. He is a graduate of St. Mary's College in California. He has been engaged in the insurance industry for 30 years.

His insurance experience began in 1946 as a claims adjuster for Farmers Insurance Group. In 1949, he became Assistant Claims Manager; in 1953, Branch Claims Manager; and in 1967, he became an agent and broker for Farmers Insurance Group.

He is past President, Reno Claims Association, Charter President of Reno Traffic Survival School, and Northern Nevada Chairman of Western Insurance Information's Speaker's Bureau. He has also served as President of the Nevada Safety Council. He and his family have been residents of Reno, Nevada since 1956.

Commission Office Phone Numbers
(Area Code 702)
Carson City: 885-5245

Las Vegas: 457-0353

THE FUND

The Nevada Workmen's Compensation Act, Chapter III, Statutes of 1913, was passed and approved on March 15, 1913. The act was elective to every employer in Nevada, including state, county, municipal corporations, school districts and city governments. Any employer who rejected the provisions of the act was deprived of the common law defenses. Workmen's compensation became compulsory in Nevada in 1947.

The Nevada Industrial Commission is an exclusive state fund directed by three commissioners, each appointed for a term of four years. The commissioners are responsible for the administration of the Nevada Industrial Insurance Act (NRS 616), the Nevada Occupational Diseases Act (NRS 617) passed in 1947, the Nevada Occupational Safety and Health Act (NRS 618) passed in 1973, which supersedes the Nevada Safety Act of 1955, and the State Mine Inspectors Act (NRS 512).

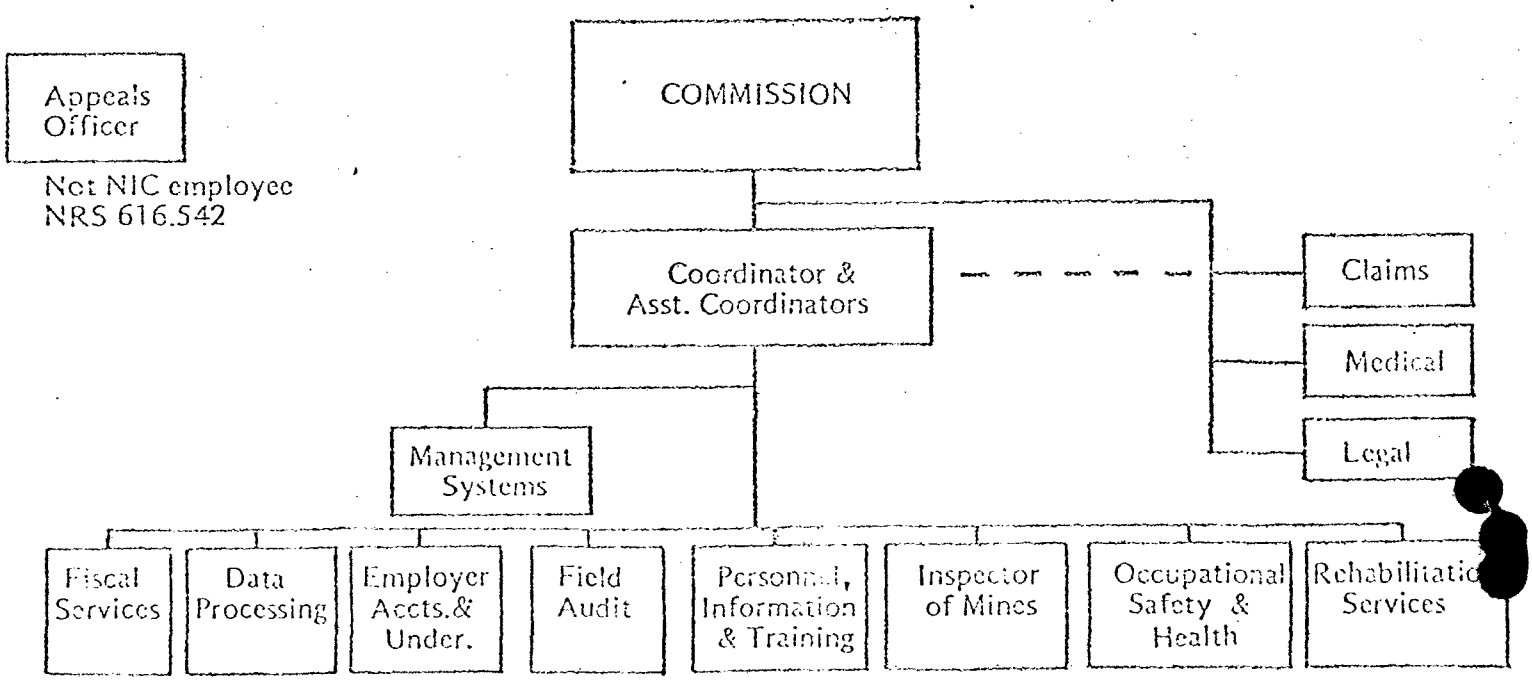
In addition to directing the operation of the agency, the commissioners are responsible for investment of NIC funds, establishment of premium rates, supervision of the adjudication of claims, and functioning as the appellate board at the first level of appeal beyond the claims department. An appeals officer, provided for by Section 616.542 of the Nevada Industrial Insurance Act, serves as the claimants' final appeal under the Nevada Administrative Procedures Act. Judicial review is limited to evidence presented to the appeals officer.

THE OPERATING INFORMATION

Premium

Premium income for the fiscal year ending June 30, 1976 totalled $53,626,736. There were 16,186 insured employers at the end of fiscal 1976.

NEVADA INDUSTRIAL COMMISSION



Claims Experience

The number of claims registered in FY 1976 (41,932) represents a 13.6 percent increase over the previous year's 36,926. Benefit expenses incurred amounted to $53,294,980 in fiscal 1976. Claims adjustment procedures are performed in the Carson City and Las Vegas offices.

Premium Rates

Premium rates are established by the Nevada Industrial Commission and are reviewed annually by an actuarial consulting firm. The loss experience of all policyholders in an industry classification is compared with the premium paid. The rate level for each industry classification is then adjusted so that earned premium will approximate the expected claim and administrative expense chargeable to the classification during the coming year.

Merit Rating

NIC policyholders whose average monthly premium amounts to $120 or more are included in the experience rating plan. The modification factors derived from the plan are used to modify the manual rate paid by individual policyholders and can range from a 40 percent credit to a 40 percent debit rating.

Investments

Broad investment authority is conferred upon the Commission by statute. A nationally recognized investment manager is retained to manage the investment program and the Commission's independent consulting actuary prepares quarterly reports to assist the Commission in measuring the effectiveness of the investment program.

Benefit Levels

The benefit structure is based on the average monthly wage. The benefit rate is adjusted annually. Maximum compensation for temporary total or permanent total disability or death is 66 2/3 percent of the "average monthly wage." "Average monthly wage" means the lesser of the monthly wage actually received by the employee on the date of accident or illness or 150 percent of the state average monthly wage. In fiscal 1977, the state average wage is $807.33, the maximum considered wage is $1,211.00 per month and monthly maximum compensation is $807.33.

Adjudicating Authority

Claims examiners have the authority to act as settlement officers for permanent partial disability. A hearing examiner within the Claims Department hears all cases which examiners are unable to settle. Appeals from Claims Department dispositions are heard first by the Commission, and if not resolved are then heard by the Appeals Officer. The Appeals Officer is appointed by the Governor and is independent from the Nevada Industrial Commission. His decisions are binding on the Commission. Appeals of his decisions are limited to judicial review of the records.

ACCIDENT PREVENTION

The Nevada Industrial Commission administers the Nevada Occupational Safety and Health Act of 1973. The 41 employees who work in the Department of Occupational Safety and Health are employees of the Nevada Industrial Commission. The department exercises policing and enforcement powers and offers consulting and training services to employers upon request.

The office of the State Inspector of Mines became a department within the Nevada Industrial Commission in January 1975.

REHABILITATION

Provision of rehabilitation services as a workman's compensation benefit was made possible by the 1973 legislature. The Department of Industrial Rehabilitation was organized within the Nevada Industrial Commission effective July 1, 1973 and is operating statewide with administrative personnel in the division located in the Commission Offices in Carson City and fully operable rehabilitation units in Reno and Las Vegas offices of the Nevada Industrial Commission.

A master plan for a Physical Rehabilitation Center has been developed for construction in Las Vegas. A location has been acquired and construction is in progress. Completion date is April 1978. A rehabilitation clinic will also be operable in Washoe Medical Center in Reno in 1976.

The Physical Rehabilitation Center is a new service to the workers of Nevada initiated and operated by the Nevada Industrial Commission as a part of its insurance program.

The new center will be designed to service medical and therapeutic programs developed to reduce the physical and psychological effects of disabling occupational injuries, and to provide workers having occupational handicaps with new adaptive vocational skills that can provide meaningful employment and economic security.

MEDICAL-LEGAL

The Nevada Industrial Commission employs a Chief Medical Advisor and four Medical Advisors who act as medical consultants to the Commission and Claims Department. The medical advisors assess residual disability for all awards.

Legal work for the Nevada Industrial Commission is executed by three attorneys employed by the Commission.

NIC GROWTH

Growth within the Nevada Industrial Commission has been steady. There are more than 16,500 policyholders at the present time. Underwriting and industry classification are responsibilities of the Employer Accounts Department. The Field Audit Department audited approximately 40 percent of the insured employers in the past fiscal year. The NIC Data Processing Department is now in a major system overhaul including data base management that will implement teleprocessing in each NIC department.

The Commission now has 348 employees. A Personnel Officer was employed in 1975. His department, which absorbed the Information and Training Department is now responsible for Personnel, Public Relations and Training services.

CHUCK WHITE, NEVADA FARM BUREAU

BOB PETRONI, ATTORNEY AT LAW

GLEN TAYLOR,

BOB GUINN, NEVADA MOTOR TRANSPORT (retired)

DARYL CAPURRO, NEVADA MOTOR TRANSPORT

ROWLAND OAKES, ASSOCIATED GENERAL CONTRACTORS

WALLIE WARREN, FIRST NATIONAL BANK

WILLIAM CAMPBELL, RESORT OWNERS ASSOCIATION

E. D. BLACKBURN, TITAMIUM METALS CORPORATION

BILL GIBBENS, GIBBENS COMPANY

BUD MENELEY, CORROON & BLACK/MENELEY & AMES

PETER CHASE NEUMANN, ATTORNEY AT LAW

WARREN GOEDERT, ATTORNEY AT LAW

DON HILL, HARRAHS

JOHN GIANATTI, HARRAHS

FISCAL NOTE

BDR 53-444
A.B.
S.B. 19

Date Transmitted November 26, 1976

STATE AGENCY ESTIMATES

Date Prepared November 26, 1976

Agency Submitting Nevada Industrial Commission

Revenue and/or Expense Items	Fiscal Note 1976-77	Fiscal Note 1977-78	Fiscal Note 1978-79	Continuing
There is a potential for added cost to the Nevada Industrial Commission and the employers of Nevada of in excess of $4,000,000.	See Explanation			
Total				

Explanation (Use Continuation Sheets If Required)

A California Supreme Court decision, Witt v Jackson 366 P. 2d 641 holds that if the worker's employer is contributorily negligent in an accident involving a negligent third party, that it will be imputed to the employer's worker's compensation insurer to deny the insurer the right to reimbursement from any recovery from the negligent third party. The Witt v Jackson rationale if applied in Nevada, would defeat NIC's lien on any third party recovery if any negligence could be attributed to the employer.

The proposed revision to the statute would specifically deny the applicability of the Witt v Jackson doctrine in Nevada worker's compensation cases.

(Next Page)

Local Government Impact YES ☐ NO ☐
(Attach Explanation)

Signature John R Reiser

Title John R. Reiser
Chairman

DEPARTMENT OF ADMINISTRATION COMMENTS

Date

Signature

Title

LOCAL GOVERNMENT FISCAL IMPACT
(Legislative Counsel Bureau Use Only)

Date

It is not possible to precisely define the financial impact if Witt v Jackson were applied to all subrogated cases. However, as of June 30, 1976, the incurred cost of worker's compensation claims which involved a third party and on which NIC had invoked its right of subrogation amounted to $4,370,061. The valuation of the cases involving subrogation increases annually as compensation benefit levels and claim volume increase.

2 / (John Reiser
2 C 3

WORKER'S COMPENSATION
RECOMMENDED BY THE NEVADA INDUSTRIAL COMMISSION

You are invited to address any questions regarding the proposed legislation to John Reiser, Chairman of the Nevada Industrial Commission, telephone 885-5284, 515 East Musser Street, Carson City, Nevada 89714.

The following legislative proposals will not generate any additional premium rate increase to employers.

Definitions - NRS 616 - Nevada Industrial Insurance Act
NRS 617 - Nevada Occupational Diseases Act
NRS 618 - Nevada Occupational Safety & Health Act
NRS 512 - State Mine Inspector
NRS 624 - Contractors

PROPOSED AMENDMENTS TO EXISTING STATUTES

NRS 616 (1) and 617 SB 3 — Temporary limited appointment of handicapped persons. Authorizes NIC to certify handicapped person for temporary limited appointments in state employment. (A rehabilitation tool)

NRS 616 (2) SB 4 — Hernia
Eliminates special provisions relating to hernia. Hernia will be treated as any other job related injury.

NRS 616 (3) SB 5 — Time Deposits
Clarifying language regarding types of securities which NIC may accept in lieu of cash for advance premium deposits. Adds Time Deposits in Nevada banks as an additional category.

NRS 616 (4) and 617 SB 6 — Subpoenas
Clarification of the language relating to NIC's authority in issuance of subpoenas.

NRS 616 (5) and 617 SB 7 — This bill extends compulsory industrial insurance and occupational disease coverage to agricultural employment. (To fulfill one of the essential recommendations of the National Commission on Worker's Compensation.)

NRS 616 (6) SB 8 — Regulation of Uninsured Employers and Medical Care Fees. Clarifying language regarding the Commission's right to recover from an uninsured employer, compensation paid on behalf of a worker injured in his employ. (Purpose: To recover costs from responsible party, rather than finance them from insured employers' premiums.)

Clarifying language regarding the NIC's authority for regulation of medical fees. Specifies that medical provider has recourse against only NIC, not the claimant, for any differences between the amount billed and the amount paid based on NIC's fee schedule.

LEGISLATIVE COUNSEL BUREAU

DAIRY COMMISSION REPORT

TABLE OF CONTENTS

INTRODUCTION

The purpose of this report is to examine the purpose and functions of the Nevada State Dairy Commission and its influence on the dairy industry in providing milk to Nevada consumers.

The marketing of milk is perennially beset with problems even though many of the current problems may not be the same as those when the Dairy Commission was initiated.

Much of the pro and con discussion of the need for passing new laws or abolishing old ones has been based too often on emotion or limited information to be valid for long-run public policy.

Specifically this report will deal with such concerns as:

1. What conditions existed that established the Dairy Commission in Nevada?
2. What is the purpose and functions of the Dairy Commission?
3. Has this agency affected efficiencies in milk production, milk distribution or has it perpetuated inefficiencies?
4. Has the Commission stabilized milk markets and stimulated adequate milk supplies for consumer needs at a fair price?
5. Recommendations and suggestions regarding improvements in regulating the dairy industry in Nevada.

WHY REGULATE MARKETS FOR MILK?

1. Some peculiarities of milk

The production and marketing of fluid milk has certain peculiarities that require special attention.

Price controls in the fluid milk industry are usually justified on the basis that conditions in the industry are such that, in the absence of price controls, the industry would be characterized by excessive price instability, causing both producers and consumers to be subjected to high risk and uncertainty.

Two important conditions, relate to the peculiar nature of the supply and the nature of the product itself. Milk moving off the dairy farms is coming from cows that must be milked twice a day. Thus there is a daily, unrelenting supply of milk which must be moved through marketing channels to the consumer's table. Further, milk is bulky and highly perishable. It cannot be stored for any period of time and because its production cannot easily be turned off and on to fit the demand, the marketing system frequently often runs into trouble with milk prices.

On the demand side, milk is considered an essential food by most families. Consumers spend more than $21 billion a year on milk and dairy products or about 13% of their total food budget. Consumer demand rises and falls from day to day and from season to season. Milk consumption increases in the fall and winter and decreases in the spring and summer. This demand is just the reverse of the high and low seasons for milk production. Such conditions are highly conducive to an unstable market which cause wide fluctuations in milk prices. The instability in the market works an unnecessary hardship on those who depend on milk for a living and those who depend on it for food.

Other conditions of the fluid milk industry that justify price control relate to the structure of the industry. There are, for example, a large number of milk producers compared to a relatively small number of large milk processing firms and supermarket chains which, in the absence of effective controls, could exploit their position in the market at the expense of the many small producers and consumers.

By reason of the above conditions, the U. S. dairy industry has a long history of price controls. Currently, about 80 percent of the fluid grade milk moving into processing plants is regulated by Federal Milk Marketing Orders. Nearly all of the remaining milk is regulated by one of the 18 State Marketing Orders. In some states such as Nevada, both the Federal Marketing Order and the Nevada State Dairy Commission function.

It must be noted the salient feature of any milk price control is to stabilize milk marketing. The ultimate objective is (a) provide a reasonable return to the producer in relation to prevailing economic conditions and, (b) assure consumers of an adequate supply of wholesome milk at reasonable prices.

It is well accepted by many that the use of price controls have contributed to these goals. But price controls improperly set or administered can also produce such negative effects in (a) stabilizing prices at levels higher than justified, (b) encouraging small and inefficient producers and processors to remain in business. While these are difficult to evaluate, hopefully this report may be helpful. Is there a need of some form of price control in Nevada - to assure a viable dairy industry in the state to supply wholesome milk at a reasonable price to Nevada consumers.

2. Conditions within Nevada that brought about the Nevada State Dairy Commission

The dairy industry in Nevada is essentially located in three distinct geographic areas. Each exist as an unrelated area to the others. All areas are and have been fluid milk markets. These geographic areas are:

Western area - Reno milkshed with dairy farms principally located in Churchill, Douglas, Lyon and Washoe counties.

Southern area - Las Vegas milkshed with dairy farms located in eastern Clark County and Lincoln County.

Eastern area - Elko-Ely milkshed with a small number of dairy farms located in Lund, White Pine County.

One of the conditions that affects the dairy industry in Nevada is its size - its scale of operations within each area. In 1959, shortly after the Milk Commission began to set milk prices, the total annual yield of 110 million pounds of milk represents a fairly small market as compared with several of Nevada's adjoining state market areas. Further, only about 31,000 gallons of milk were sold per day as Class I milk which was processed and distributed by 15 different plants. By any measure a small industry, but important in that it supplied milk to the Nevada consumer and was an important economic asset to the rural counties in which milk was being produced.

The following table gives some information relative to size and characteristics in 1959 and 1976.

	Western Area		Southern Area		Eastern Area	
	1959	1976	1959	1976	1959	1976
No. Producers	113	49	37	13	14	7
No. Processors	10	5	4	3	1	0
Estimated Class I Sales (Gal/day)	14,000	21,250	15,500	30,000	1,170	2,115
Retail Price - 1/2 Gal. Homo.	.50	.72	.50	.72	.56	.79
Producer Price (Class I)	5.36	9.48	5.60	9.48	5.74	10.74

(Data obtained from Nevada Milk Commission)

In any milkshed there is always a large number of producers and a relative small number of processors. The pasteurization and bottling and distribution of milk are operations that require large investments in machinery and equipment. With fixed costs making up a large share of total costs, the economies of scale in these operations are significant ("Marketing Margins in Costs for Dairy Products," U.S.D.S. Technical Bulletin 936 1946).

In an "uncontrolled market" this degree of concentration provides milk processors certain advantages. Because they are few in number, they are able to set price to

producers and hence have a bargaining advantage. The small volume market and the necessary plant volume of milk needed to offset high fixed plant costs served to intensify competition between processors. Under such conditions many processors provided rebates, discounts, or other incentives as a normal business method to obtain a greater share of the market. Retail business through stores and restaurants as well as supplying dairy products to schools, institutions and government bases were awarded to the processors providing the largest discount. As the volume of business of the individual processors business ebbed and flowed depending on their ability to undercut competition, so did the price of milk paid to the producer. Each processor regulated his supply of milk to meet demand by adding or dropping producers overnight.

Marketing conditions were very competitive and unstable. Producers had to accept the price offered or dump their milk. Supply and demand for fluid milk was out of balance and the producers who had recently been required to invest heavily in new dairy barns and equipment to meet more stringent Nevada State Health requirements, faced economic disaster. Processors under such conditions also found the business to be unsettled. Further the price of milk paid by the consumer was about twenty cents per quart which was comparable to other markets outside Nevada.

This was the general economic environment of the dairy industry in the fifties. A classic example of the need to provide some control to the milk market. The dairy producers, in order to achieve some stability, were instrumental in seeking the help of the State Legislature. As a result, legislation was passed in 1955 and amended and revised in 1957 (NRS 584.175 to 584.179 and 584.325 - 584.690 inclusive) to establish the Nevada State Dairy Commission. The historical basis for the Commission was to achieve among other objectives, the following:

(1) To insure an adequate supply of wholesome milk at competitive consumer prices.

(2) To maintain an economically sound dairy industry and maintain channels for orderly marketing.

The Legislature chose to recognize the business to be of public interest (NRS 584.395) and stated accordingly.

(1) Fluid milk and cream are necessary articles of food for human consumption.

(2) Production and maintenance of an adequate supply of healthful milk of proper chemical and physical content free from contamination and vital to health and welfare.

(3) Production, transportation, processing, storage, distribution or sale of fluid milk and cream in the State of Nevada is an industry affecting public health and welfare.

(4) It is the policy of this State to promote, foster and encourage intelligent production and orderly marketing of commodities necessary to its citizens including milk and to eliminate speculation, waste and improper marketing, unfair and destructive trade practices and improper accounting for milk purchased from producer.

The policy was to be accomplished by the Nevada State Dairy Commission, composed of nine members representing consumers, retailers, processors and producers. The Commission was empowered to develop methods and procedures to achieve the objectives. The basic tool used to accomplish the objectives is setting of prices - at the producer, processor and consumer level. Currently the presumption seems to be that the issue of price is the singular ultimate concern of the Dairy Commission rather than as a means to achieve an adequate supply of milk for consumers with a fair return to producers, processors and retailers.

The purpose of this report is to examine the dairy industry to determine - (1) does the Nevada State Dairy Commission serve the purpose for which it was established, (2) what functions should the Commission carry out, and (3) what recommendations or suggestions are to be made that would help a state regulatory agency to be more effective in Nevada.

1. Dairy Producers and the Nevada State Dairy Commission

Milk must be produced before it can be consumed. It must be produced efficiently. It must be produced in sufficient supply to meet consumer demands. It must be produced so that it is wholesome and of high quality. It must bring sufficient economic returns to the producer. The production of an adequate supply of wholesome milk is basic to an efficient dairy industry and to help meet the nutrition needs of the general public.

It may be too simplistic to examine the production of milk as an independent element of the dairy industry. It is understood the strong interdependence of the producer, processor, retailer and consumer - what affects one has a resultant effect on the others. However, there are certain conditions and situations that directly affect the producers and only indirectly affect the other segments.

2. Efficiency of Producing Milk In Nevada

When the Dairy Commission was established it was clearly stated that the price paid to producers should not be set so high to encourage the inefficient producer to stay in business. Further, the method to determine production costs should be sound and appropriate and must be representative of sound dairy production management. If not, a higher price for milk will result which would be detrimental to the entire industry and result in a higher price to the consumer.

The gross efficiency of producing milk in Nevada can be measured by the effect on the number of producers, number of dairy cows, production of milk per cow and the total milk produced in Nevada during the past twenty-five years. This information is presented in Table I.

TABLE I

NEVADA MILK PRODUCTION DATA 1950-74

Year	Number Producers	No. Cows Milked	Lbs. Milk Per Cow	Milk Production (Million Lbs.)
1950	354 [1]	15,000	6,050	91.0
1955	232	14,000	6,240	87.0
1959	164 [1]	15,000	7,330	110.0
1963	134	14,600	8,360	122.0
1964	128 [1]	14,000	9,220	129.0
1965	120	13,900	9,640	134.0
1966	112	13,400	10,000	134.0
1967	104 [2]	13,500	9,930	134.0
1968	100	13,700	10,020	137.0
1969	96	13,800	10,072	139.0
1970	91	13,900	10,216	142.0
1971	86	13,900	10,144	141.0
1972	82 [2]	14,000	10,362	143.0
1973	78 [2]	13,900	10,435	144.0
1974	72	14,000	11,929	167.0

Source: Milk Production 1955-74, U.S. Department of Agriculture, Statistical Reporting Service

1) U. S. Census Data

2) Nevada State Dairy Commission Data

The number of producers in Nevada since 1950 show a dramatic decline from 354 to 72 producers in 1974. The information also indicates that the number of dairy cows has remained fairly constant (14,000-15,000) but the total milk produced by fewer producers shows an increase from a total of 91 million lbs. produced in 1950 to 167 million lbs. in 1974.

The increase in total milk produced in Nevada is due to higher production levels per cow. Improved management of dairy herds has resulted in milk production per cow jumping from 6,050 lbs. in 1950 to 11,929 lbs. in 1974. This production level is considerably above the 1974 national average production per cow of 10,286 lbs.

The information also discloses that a fourfold increase has occurred in the average size of the dairy herd, ten times more milk is being produced per Nevada farm, all of which implies that the total investment and operating costs have increased significantly. Most of the 72 dairy farms are family owned and operated. It is estimated that these family owned dairy farms have 20 million dollars invested in dairy cattle, facilities and equipment for the operation. A recent study by the University of Nevada (Table II) in 1976 shows that a typical western Nevada dairy operation requires over a quarter of a million dollars invested. In addition, this family operation requires an estimated annual operational budget of another $200,000.

Producing milk is a high investment business. The large capital outlay and the high operational costs offer little encouragement to an individual getting in or out of the business easily. Good dairy operations require sound management of all resources, any mistakes in the management of the herd or in marketing of the product are extremely costly.

TABLE II

TYPICAL WESTERN NEVADA DAIRY FARM INVESTMENT

Land ($1236.22 per acre) 5 acres	$ 6,231.10
Employee housing	18,000.00
Feed mill & feed storage	43,971.42
Milking parlor, equipment, holding pens	39,971.80
Livestock housing	10,664.28
Feed Bunks & Corrals	7,815.62
Vehicles and Farm Equipment	32,345.00
Culinary Water System	2,869.00
Livestock:	
Cows 158 @ $466.50	73,707.00
Heifers 82 @ $361.00	29,602.00
Bull 1 @ $1,537.50	1,537.50
Calves and yearlings 106 @ $80.40	8,522.40
Total	$275,237.12
Cost per cow (158 cows)	1,742.00

(Does not include quota or standby allowance)

College of Agriculture, University of Nevada Reno, 1976

This information indicates that the price received for milk produced as determined by the Dairy Commission was not at a level to encourage inefficient producers to remain in business as once feared. In fact, Nevada dairy farmers are ranked within the top five states in the country in milk produced per cow.

NEVADA DAIRY COMMISSION AND PRICE RECEIVED BY NEVADA PRODUCERS

There are two basic uses for milk in the market. Milk is classified according to this usage. Class I milk used to meet the fluid milk demands and usually commands the highest price. Milk in excess of Class I demands flows into Class II for use in cottage cheese, ice cream, etc., or into Class III for butter, cheese and dried milk. Nevada is primarily a fluid milk market with limited plant facilities to handle manufactured dairy products.

In conducting public hearings, the Nevada Dairy Commission, emphasizes setting minimum Class I price to the producer. This price, while important, is but one factor that determines what a producer receives for his milk. The price received for producer's milk is dependent on - the minimum price received for milk used in Class I, II and III, and the amount of milk marketed in each class. The most important price received is that price received for all milk marketed or the blend price. It is this price that determines the producer's financial position. The Class I price, the price the producer received for milk and the difference per cwt milk is shown in Table III.

The Nevada Dairy Commission has provided greater stability to the producer's position than ever before. It is generally agreed by Nevada distributors and producers alike, that regulated producer price serves to provide stability to the entire industry. Hence, the Dairy Commission in carrying out its function to encourage adequate and economical production of milk, must consider more carefully all factors that influence blend price received by the producer.

1. Determining Class I, II and III Minimum Milk Price

In 1957 the State Legislature empowered the Commission to set minimum milk prices for all classes of milk. The intent - provide a reasonable return to producers to assure an adequate supply of milk for Nevada consumers at a reasonable price.

Most milk markets in the country, either state or federal agencies set minimum prices for different uses of milk. Regulations exist at the federal level through Federal Marketing Orders and at the state level through State Boards or Commissions.

TABLE III

CLASS I PRICE AND BLEND PRICE PAID NEVADA PRODUCERS 1966-75

Western Nevada	Average Class I Price/Cwt	Average Blend Price Per Cwt (1)	Difference Per Cwt	Percent of Usage Class I	Class II	Class III
1966	$6.00	$5.22	$-0.78	79.4%	8.9%	11.7%
1967	6.00	5.52	-0.48	77.8%	5.3%	16.9%
1968	6.00	5.58	-0.42	77.8%	6.4%	15.8%
1969	6.00	5.90	-0.10	86.9%	6.8%	6.3%
1970	6.35	6.19	-0.16	86.0%	6.7%	7.3%
1971	6.35	6.07	-0.28	82.8%	6.9%	10.3%
1972	6.35	6.16	-0.19	85.3%	8.0%	6.7%
1973	7.27	7.08	-0.19	87.7%	8.3%	4.0%
1974	9.09	8.94	-0.15	85.4%	8.0%	6.6%
1975 (April,May,June)	9.46	9.10	-0.36	87.2%	7.7%	5.1%
Southern Nevada						
1966	$6.13	$5.57	$-0.56	88.3%	10.4%	1.3%
1967	6.13	5.65	-0.48	88.9%	9.2%	1.9%
1968	6.13	5.77	-0.36	92.9%	6.3%	0.8%
1969	6.13	5.80	-0.33	91.1%	7.7%	1.2%
1970	6.48	6.22	-0.26	92.6%	7.2%	0.2%
1971	6.48	5.98	-0.50	88.9%	9.3%	1.8%
1972	6.48	5.99	-0.49	85.1%	10.1%	4.8%
1973 (2)	8.06	7.04	-1.02	83.0%	9.7%	7.3%
1974	9.44	8.42	-1.02	63.1%	6.1%	30.8%
1975 (April,May,June)	10.03	8.28	-1.75	57.9%	5.3%	36.8%

(1) Blend price adjusted by Bf.

(2) Lake Mead Federal Marketing Order started 8/1/73

Data from Nevada State Dairy Commission

In some states both types of control exist. This is the case in Nevada - federal orders exist in both the eastern and southern marketing areas of the state. Under a federal order, the minimum Class I price is set according to the price of manufacturing grade milk in Minnesota and Wisconsin.

In contrast, State Dairy Commission commonly sets minimum Class I price based on cost of production of milk. In Nevada, the Commission, through its staff, conducts a survey of dairy producers to determine the cost of producing milk on a hundred weight basis. To this cost is added a reasonable return on investment and this figure becomes the possible Class I price. A public hearing is held by the Commission, testimony taken, and a Class I price promulgated.

The Commission sets the minimum price for Class II and III without public hearings. These prices are set by formulae based on certain manufactured dairy products in the Chicago market.

The most recent cost of production figures as determined by the College of Agriculture are shown in Table 4. The major cost inputs include feed costs, labor, hauling charges, interest and repairs. The information was obtained by interview and from farm records of ten dairy farmers out of 54 in the western marketing area.

Based on personal discussions with producers and distributors most agree that setting producer price should continue. However, there is lack of agreement on the part of producers whether this would be best accomplished by a state agency or Federal Marketing Order. In fact, the majority of Nevada producers in Clark and White Pine counties who are in the Lake Mead and Great Basin Federal Marketing Order, appear to favor a Federal Marketing Order.

Several major objections were raised concerning the Nevada Dairy Commission in setting producer price. This is particularly true in the western marketing area where the Commission is the singular agency. A common complaint was the slow response to change in costs, especially feed costs. The procedures that are legally followed by the Commission are cumbersome and time consuming. Conducting production cost surveys, scheduling public hearings and the time involved in promulgating a new price may take from four to six months.

TABLE IV

COST OF PRODUCING MILK PER COW ON TYPICAL WESTERN NEVADA DAIRY FARM - 1975 (1)

ITEM	NOVEMBER 1975		JANUARY 1976	
Feed:				
Hay (2)	$639.26		$780.18	
Grain (3)	241.38		248.88	
		$ 880.64 (62%)		$1,029.06 (66%)
Non Feed:				
Labor (4)	$261.28			
Hauling	55.92			
Interest	33.48			
Repairs	26.45			
Death Loss	25.11			
Taxes	24.39			
Fuel	18.91			
Utilities	17.96			
Pooling	13.60			
Veterinarian-Medicine	11.97			
Supplies	11.31			
Breeding Fees	10.80			
DHIA	9.59			
Insurance	8.83			
Accounting	3.45			
		$ 541.66		
Depreciation (Buildings, Equipment)	$ 59.49			
		$ 601.15		
Less Livestock Sales	$ 67.20			
		$ 533.95 (38%)		$ 533.95 (34%)
Total Cost/Cow/Year		$1,414.59		$1,563.01

(1) Average herd size, 158 cows producing 13,864 lbs. milk.

(2) Average total hay cost per year (1975 - $62.27/T; 1976 $76/T)

(3) Average total grain cost per year (1975 - $123.66/T; 1976 $127.50/T)

(4) Based on hired labor costs and estimate of family labor

Some cost factors shown in Table 4 are subjected to fairly rapid change including labor, fuel, utilities and especially feed costs. In view of the fact that feed costs usually make up over 50% of the total cost, any marked change in price would have an immediate effect on production cost. As an example, the information in Table 4 shows feed costs in November 1975 were 62% of the total costs and by January 1976 had increased to 66% of the costs.

There is considerable interest throughout the country in adopting a formula to price Class I milk. The National Milk Producers Federation has been a strong advocate for formula pricing. The Federation suggests that such a formula include three factors: (1) Minnesota-Wisconsin price weighted - 60%, (2) index of prices paid by formula - 20%, and (3) dairy feed costs weighted - 20%. The Board of Milk Control of Montana uses a formula for Class I price that includes alternative opportunities open to milk producers such as prices received by beef cattlemen and producers of alfalfa hay. These as well as other formulas should be carefully considered by the Commission as a means to set Class I price. Such a formula could be more objective and responsive to economic change up or down affecting the cost of producing milk in Nevada, and require less time.

Recommendation:

It is recommended that a flexible, economic formula to determine Class I price be established.

2. Market Usage of Milk

In addition to the price of milk as set by the Commission, the usage of milk going into the market is very important in determining the blend price received by the producer for his milk. For this reason it is necessary to understand the implications of market usage.

About sixty years ago, most milk produced on farms was for home and local consumption and the remaining milk was sold as sour cream or butter. As farm milk production gradually evolved into a dairy industry, the classified system for milk began. This

started due to recognizing that higher quality standards were required for milk going direct for human consumption than milk to be shipped and used in dairy manufactured products. Producers that invested in improved barns and equipment to meet the higher quality standards provided the fluid milk to the market. They were called "Grade A Producers." Producers shipping milk and cream for manufacturing purposes had lower quality standards, less capital investments, and received a lower price. These producers were called "Grade B Producers."

The large supply of manufacturing grade milk in the country is rapidly declining as"Grade B Producers"go out of business or shift into Grade A production. In 1960, the milk produced by "Grade A Producers" was 67 percent of the total milk produced for all uses. In 1970 this percentage increased to 75 percent. As manufacturing grade milk producers, "Grade B," decline in number and supply of milk for manufactured products continues to decrease the milk needed for this purpose must come from "Grade A Producers" or Class I sources.

Nevada dairy producers invested heavily in new dairy barns, bulk tanks, milking machines to meet the higher quality standards as "Grade A Producers" (Class I suppliers) in the late 1940's. Most "Grade B Producers" disappeared at that time in Nevada. More of the nation's dairymen are now undergoing the same shift.

Nevada is primarily a fluid milk market. Some milk is used in Class II and at times in Class III. Usually the supply of milk for Class I sales exceeds fluid milk demands during the summer months. This serves to increase the supply of milk going into Class II and III usage at that time.

A common concern of Nevada producers is the lack of confidence in the usage of milk reported by distributors. The Commission requires the various distributors to report and account for all milk received in the plant including usage of the milk. Certain plants may manufacture ice cream, cottage cheese, etc., while other plants may ship milk to another plant, or separate milk and ship the butterfat out-of-state.

Plants may differ as to how milk in excess of Class I is used. There is a need to provide greater enforcement of auditing procedures to account for total milk usage. The lack of vigorous enforcement has been due in part to the high percentage of milk used in Class I and thus Class II and III volume not too important and the lack of staff time to conduct in-depth audit procedures on a regular basis.

Since the cost of producing milk is now less dependent on standards of quality and the use to which the milk finds in the market place, there is a need to consider one single price for producer milk. The cost of producing milk, especially in Nevada, is the same regardless if such milk is identified in the market as Class I, II or III. Further, a single price for all milk from "Grade A Producers" is justified as the traditional Class I and II price relationship begins to change. For example, in December 1975 the Class II price for milk as dictated by the Minnesota-Wisconsin supply and demand situation for manufactured milk was $9.52 per cwt which was higher than the Class I price of $9.46 set by the Nevada Dairy Commission. The difference in price due to the heavy market demand for butterfat and powder. A single price system could eliminate the establishment of three minimum producer prices for the various classes of milk, the need to keep accurate usage of all milk entering the plant, and the associated enforcement and auditing procedures.

Recommendations:

1. It is recommended that a uniform system be established to determine milk usage in all plants. More frequent and closer auditing procedures be enacted to determine the quantities of milk marketed in the various classes.

2. It is recommended that the College of Agriculture be requested to determine the practicability of establishing a single price for producer milk in Nevada in milk markets outside of the Federal Marketing Orders.

3. Milk Contracts Between Producer and Distributor

The Dairy Commission is required to have on file a contract between the individual producer (may be a producer corporation) and the distributor who purchases the milk

As stated in the regulations - Article IV - Producer Determinations, Section A, Usage, Item 2 - ---"Each distributor shall assign each producer from whom he receives milk a contract amount which shall be the minimum quantity of milk to be purchased from such producer each month for Class I and II usage. Such minimum quantity shall be known as contract base milk."

These contracts are useful and serve to keep the supply of milk in close balance with the demands of the market throughout the year. The contract provides stability to the producer in that he has a market for his milk and that the distributor has a dependable supply to meet market demands.

Recommendation:

1. All contracts be reviewed and revised where appropriate and kept current.

2. Henceforth, each year each distributor will be responsible to initiate a contractual agreement with each producer (may be an individual or a cooperative) stating the minimum quantity of milk to be purchased each month to meet the market demands of that particular distributor.

3. The Dairy Commission should determine that all producer-distributor contracts are current, up-dated, and on file by September 1 of each year.

4. Federal Milk Marketing Orders

Federal orders presently cover about 80% of the total fluid milk marketed in the country. A federal order can be established when dairy producers, through a cooperative association, petition the Secretary of Agriculture to undertake the regulation of producer milk prices in a local marketing area. To qualify for an order it must be shown (1) the handling of milk is in the channels of interstate commerce or where such handling obstructs, or affects interstate commerce in milk, and (2) marketing or price conditions are such that an order is necessary or feasible to correct such conditions.

Federal orders set the producer price of milk for Class I, II and III usage. A federal order does not set wholesale or retail milk prices. This is one reason that a number of states (including Nevada) have both State Dairy Commissions and federal orders involved in milk marketing.

5. Federal Milk Marketing Orders in Nevada

In our state, two federal marketing orders exist, the Great Basin Federal Order and the Lake Mead Federal Order. In the main, the producer price is determined by the federal orders while wholesale and retail price is under regulations of the Nevada State Dairy Commission.

The Great Basin Federal Order includes northern Utah and eastern Nevada. Most of the fluid milk comes from Utah producers.

A small amount of milk is produced by Nevada dairymen located in Lund. These producers ship their milk into Utah and the Utah dairy plants supply fluid milk to such markets as Elko, Ely, Carlin in eastern Nevada. Eastern Nevada producers are satisfied with the present situation and do not believe the Nevada Dairy Commission would be very helpful under the circumstances.

The Lake Mead Federal Marketing Order covers southern Nevada and Utah producers. The prime market is the Las Vegas area.

Over 50 percent of the milk entering the Las Vegas market is not produced in Nevada. While a state has legal authority to establish retail prices within its own borders, it has no authority to establish producer prices for milk imported from outside the state. Since the Anderson Dairy Plant provided the market for the Utah producers, it was able to set a price for such milk independent of state regulations. This gave Anderson a competitive advantage over other Nevada milk distributors. It also reduced the volume of milk of Nevada producers going into Class I sales.

A joint effort on the part of producers in both states (except Anderson producers) eventually resulted in the establishment of the Lake Mead Federal Marketing Order in August 1973. Utah dairy farmers shipping milk into Anderson were in a difficult financial bind inasmuch as they were receiving little more than manufacture milk price. While Nevada producers recognized that the greater the volume of Utah milk the less market for Nevada producers, this group of producers recognized they had little to lose and possibly much to gain if an order was established.

The Lake Mead Milk Producers Cooperative serves as the marketing association for all Utah producers and all southern Nevada producers shipping milk into the order except three Anderson producers and two Hiland producers. So far as the members of the cooperative are concerned, there is no real need to have a State Dairy Commission. They are confident that their cooperative and the federal order can provide framework through which they can maintain a stable marketing situation for producers.

6. Producer Price, The Nevada Dairy Commission and the Lake Mead Federal Order

Although a federal order exists in the Las Vegas milkshed, the Nevada Dairy Commission continues to have certain responsibilities to the Nevada producers as well as setting wholesale and retail milk price. Usually, the Class I price is set by the federal order.

The Dairy Commission may determine the Class I price for Nevada producers in the federal order when that price is below the producers cost of production costs

as calculated by the Commission. In the summer of 1975 such a condition existed. Based on Nevada cost of production, the Commission set Class I milk at $9.33 per cwt. The following Class I price as set by the federal order was somewhat less:

June 1975	- $9.33/cwt
July 1975	- $8.53/cwt
August 1975	- $7.91 cwt
September 1975	- $7.89 cwt
October 1975	- $7.99 cwt

Under these conditions the state agency price of $9.33 prevailed and an "up-charge" was declared to compensate for the difference in price. This difference can be attributed to the difference in the method used by the Dairy Commission and the federal order in setting price. The "up-charge" did create some concern by dairy producers in that they felt there was unequal treatment. The full "up-charge" was paid to the three Nevada producers who are not members of the co-op, whereas, other Nevada producers who are members of the Lake Mead Producers Cooperative had to share the benefits of the "up-charge" with all members of the cooperative which included the Utah producers.

A cooperative within a federal order represents all its members and as such is looked upon as a unit producer. As a unit producer the co-op receives and distributes all milk receipts to the membership less deductions necessary for the business management and operations of the co-op. The disparity in Class I producer price due to "up-charge" was not related to any deliberate action taken by the Commission or the federal order, but to the legal procedures to be followed by each.

The average blend price received by producers in Nevada for the past ten years is shown in Table III was discussed earlier. The information indicates the price trends for Class I, blend price and difference between the two prices were somewhat comparable in both markets until the last few years. More recently a much wider price spread is developing between Class I and the blend price in southern Nevada.

It would appear that much of this difference is due to a marked decrease in the percentage of the total milk going into Class I use - from 85 to 90% to about 60%. And simultaneously a significant increase in Class III usage from less than 5% to around 30% has occurred.

Such changes could be attributed to a marked decrease in the consumption of milk in southern Nevada or a greater supply of milk entering the market. An examination of Class I sales in southern Nevada shows the following:

TABLE V

FLUID MILK SALES IN SOUTHERN MARKETING AREA, BY FIRST QUARTERS 1973-197

Product (Gals.)	1st Quarter 1973	1st Quarter 1974	1st Quarter 1975	1st Quarter 1976
Homogenized	1,684,733	1,635,958	1,766,224	1,905,027
2%	752,892	689,889	588,028	650,149
Chocolate	104,192	133,909	143,878	173,498
Skim	84,294	78,118	80,762	98,274
Total Gallons	2,626,111	2,537,874	2,578,892	2,826,948

The demand, or use of Class I, in southern Nevada does not show a decrease for the period studied, in fact, an increase occurred. Based on this, it would appear that a larger volume of milk is entering the milkshed which accounts for a decrease in percentage of Class I usage and an increase in Class III milk with a resultant decrease in blend price paid to dairy farmers.

It would appear that additional milk may be entering the market through other co-ops operating in adjoining federal markets. The procurement of milk and marketing of milk is not restricted to an area within a single federal order, but on a regional basis to better balance the market. It is interesting to note that Mr. Vern Bingham, Manager of the Mountain Empire Dairymen's Association, a co-op, was quoted in the Western Dairy Journal, April 1976 - "The Las Vegas operation is now moving a lot

of milk at Class I that we would otherwise only be realizing a manufacturing price---." He was referring to a distribution business recently started in Las Vegas by this cooperative that has members in Wyoming, Idaho, Nebraska and Colorado. A continued increase in the volume of milk from out-of-state sources will have an adverse effect on Nevada producers.

The present Secretary of Agriculture has indicated the milk marketing system needs a constant evaluation. Such factors as better ways of setting Class I and reserve milk prices in federal orders are needed according to the Secretary. There is an organized effort by Congress to get involved in milk marketing while the Department of Justice and Federal Trade look closely at the dairy co-ops. Undoubtedly in time certain improvements will be made.

Recommendation:

1. The State Dairy Commission continues to determine the production costs of producing milk by Nevada producers (on a formula basis) and when such production costs are out of line with price established by federal orders take appropriate action for needed adjustments.
2. Establish closer working relationships with the administrator and other staff members of the Lake Mead Federal Marketing Order on plant usage audits and other matters of common interest.
3. One additional staff member should be assigned to southern Nevada market plus a half-time secretary due to the size and importance. One individual staff member of the Dairy Commission is now located in Las Vegas.

WHOLESALE AND RETAIL MILK PRICING

1. Type and Extent of State Regulations

Wholesale and/or retail milk prices can only be set by state regulation. In 1962, 14 states set retail prices, and in 1971 this increased to 16 states. Nationally, the volume of milk under the control of state regulations (about 30 billion pounds), continues to be about the same as in 1968, despite the general increase in federal orders(1).

State regulations that set wholesale or retail price can be divided into two types:

(1) Laws which set minimum class prices at producer level and also either minimum or maximum prices at the wholesale and/or retail level, and,

(2) Laws which prohibit the selling of milk to wholesale and/or retail customers below actual cost.

Such laws were in effect in all but 20 states as of January, 1972. Four states establish prices only at the producer level, while 14 states have the power to set prices at the producer and wholesale or retail level. Ten states prohibit the sale of milk at the wholesale or retail level below costs(2). Some of these states prohibiting sales below costs will permit such sales, if made in good faith, to meet the legal prices of a competitor. Cost can be determined in several different ways. State regulatory agencies can require distributors to furnish schedules of actual product prices charged wholesalers and/or retailers and require the wholesaler and retailer to substantiate the marketing costs; or the agency may determine a definite percentage markup that is to be added to the cost of the product to cover the additional costs of merchandising.

(1) USDA 1971, "Changes in State Milk Control." The Dairy Situation DS 338, Nov. 1971.

(2) USDA, "Governments Role in Pricing Fluid Milk in the United States." ERS, AER No. 229, July 1972.

Various reasons have been advanced as to why minimum wholesale and retail milk prices were established in Nevada. At the time of establishing the Commission, it was recognized that Nevada distributors were essential to handle Nevada produced milk. It was reasoned that setting wholesale and retail prices would:

(1) Provide stability for the processing and distribution of milk and advance the growth of a state dairy industry.

(2) Provide a local market for Nevada produced milk.

(3) "Protect" Nevada distributors most of whom were small from "unfair out-of-state competition..

(4) Provide adequate fluid milk to meet Nevada consumer demands at the lowest reasonable price.

Perhaps one of the most important factors that influenced the setting of wholesale and retail milk price in Nevada was the fact that this was being done in California.

A number of studies have been undertaken to determine the influence of state milk regulations on the fluid milk industry. The results of the studies reveal that markets in which minimum and/or maximum prices were set by state authority had larger marketing margins than were markets not regulated. (1) (2)

(1) Is State Control of Consumer Milk Prices in the Public Interest? R. W. Bartlett, Bulletin 705, Agricultural Experiment Station, University of Illinois

(2) Impact of State Regulation on Market Performance in the Fluid Milk Industry, C. N. Shaw, Bulletin 803, Agricultural Experiment Station, Pennsylvania State University

Data presented in the following table is representative of such studies.

Table V. Average Fluid Milk Marketing Margins in Study Markets by Type of State Regulation (1)

Type of State Regulation	Number of Markets	Marketing Margin Cen s/Half Gal.
None	41	25.80
Sales Below Cost Prohibited	17	25.08
Resale Prices Fixed	22	29.87

The data suggests resale-price control do have higher fluid milk margins than markets with no state price control. It is important to note, however, where sales of milk below cost are prohibited by state authority, that this method resulted in lower marketing margins as well.

Logical questions that concern state regulations of wholesale and retail prices are: Has the Nevada Dairy Commission encouraged efficiency in milk processing and distribution, or has price setting tended to perpetuate inefficiency? Has it provided milk to the consumer at a reasonable price? Have such regulations enhanced or been a barrier to per capita milk sales? Obviously state regulation cannot set wholesale price sufficiently high to permit inefficient distributors to remain in business. Nor can retail prices be set at a level that efficient distributors are prevented from offering the consumer the benefits of their efficiencies. Determining a fair wholesale and retail price for milk is difficult in Nevada for several reasons. One is the small number of distributors and the relatively small volume of milk handled per distributor.

(1) State Controlled Milk Markets, How Well Do They Perform? M. E. Hallberg, Farm Economics, November 1975 Issue, Pennsylvania State University

The large number of fluid milk products that are under price control by the Dairy Commission (over 90) presents a difficult problem in enforcement.

2. The Number and Size of Nevada Distributors

The number of Nevada distributors and the estimated average Class I milk sales in 1959 as compared to 1976 is shown below:

Table VI. Number and Size of Nevada Distributors

	Western Area		Southern Area		Eastern Area	
	1959	1976	1959	1976	1959	1976
No. of Distributors	10	5	4	3	1	0
Average Class I Sales (Estimated Gal./Day)	14,000	21,250	15,500	30,000	1,170	2,115

Source: Data from Milk Commission Records

The total number of distributors in Nevada is decreasing. The greatest change occurring in the Reno milkshed through mergers and drop-outs.

With a decrease in the number of distributors and an increasing population, the total volume of milk handled per distributor still remains small. The size of scale does influence the cost per unit and is a factor to be recognized. In a discussion with a Nevada distributor it was his opinion that a minimum of 20,000 gallons of milk per day is required to institute certain plant efficiences. Small volume family operated plants may survive by reason of convenience of plant location, local support for a local industry and labor returns.

The relative amount of milk handled by distributors also affects other innovations. At a public hearing of the Dairy Commission this spring, a representative of Safeway inferred that Nevada distributors under existing conditions were slow in adopting new practices. The point was made that consumer demand for milk marketed in plastic gallon jugs was increasing. In spite of this increased demand, no blow-mold machines used to manufacture plastic jugs were in Nevada. We then made direct contact with two companies that

manufacture the blow-mold machine. Both companies reported that a minimum demand of 25,000 gallons of milk in plastic jugs per day was needed to support either leasing, or the purchase of a machine of this type. Data as given in Table VI. show the average total volume of Class I milk handled per distributor per day to be less than this. It is necessary to recognize that Nevada distributors are comparatively small volume operators.

3. Minimum Wholesale Milk Price

Public hearings have been conducted by the Commission to set wholesale price until suspended by Governor O'Callaghan on October 23, 1975. Prior to this the Commission issued 16 orders for Western Nevada and 20 orders in Southern Nevada setting a minimum wholesale price. Cost studies were taken at these hearings. Some of the more important factors considered included, the cost of the raw milk, labor, utilities and service or delivery charge. All information used by the Commission to set wholesale price was not presented in the public hearings. Various other factors peculiar to a distributor's management or operations were provided in confidence to the Commission.

The result of these hearings and other information provided the Commission are then used to determine a representative distributor cost on which a wholesale price is set. The small number of distributors involved in each of the marketing areas raises a question whether a truly representative sample of the average distributor cost could be determined on which to set wholesale price. The ramifications of this is further felt in setting retail milk price. The wholesale milk price as determined by the Commission is an important factor in setting retail, or out-of-store, milk price.

Further, determining average distributor costs are complicated by the nature of their individual plant operations. Some plants are basically Class I fluid milk handlers, while others are involved in other dairy products such as cottage

cheese and ice cream. Distributors are also becoming more "specialized" in the manner and type of customer served. The proportion of home delivery of milk has been drastically reduced while store distribution has increased. Some Nevada distributors have large supermarkets as customers, others have casinos and restaurants. The size of drop-off to the various customers and the type of service required by these customers from full-service to limited service delivery all influence distributors' costs. The following table gives evidence of this.

Table VII. Wholesale Sales of 1/2 Gallon Milk to Grocery Stores by Anderson, Reno

Homogenized Half Gallon	Unit Sales Prices As Filed	Effective Price	Percent of Total Sales	Weighted Value
Sales per week				
$ 0 $100	0.72 net	0.72	1.7%	$.01224
100.01 - 500	0.72 less 8.35%	0.6598	33.0%	.21776
500.01 - 800	0.72 less 12.5%	0.63	9.4%	.05922
800.01 and over	0.72 less 16.5%	0.601	55.9%	.33607
			100%	$.62529

Determining distributor costs is complicated at best and further complicated in Nevada by other factors such as number of distributors, volume of milk handled etc. Determining costs on over 90 Class I fluid milk products and setting a wholesale price on these products exceeds the capacity of the present size of the Commission staff. Enforcement of such price regulations is impossible. Governor O'Callaghan's decision to suspend wholesale milk price in Nevada was sound.

In view of the limitations in setting wholesale price the following suggestions are made.

Recommendations:

1. Setting uniform minimum wholesale milk price by the Nevada Dairy Commission be terminated at the earliest date.
2. The Commission not permit individual distributors to sell products at below costs to retailers. Each distributor should file with the Commission a statement of processing and marketing costs with supporting proof of such costs.
3. Each distributor provide the Commission with a schedule of product prices charged retailers.

4. Minimum Retail Milk Price

State regulatory agencies now set retail prices in 16 states. While federal milk market orders are increasing, the need to augment such orders by state agencies setting retail milk price is well recognized and accepted. In our state, where two federal orders are operative and set producer price, the Dairy Commission does fix retail prices within the area served by the federal orders.

The ultimate yardstick used by a consumer to measure efficiency of any industry is the price of the product. This is true in the dairy industry as well. A high price for milk does not serve the public good. Studies have shown that the demand for milk is sensitive to milk price. When the price is above 20 cents per quart, the demand is elastic; that is for each 1 percent change in price, per capita consumption changes more than 1 percent in the opposite direction.(1) In assuming retail price reductions of 3, 5 and 7 cents per quart the potential increase in per capita milk sales in high-price markets would be:

Price Reduction	Potential Increase In Milk Sales(2)
3 cents	13.2 percent
5 cents	22.2 percent
7 cents	31.0 percent

(1) Potential Expansion of Sales of Fluid Milk as Related to Demand Elasticities, R. W. Bartlett, Agricultural Economics Bulletin 7, University of Illinois 1963

(2) Is State Control of Consumer Milk Prices in the Public Interest? R. W. Bartlett, Agricultural Experiment Station Bulletin 705, University of Illinois 1965

It is interesting to compare fluid milk sales before and after Governor O'Callaghan suspended wholesale pricing and declared a 10 percent decrease in the retail price of milk in October 1975. To determine if the reduction in the retail price affected fluid milk sales, information on the volume of such sales was obtained from the Commission for the first quarter of each year in 1973, 1974, 1975, and 1976. The first quarter periods of each year were used for comparative purposes with the first quarter of 1976 as this period was the first complete quarter on fluid milk sales following Governor O'Callaghan's order.

Table VIII. Fluid Milk Sales in Nevada for First Quarter of 1973-1976

Western Area

Product	1st Quarter 1973	1st Quarter 1974	1st Quarter 1975	1st Quarter 1976
Gallons - Homogenized	1,143,008	1,173,851	1,190,378	1,318,600
2%	606,555	564,285	574,504	631,782
Chocolate	39,395	34,343	32,286	41,741
Skim Milk	39,752	41,330	43,489	50,351
Total Gallons	1,828,710	1,813,809	1,840,657	2,042,474
% of 1973	100%	99.2%	100%	111.7%

Southern Area

Product	1st Quarter 1973	1st Quarter 1974	1st Quarter 1975	1st Quarter 1976
Gallon - Homogenized	1,684,733	1,635,958	1,766,224	1,905,027
2%	752,892	689,889	588,028	650,149
Chocolate	104,192	133,909	143,878	173,498
Skim Milk	84,294	78,178	80,762	98,274
Total Gallons	2,626,111	2,537,874	2,578,892	2,826,948
% of 1973	100%	96.6%	98,2%	107.7%

The information does show that Class I fluid milk sales increased significantly in the first quarter of 1976. It would appear reasonable to suspect that the decrease in price was a factor in increasing sales.

In Nevada the largest volume of milk purchased by the consumers is from retail store outlets. The Commission does not set a uniform retail price for all retail stores but rather sets a minimum price below which fluid milk is not to be sold. The smaller stores, the convenience stores, individuals who operate a retail truck route often charge more for milk than the set minimum price. However, this volume of sales is not large and for this reason in discussing retail price, we mean the minimum price set by the Commission.

Since its inception, the Dairy Commission has held 19 public hearings in Western Nevada and 22 hearings in Southern Nevada to set a retail price for milk. Unfortunately, the participation and input by retailers at these meetings has been meager. Under the conditions, the Commission has depended on information from trade journals, retail markup in other states and input from retailer representatives on the Commission for information. Considerable weight has been given by the Commission to the minimum wholesale price plus a reasonable retail markup in determining at what level the retail price of milk is to be set.

The main purpose of setting a minimum retail price for milk is to establish a price floor under which it is unlawful to sell milk to the consumer. This method prevents the possibility of using milk as a loss leader in retail stores. Most Nevada producers and distributors are concerned about "out-of-state" supermarket chains that process and distribute their own brand milk and dairy products. This concern is based on the fear that, if retail price regulations were discontinued, these well financed supermarkets could sell milk in Nevada markets at below costs to attract customers and eventually capture a large share of the milk market. This type of operation would work to the consumer's benefit on a short run basis, but in the long run, such market control would not be to the economic and public interest of Nevada. It is postulated that "out-of-state" milk sold at a loss in Nevada markets would serve to decrease Class I sales of Nevada milk and thus seriously reduce producer income or force producers out of business.

The loss of retail markets would also reduce the volume of milk handled by Nevada distributors and eventually create a situation that survival of the Nevada dairy industry would be in question. In the meantime "out-of-state" milk would have seriously curtailed competition of Nevada milk to the point that the price of milk could be set at level to whatever the market would or could bear.

Has the Dairy Commission in setting dairy prices established a high price market? How does the consumer price of milk compare with other markets? What effect has milk prices in Nevada had on the consumption of milk?

The following table compares the consumer milk price in Nevada with other regional retail milk prices.

Table IX. Consumer Price in Various Western Markets for Half Gallon Homogenized Milk.

	1974		
Market	August	October	November
Reno	$0.77	$0.79	$0.80
Las Vegas	0.75	0.80	0.79
San Francisco	0.72	0.72	0.71
Denver	0.78	0.78	0.80
Montana (statewide average)	0.84	0.84	0.84

	1975			
Market	March	April	May	August
Reno	$0.80	$0.80	$0.80	$0.80
Las Vegas	0.80	0.80	0.80	0.80
San Francisco	0.71	0.71	0.71	0.78
Denver	0.80	0.80	0.82	0.86
Montana (statewide average)	0.85	0.86	0.85	0.83
Wyoming	0.80	0.86	0.83	-

	1976		
Market	January	February	March
Reno	$0.72	$0.72	$0.72
Las Vegas	0.72	0.72	0.72
San Francisco	0.69	0.69	0.69
Denver	0.83	0.82	0.80
Montana (statewide average)	0.88	0.89	0.88
Wyoming	-	-	0.89

A random selection of various western markets indicates consumer, or retail price, of milk in Nevada compares favorably with other markets.

Consumer price of milk in Nevada compares very favorably with most markets across the country. The data above is typical.

The information does indicate there is a difference in consumer price of milk between California and Nevada. California retail price is lower than Nevada price. Many Nevada consumers wonder why this should be. The inference being that the higher price of milk is indicative of a wider profit margin.

The California producer price for milk and the Nevada producer price is quite comparable. One of the major factors contributing to the difference in price is the scale of operations of the distributors. The volume of milk handled by some individual California distributors exceeds the combined total of Nevada distributors located either in the western or southern marketing areas. This volume of milk serves to reduce unit costs. Other factors such as the density of population and size and number of retail outlets further reduce distributor costs. The dairy industry in Nevada, in spite of its lack of scale, is fairly efficient in providing milk to the consumers as measured by comparative prices in other markets.

The public interest is best served by having an adequate supply of milk available at a price level which will insure an adequate supply and a consumption level that would enhance the health and well being of the public. One measure of the effectiveness of the Dairy Commission in providing an adequate supply of milk at a reasonable price to the consumer is the per capita consumption of milk. Earlier it was mentioned that the demand for milk is sensitive to milk price, as price goes up there is decrease in fluid milk sales. Has the consumer price of milk in Nevada depressed milk consumption?

Information was obtained to determine the Nevada milk consumption pattern. This is presented in Table X.

Table X. Fluid Milk Consumption Per Capita In Nevada by Marketing Area

Marketing Area	1966	1970	1975
Western Nevada			
Population(1)	164,688	175,234	229,087
Fluid Milk Sales (lbs.)(2)	54,131,448	55,614,808	66,042,232
Per Capita Consumption (lbs.)	329	317	288
Southern Nevada			
Population	243,509	282,073	340,473
Fluid Milk Sales (lbs.)	66,089,656	78,094,688	86,385,032
Per Capita Consumption (lbs.)	271	277	256
Eastern Nevada			
Population	31,494	31,331	35,424
Fluid Milk Sales (lbs.)	6,661,384	6,704,184	6,610,016
Per Capita Consumption (lbs.)	212	214	187
U. S. Average (lbs.)	297	264	-

(1) Population Data - Bureau of Business and Economic Research, UNR

(2) Fluid Milk Sales from all Sources - Nevada Dairy Commission Statistics

The national average per capita consumption of fluid milk in 1950 was 349 lbs. There has been a gradual national decrease in milk consumption each year and in 1973 the national average consumption had fallen to 259 lbs. The data in Table X shows this trend both at the national and state level. However, the per capita consumption of milk in Nevada in both the western and southern marketing areas is consistently higher than the national consumption figure. It is interesting to note that milk consumption per person in the western area of Nevada is consistently higher than the other two marketing areas. Based on the above information it appears reasonable that the consumer price of milk in Nevada was at level that did not reduce milk consumption when compared with national per capita consumption.

The Dairy Commission presently sets the retail price of milk based on the established wholesale price plus a reasonable retail markup. The limitations in Nevada in accurately determining distributors costs on which the wholesale price is based leaves much to be desired as mentioned earlier. Such a limitation must exert an influence in determining the retail or consumer price of milk. A recommendation has been made earlier that would change the present method of setting wholesale price by the Commission and eliminate some of the present limitations.

Further, the recommendation, if followed, would permit the more efficient distributors to establish wholesale milk price at a lower price than those less efficient. This lower wholesale price could result in a lower consumer price of milk by setting the minimum retail price of milk in accordance to the following recommendation:

Recommendation:

The Commission establish a reasonable retail markup. This markup would be added to the schedule of product prices charged the retailers by individual distributors as filed with the Commission. The resultant figure would then constitute the minimum retail price of milk.

WHOLESALE AND RETAIL GROSS MARGINS

This report has examined and discussed how the Dairy Commission has established minimum milk prices at the producer, distributor and retail level. In setting these minimum prices the Commission has in essence also established the gross margins for the distributor and retailer.

Studies have been published which compare margins between state regulated markets and non-regulated markets. These studies generally have shown that both narrow margins and wide margins exist in both regulated and non-regulated markets. It was also noted that regional differences in margins were much greater than differences between regulated and non-regulated markets.

More recent studies by C. N. Shaw, Pennsylvania State University, show margins in non-state-regulated markets were significantly lower than margins in markets in which minimum or maximum resale prices are set.

FLUID MILK MARKETING MARGINS BY SELECTED TYPES OF ECONOMIC REGULATION IN STUDY MARKETS, 1969(1)

Regulation	No. Markets	Marketing Margin For Milk Sold Through Stores (Cents/Half Gal.)
No state regulation	37	24.43
Sales below cost prohibited	17	24.03
Minimum producer price	4	24.88
Minimum or maximum resale	22	27.86

(1) Impact of State Regulation on Market Performance in Fluid Milk Industry, Pennsylvania State University, Agricultural Experiment Station Bulletin 803, 1975.

The results of the above study indicates the marketing margins for milk sold through stores ranged from a low of 24.03 cents per half gallon in markets which prohibit sales below cost to a high of 27.86 cents in markets which set resale prices. It is to be noted that a recommendation has been made that wholesale sales below costs be prohibited in Nevada rather than the present procedure of cost determination plus a reasonable return.

: the margins in Nevada, are they changing and, if so, where and how
portion of the consumer price of milk is now accounted for by the
retail margins?

ins for milk marketing were determined and analyzed on one-half gallon
lk for the period 1957-1974. The wholesale gross margin as determined
nce between the farm price paid producers for the 4.3 lbs. of milk in
milk and the wholesale price of milk set by the Commission. The
r margin, is what is available to the distributor to pay all plant costs
ch the processing, packaging, storing, transportation of milk as well as
n investment and profit or loss. The retail gross margin, as determined,
rence between the minimum wholesale price and the retail, or consumer
. This margin provides for all store costs associated with the move-
through retail stores as well as profit or loss.

rgins are shown for the Western Marketing Area in Table XI and for
ada in Table XII. The wholesale and retail margins show a slow but
increase from 1957 to 1974. In western Nevada the wholesale margin
9 cents during this period, with over half of this increase occurring
. The retail margin per half gallon of milk increased from 6 cents to 8.5
73, and in 1974 decreased slightly to 8.3 cents.

n Nevada shows the same general trend. The wholesale margin increased by
rom 1957-74 with most of the increase occurring since 1972. The retail
ased from 6 cents in 1957 to 9.8 cents per half gallon of milk in 1974.
me differences between the two marketing areas that should be noted - the
rgin is slightly higher in the western area while the retail margin is
he southern area. This difference in retail margin may be due to the type
provided by the distributor - full service or limited service in the two
as.

TABLE XI

MILK PRICE: WHOLESALE AND RETAIL GROSS MARGINS PER HALF GALLON HOMOGENIZED MILK 1957-1974[1]

Year	Equivalent Producer Price/1/2 Gal.[2]	Western Nevada Area			
		Wholesale Margin	Wholesale Price[2]	Retail Margin	Retail Price[2]
1957	$0.23	$0.21	$0.44	$0.06	$0.50
1958	0.23	0.21	0.44	0.06	0.50
1959	0.23	0.21	0.44	0.066	0.506
1960	0.237	0.224	0.461	0.07	0.527
1961	0.241	0.229	0.47	0.07	0.54
1962	0.241	0.229	0.47	0.07	0.54
1963	0.241	0.229	0.47	0.07	0.54
1964	0.241	0.229	0.47	0.07	0.54
1965	0.242	0.228	0.47	0.071	0.54
1966	0.246	0.231	0.477	0.075	0.548
1967	0.258	0.237	0.495	0.075	0.57
1968	0.258	0.237	0.495	0.075	0.57
1969	0.258	0.237	0.495	0.075	0.57
1970	0.27	0.248	0.518	0.082	0.60
1971	0.273	0.252	0.525	0.085	0.61
1972	0.273	0.252	0.525	0.085	0.61
1973	0.314	0.264	0.578	0.085	0.663
1974	0.405	0.300	0.705	0.083	0.788
	-	-	Suspended 10-23-75	-	-

Source: Nevada Dairy Commission Raw Data

(1) Since orders setting the level of prices are often set at different dates of the year, the above prices are weighted average prices for the year - the weights based on the number of months of a particular year an order price prevailed.

(2) Minimum producer, wholesale and retail price as set by Nevada Dairy Commission.

TABLE XII

MILK PRICE: WHOLESALE AND RETAIL GROSS MARGING PER HALF GALLON HOMOGENIZED MILK 1957-1974(1)

Year	Equivalent Producer Price/1/2 Gal.(2)	Southern Nevada Area			
		Wholesale Margin	Wholesale Price(2)	Retail Margin	Retail Price(2)
1957	$0.241	$0.199	$0.44	$0.06	$0.50
1958	0.241	0.199	0.44	0.06	0.50
1959	0.241	0.199	0.44	0.06	0.50
1960(1)	0.246	0.215	0.461	0.066	0.527
1961	0.248	0.222	0.47	0.07	0.54
1962	0.248	0.222	0.47	0.07	0.54
1963	0.248	0.222	0.47	0.07	0.54
1964	0.248	0.222	0.47	0.07	0.54
1965	0.248	0.222	0.47	0.07	0.54
1966	0.256	0.229	0.485	0.075	0.56
1967	0.263	0.237	0.50	0.08	0.58
1968	0.263	0.237	0.50	0.08	0.58
1969	0.263	0.237	0.50	0.08	0.58
1970(1)	0.275	0.246	0.521	0.082	0.603
1971	0.279	0.251	0.53	0.09	0.62
1972	0.279	0.251	0.53	0.09	0.62
1973(1)	0.313	0.261	0.574	0.095	0.669
1974(1)	0.400	0.287	0.687	0.098	0.785
1975		-	Suspended 10-23-75	-	-

Source: Nevada Dairy Commission Raw Data

(1) Since orders setting the level of prices are often set at different dates of the year, the above prices are weighted average prices for the year - the weights based on the number of months of a particular year an order price prevailed.

(2) Minimum producer, wholesale and retail price as set by Nevada Dairy Commission.

Analysis of the margins in western Nevada indicate that the wholesale margin has increased at the rate of 1.5 percent per year while retail margins increased at the rate of 2.1 percent per year. In the southern region wholesale margins increased at the rate of 1.8 percent per year while the retail margin increased about 2.9 percent per year.

It is difficult to draw any strong conclusions about these results. They do show wholesale and retail margins increasing with the retail margin showing a higher annual rate of increase. A half gallon of milk in the western marketing area increased 28.8 cents in price since 1957. This was due to an increase of 9 cents and 2.3 cents in the wholesale and retail margin and 17.5 cents in the price of milk paid the producer. On the same basis southern Nevada consumers paid 28.5 cents more for a half gallon of milk. An 8.8 cent and a 3.5 cent increase in the wholesale and retail margin and a 15.9 cent increase in the producer price of milk accounted for the total price increase.

In determining and discussing wholesale and retail margins the question of rebates or kick-backs immediately came to mind. Are these margins sufficiently wide to permit kick-backs or rebates - are the wholesale and retail prices realistic or artificial as established by past commissions? As we discussed earlier in this report, on setting wholesale prices, the present information and procedure followed by the Commission to determine actual distributor costs on which to establish a fair and representative wholesale price is difficult if not impossible. Proper and accurate pricing is fundamental to state regulation and control.

State control of wholesale and retail prices can create a situation in which efficient distributors are prevented from offering the consumer the benefit of this efficiency through lower retail prices. Under such conditions, some distributors increase their sales by offering services or discounts to retailers that are considered illegal. Other distributors must offer kick-backs or rebates to be competitive and enforcement of wholesale pricing is for all practical purposes, non

existent. Further, such hidden costs can then become unidentified cost factors that serve to inflate the actual or true costs of plant operation. The situation is such that the consumer continues to pay a higher price for milk than what the market actually demands.

If the recommendation in this report regarding wholesale pricing procedures is adopted, the efficiencies of the distributors will be passed on to the consumer and minimize rebates and discounts as presently practiced.

1. Analysis of Producer, Wholesaler and Retailer Share of Consumer Price

The purpose of the analysis was to determine if there has been any significant changes from 1957 to 1974 in the percent of producers', distributors' and retailers' share of the consumer price of a half gallon of milk.

The percent of producer, distributor and retailer's share of the consumer's price in the Western Marketing Area is presented in Table XIII and for the Southern Area in Table XIV.

TABLE XIII

PERCENT OF PRODUCER, DISTRIBUTOR AND RETAILERS SHARE OF THE CONSUMER PRICE OF HALF GALLON OF HOMOGENIZED MILK 1957-1974

Western Marketing Area

Year	Consumer Price	Producer %	Distributor %	Retailer %
1957	$0.50	46.0	42.0	12
1958	0.50	46.0	42.0	12
1959	0.506	45.4	41.5	13
1960	0.527	44.9	42.5	13.2
1961	0.540	44.6	42.4	13
1962	0.540	44.6	42.4	13
1963	0.540	44.6	42.4	13
1964	0.540	44.6	42.4	13
1965	0.540	44.8	42.4	13
1966	0.548	44.8	42.1	13.6
1967	0.570	45.2	41.5	13.1
1968	0.570	45.2	41.5	13.1
1969	0.570	45.2	41.5	13.1
1970	0.600	45.0	41.3	13.7
1971	0.610	44.7	41.3	13.9
1972	0.610	44.7	41.3	13.9
1973	0.663	47.3	39.8	12.8
1974	0.788	51.3	38.1	10.5

Data obtained from producer price, distributor and retailer gross margins and consumer price presented in Table XI.

Western area analysis of the data indicates that the percent of the producers share in the consumer price has increased at a faster rate than the wholesale portion. The producer share had increased to about 51.3% of the consumer price of milk by 1974. Whereas, the wholesaler's share has shown a decrease to 38.1% of the consumer price of milk. The producer's and the retailer's percentage share of the consumer price have increased, while the distributor's percentage compared with the producer and retailer percentage share has decreased with time in western Nevada.

TABLE XIV

PERCENT OF PRODUCER, DISTRIBUTOR AND RETAILERS SHARE OF THE CONSUMER PRICE OF HALF GALLON OF HOMOGENIZED MILK 1957-1974

Southern Marketing Area

Year	Consumer Price	Producer %	Distributor %	Retailer %
1957	$0.50	48.2	39.8	12
1958	0.50	48.2	39.8	12
1959	0.50	48.2	39.8	12
1960	0,527	46.6	40.7	12.5
1961	0.54	45.9	41.1	12.9
1962	0.54	45.9	41.1	12.9
1963	0.54	45.9	41.1	12.9
1964	0.54	45.9	41.1	12.9
1965	0.54	45.9	41.1	12.9
1966	0.56	45.7	40.8	13.3
1967	0.58	45.3	40.8	13.7
1968	0.58	45.3	40.8	13.7
1969	0.58	45.3	40.8	13.7
1970	0.603	45.6	40.7	13.5
1971	0.62	45	40.4	14.5
1972	0.62	45	40.4	14.5
1973	0.669	46.7	39	14.2
1974	0.785	50.9	36.5	12.4

Southern area - The analysis of the percentages show that the producer's share of the consumer price relative to the retailer's share did not significantly change over time. Hence the relative percentage of the producer and wholesaler share of the consumer price remained fairly constant. There was a significant change in the relative portions of the wholesaler and retailer share of the consumer price. The retailer share tended to show an increase while the wholesaler remained constant.

In general, the percentage of the producer share of the consumer price has increased in relation to the distributor share. Producers now receive slightly better than 50 percent of the consumer price. The retailer's percentage share of the consumer price has over the period of 1957 to 1974, tended to increase in relation to percent of distributor share.

Whether such changes have real significance in milk pricing remains a moot question. It is clear that the largest portion of the consumer price now goes to the producer.

NEVADA DAIRY COMMISSION AND STAFF

The State Legislature has vested the Dairy Commission with broad authority to insure the production and orderly marketing of milk at fair and reasonable prices. The promulgation of regulations and enforcement of such regulations is the direct responsibility of the Commission. In fact, the effectiveness of state regulations on the dairy industry and the general public is dependent on the actions taken by the Dairy Commission.

The member representation on the commission has undergone several changes since its inception. The original 9 member commission was composed of 5 representatives of the dairy industry, 2 retailers and 2 consumer representatives. The majority of members have been representatives of the dairy industry. The current representative members have now been changed from a predominant dairy industry commission to a commission more consumer oriented. The current commission is composed of 8 members - 4 consumer representatives, 3 from the dairy industry and 1 retail representative.

The very composition of the commission has raised many questions concerning its ability to be objective and aggressive in performing its functions. A common question is why have dairy representatives serve on a commission charged with the responsibility of regulating, policing and determining prices for that very industry. The justification given is that the complexities of the dairy industry are such that industry representatives are needed to provide the information required by the commission to carry out its mission. Today most dairy industry people do not feel they need be represented on the commission. Their only concern is that the members of the commission be knowledgeable of the industry and objective in their decisions.

No one can deny that the Dairy Commission has by its actions, provided stability to the production and marketing of Nevada milk. It has also been apathetic in pursuing violations of its own regulations, ineffective in obtaining cost information from distributors and retailers on which to base a realistic price, and not providing guidance and direction to the staff in such matters as conducting required audits, and

conducting public hearings. Too frequently in the past the responsibilities of the Commission and the role of the staff have not been clearly recognized. The Dairy Commission has at times delegated to the Executive Director certain responsibilities that should remain a responsibility of the Commission.

It would appear desirable to consider further changes in the composition of the Commission, clarify the functions of the staff to the Commission, and provide information and training to Commission members regarding the dairy industry in Nevada and the responsibilities of Commission members in determining and enforcing state milk regulations.

The following are suggested recommendations:

1. The Nevada Dairy Commission be a five member commission.
2. Membership be on a geographical basis, two each from the western and southern marketing area and one from the eastern marketing area.
3. One member from each marketing area be a respected member of the financial or business community and not directly involved in the dairy industry.
4. All members be appointed by the Governor including the chairman.
5. Provide information and data to all new members regarding their responsibilities as Commission members as well as information on the dairy industry in Nevada.

1. Nevada Dairy Commission Staff

Two major requirements for enforcing state control of milk prices are: (1) an adequate staff of accountants to assist the Commission in determining minimum milk prices, and (2) an adequate legal staff for enforcing state regulations.

In Nevada, control of prices for those handling milk has broken down because of lack of solid informational input by distributors and retailers and lack of adequate personnel to enforce the law.

Regular and in-depth audits of plant operations do not exist. Sound audits are essential to determine accurate costs on which to base pricing. In this report it has been recommended that distributors be held responsible to provide the commission accurate plant cost data using a prescribed form and procedure. The information supplied by the distributor must be accompanied by supporting evidence of proof. Hence the distributor is now held directly responsible for the information rather than the commission staff. This information will be used to establish a wholesale price at not below costs and will be subject to audit by the commission staff. By following this process, the burden of proof no longer is on the commission staff but rather on the distributors. Further, we have as many as 80 or more items on which wholesale and retail prices are established. With the limited number of personnel available, it is virtually impossible to determine what the price margins should be on each of the items at any particular time. It is to be remembered that a recommendation made earlier would reduce the number of items on which wholesale and retail prices are to be established. Such a reduction would be helpful in enforcing the price regulations as established by the commission and enforced by the staff.

The present number of staff personnel has been decreased to: 3 accountants in the Reno office, 2 office secretaries, and 1 area supervisor in the Las Vegas office, all under the direct supervision of the Executive Director. The decrease in staff is due to a problem in available funds.

The State Dairy Commission is financially supported by assessments collected from the dairy industry. At present no money from the general fund is used to support the commission. The assessment comes from the following sources: Milk 39.8%, ice cream 39.6%, cottage cheese 5.6%, butter 12.7% and other 2.3%. The total assessment available in 1975 was $185,000. The rate of assessment has remained the same although the total dollar revenue has increased. The increase in dollars has not been sufficient to offset the increases in salaries and operational costs, thus the reason for a decrease in commission staff.

There is some feeling on the part of the dairy industry that the Commission is supported by assessments contributed by the industry. The cost is actually paid by the consumer. The possibility of obtaining money from the general fund for the support of the Commission has been raised in the past. It is apparent that there is a need to increase staff to effectively carry out the state control milk regulations. The additional revenue may come from several sources. This would include the increase in the rate of assessment on some or all dairy products, obtaining a part or all funds from the general fund, and having a legal staff member appointed from the Attorney General's office rather than have the Commission employ an attorney.

Recommendation:

1. The legal counsel for the Commission be appointed from the Attorney General's office.
2. That the rate of assessment be increased on such items as ice cream and butter.

SUMMARY AND RECOMMENDATIONS

Twenty years ago the Nevada Legislature passed legislation which provided for State milk control regulations. This action was dictated by the chaotic economic and marketing conditions that existed at that time in the dairy industry. The Legislature created a Nevada Dairy Commission and vested in it broad authority to insure the production and orderly marketing of milk at fair and reasonable prices.

This report is an attempt to examine the impact of the Dairy Commission on the performance of the dairy industry.

Dairy Producers, Milk Supply and Producer Price

The number of dairy producers has decreased sharply in the past twenty years. The number of dairy cows has remained fairly constant. Milk production per cow has steadily increased to one of the highest in the nation. The total volume of milk coming off Nevada dairy farms has increased significantly. Nevada dairy farms, while fewer, are larger, requiring greater capital investment. Using this information as evidence,it would appear that the production of milk has steadily improved in efficiency and State milk control regulations have not impeded such growth but has been helpful.

Many producers and distributors feel that State regulations have provided marketing stability to the flow of milk moving off farms. This stability has provided confidence to the producer to expand his operations.

The price received by a producer for his milk is not directly set by the Commission. Rather, the Commission establishes a price to be paid for Class I, II and III milk. These classes identify the market usage of milk with Class I, or fluid milk, the premium. Each distributor must account for all milk received in his plant, and the amount of milk marketed in the various classes. The producer is paid a blend price for his milk which depends on the volume of milk his distributor markets in each class and the price of milk established by the Commission for each class. In the main, Nevada

markets can be classified primarily as a fluid milk or Class I market.

Most people in the industry, producers and distributors, feel a need to continue to establish producer milk prices. All do not agree on how - many producers in eastern and southern Nevada,now under Federal milk marketing orders, are content whereas, others feel State milk regulations is the better method.

The following recommendations are suggested to improve State milk regulations that apply to producers:

1. A flexible, economic formula be developed and used to determine Class I milk prices to be paid producers, rather than repeated cost of production studies and public hearings.

II. Request the College of Agriculture to determine the practicability of establishing one single price for all milk produced, rather than different prices for different milk uses, which would be paid producers who are outside Federal marketing orders.

III. The Commission develop and enforce a uniform auditing process to be used in all plants to accurately determine the quantities of milk utilized in the various classes of milk.

IV. All marketing contracts between the producer (may be on individual or a cooperative) and the individual distributors, be reviewed and revised where appropriate and kept current.

V. Each year, each distributor will be held responsible by the Commission to initiate a contractural agreement with each of his producers (individual or cooperative) stating the minimum quantity of milk to be purchased each month to meet the demands of that particular distributor.

VI. The State Dairy Commission continue to determine the production costs of producing milk by all Nevada producers (on a formula basis) and when such costs are higher than the Class I price established for producers under Federal marketing orders,

take appropriate action for needed adjustments.

VII. Recommend that closer working relationships be established with the administrator and staff members of the Lake Mead Federal Marketing Order on plant usage audits and other matters of common interest.

Wholesale and Retail Milk Pricing

Minimum wholesale and retail milk prices can only be set by State regulations. Some states that operate under a federal milk marketing order use state regulations to establish wholesale and/or retail prices. Nevada is one of these states.

Wholesale and retail minimum price is set by the Dairy Commission based on both public and confidential testimony. Wholesale price is based on distributor costs plus a reasonable return.

Determining a representative distributor cost on which to determine a fair and reasonable wholesale price is difficult. With but 5 distributors in western Nevada and 3 in southern Nevada, the small number makes it difficult, if not impossible, to obtain a truly representative cost figure. In addition, the fixing of wholesale prices on the large number of fluid milk prices (over 90) and the enforcement of such regulations on these products further compounds the difficulty.

The importance of establishing a fair minimum wholesale price to the consumer price is easily appreciated. This is especially true when it is recognized that the Commission gives considerable weight to the wholesale price plus a reasonable retail markup in establishing the retail, or consumer price. In view of rebates and kick-backs between distributors and retailers and the knowledge that wholesale milk price was established on a weak foundation, Governor O'Callaghan suspended wholesale prices and reduced retail prices by 10 percent on October 23, 1975.

Where both wholesale and retail prices are fixed by State control, the more efficient distributors cannot pass on any benefits to the consumer. To this extent it may result in a higher retail price for milk.

It is widely agreed within the industry that setting wholesale price is not

essential for market stability. In fact, it may encourage the opposite.

In spite of these limitations, the retail price of milk has compared favorably with other Western retail milk prices, with the exception of California. Consumer price of milk has not been so high as to seriously reduce consumption of milk. The per capita consumption in Nevada has been consistently higher than the national average.

The advantage of setting a minimum retail price for milk is to prevent the possibility of using milk as a loss-leader in retail stores. Most Nevada producers and distributors are concerned about "out-of-state" supermarket chains that process and distribute their own brand milk and dairy products. This concern is based on the fear that, if retail price regulations, were discontinued, these well-financed companies could sell milk in Nevada markets at below actual costs to attract customers and eventually capture a large share of the market. The loss of markets would reduce the volume of milk handled by Nevada distributors and reduce milk production on farms to a point that would cause serious economic adjustments within the industry.

The limitation in establishing a supportable minimum wholesale price for all distributors and the use of a questionable wholesale price to determine a fair consumer price suggests certain recommendations:

I. Setting uniform minimum wholesale milk prices by the Nevada Dairy Commission be discontinued.

II. The Commission enact regulations that would not permit individual distributors to sell products below actual costs to retailers. Each distributor be responsible to file with the Commission an audit report, as determined by the Commission, of the processing and marketing costs with supporting evidence of such costs.

III. Each distributor file with the Commission a schedule of product prices to be charged retailers.

IV. The Commission establish a reasonable minimum retail markup. This markup would be added to the schedule of prices charged the retailers by individual

distributors as filed with the Commission. The resultant figure would constitute the minimum retail price of milk.

Nevada Dairy Commission and Staff

The promulgation of State milk control regulations and the enforcement of such regulations is the direct responsibility of the Commission.

The member representation on the Commission has undergone several changes. In the main, the majority of members have been representatives of the dairy industry. The current Commission membership is consumer oriented.

With a majority of members representing the dairy industry, the Commission has been suspect as to its ability to be objective and free of self-interest in determining and enforcing milk regulations. By its actions, it has provided stability to the production and marketing of Nevada milk. It has also shown a reluctance to vigorously pursue violations of State regulations on members of the dairy industry.

It would appear desirable to consider further changes in the Commission to remove any possible self-interest membership and provide more objectivity in developing State regulations and their proper and full enforcement. The following are suggested recommendations to aid in this accomplishment.

I. The Nevada Dairy Commission be a five-member Commission.

II. Membership be on a geographical basis, two each from the western and southern marketing areas and one from the eastern marketing area.

III. One member from each marketing area be a member of the financial or business community and not directly involved in the dairy industry.

IV. All members be appointed by the Governor including the Chairman.

V. Provide information and data to all new members regarding their responsibilitie as Commission members as well as information on the dairy industry in Nevada.

Nevada Dairy Commission Staff

The State Dairy Commission is financially supported by assessments collected

on fluid milk and other dairy products. The rate of assessment on each item has remained the same although the total dollar revenue has increased. This increase has not been sufficient to offset the increase in salaries and operational costs, which has necessitated a decrease in staff. At present, no money from the general fund is used to support the Commission and its staff.

The present staff consists of 3 accountants and two secretaries in the Reno Office and 1 area supervisor in the Las Vegas Office all under the direct supervision of the Executive Director. The Commission also employs its own legal counsel.

Two major requirements for enforcing State control of milk prices are: 1) an adequate staff of accountants to assist the Commission in determining minimum milk prices and conducting necessary audits, and 2) an adequate legal staff for enforcing State regulations.

The dispersion of retailers in Nevada, the variance in milk plant operations, the number of dairy products under State regulations, and necessary audits to be conducted suggests that the size of the present Commission staff be increased.

Funds for additional staff members could come from either increasing the present rate of assessment on all or some dairy products and/or the general fund. Additional funds could be made available by having a legal staff member appointed from the Attorney-General's Office.

Recommended Suggestions to Augment Present Staff

I. Rate of assessment be increased on ice cream and butter.

II. Legal counsel for the Commission be appointed from Attorney-General's Office.

III. An additional accountant be employed in the Las Vegas Office.

IV. Consideration be given to employing an accountant for the eastern marketing area.

MIKE O'CALLAGHAN
GOVERNOR

STATE OF NEVADA
NEVADA INDUSTRIAL COMMISSION

JOHN R. REISER
CHAIRMAN

LAUDE EVANS
COMMISSIONER REPRESENTING LABOR
JAMES S. LORIGAN
COMMISSIONER REPRESENTING INDUSTRY

SB11
2-7-77

ADDRESS ALL CORRESPONDENCE TO
NEVADA INDUSTRIAL COMMISSION

REPLY TO

515 East Musser Street
Carson City, NV 89714

March 1, 1977

Senator Thomas R. C. Wilson
Nevada State Legislature
Legislative Building
Carson City, NV 89701

Dear Spike:

We have reviewed the amendments proposed in the hearing on SB 11 and are in agreement with the proposed amendments. According to my notes, you agreed to amend NRS 616.030 to read as follows:

"Casual" refers only to employments where the work contemplated is to be completed in not exceeding 20 working days or part thereof each calendar quarter, without regard to the number of persons employed, and where the total labor cost of such work is less than $500 in any calendar year.

I believe you also agreed to amend NRS 617.030 to read as follows:

"Casual" refers only to employments where the work contemplated is to be completed in not exceeding 20 working days or part thereof each calendar quarter, without regard to the number of persons employed, and where the total labor cost of such work is less than $500 in any calendar year.

Sincerely,

John

John R. Reiser
Chairman

JRR:dl