Members present: Chairman Banner
Mr. Bennett
Mr. Bremner
Mr. Brady
Mr. Fielding
Mr. Jeffrey
Mr. Webb

Members excused: Mr. Rhoads
Mr. Robinson

Guests present: See attached list

Chairman Banner called the meeting to order at 3:02 p.m.

A.B. 238 - Revises guidelines for determining suitability of work under unemployment compensation law.

Chairman Banner called on Ernest Newton, executive director of the Nevada Taxpayers Association, to testify on the bill. Mr. Banner explained that this bill, and the others scheduled for hearing this date, were prepared by Mr. Newton, and that he helped Mr. Newton with them. Mr. Newton then remarked that a series of speakers supporting the bills were present and asked that they stand up and introduce themselves. The first speaker he called upon to speak on A.B. 238 was Mr. Anthonisen.

N. C. Anthonisen, Summa Corporation, also represented the Greater Las Vegas Chamber of Commerce and the Southern Nevada Personnel Association, after making general comments about the problems concerning the corporation he represents, commented on A.B. 238. He said what this bill provides is that an individual who happens to be laid off cannot stay in the unemployment field and draw unemployment compensation for 26 weeks, if there is a job available that this person can do. As it stands today, if a maitre d' is laid off he does not have to accept a job as a food server. However, under the provisions of this bill, the maitre d' would be required to accept a job as food server.

Chairman Banner queried as to what was meant by "exceed claimant's benefits by 15 percent." Mr. Anthonisen replied that because the maximum weekly benefit is $107, a person would have to take a job paying about $125 a week.

Chairman Banner then asked what "suitable work" meant. Mr. Anthonisen replied that a particular job would be within the claimant's prior training, experience or capabilities.

In this connection, Mr. Newton gave the following example as an explanation: A professional working for a corporation and is making $20-30,000 a year, be laid off, can take a vacation on unemployment compensation, without being required to take a job that is within his capability. The pesent ruling is that he must have a job that is as good as the one he left. He further explained that this bill will solve the same problem that we had when professional athletes or school teachers were allowed to collect unemployment compensation during off season or during vacation -- because they were out of work. Yet these were not required to take jobs within their capabilities. The federal government solved those two problems for all the states. This bill, then, is an attempt to solve a problem that is particularly noticeable in Nevada.

Assemblyman Jeffrey, commenting on subsection 2, the part to be deleted, said he doesn't see anywhere in the law where it requires the unemployed person being offered at least as good a job as he was unemployed from. It says the executive director must consider all these things and has a latitude to consider a claimant.

Mr. Newton replied he thinks the director has that latitude, but also said he believed that a person can go at least 4 weeks before he is required to take a job for which he is qualified.

Gary Nielson, J.C. Penney Co., testifying on subsection 1, said he would amend that bill to be in conformity with Section 612.380, eliminating the 15 weeks maximum period. Another common situation they frequently face is the normal J.C. Penney employee who is considered a secondary worker -- a housewife who works during peak periods such as Christmas, Easter, back-to-school, etc. If she's discharged for good cause, quits or is laid off, with this aspect of the bill, all she has to do is simply wait 15 weeks if she is disqualified, until she can collect benefits. This encourages a lack of incentive to look for work.

Assemblyman Jeffrey asked what the eligibility requirements are for unemployment compensation for part time workers.

Mr. Nielson replied that according to Nevada statutes, if they earn $100 in one quarter, they have to have at least earnings of $150 in a one year period. That qualifies him for 26 times the weekly benefit amount, or one-third of total wages, whichever is less. That would be the maximum amount they can collect.

Mr. Jeffrey asked further if a housewife works for a month during the Christmas season, is she eligible for unemployment compensation. And what would the maximum be? Mr. Nielson replied she would be eligible if she had wages from other employers, and that it would depend upon what her earnings were from the previous employers.

Mr. Jeffrey again asked what would the benefits be for the part time employee if she only worked one month. To which Mr. Nielson replied that if that was the only job she had -- one month with J.C. Penney -- that she probably would not qualify for any benefits.

At this time Chairman Banner called on Mark Tully Massagli to speak for those opposing the bill.

Mark Tully Massagli, president of the Nevada AFL-CIO, said there were several representatives who are present, and are in opposition to the bill, and wanted it of record that he was representing labor in Nevada. He said in addition to the other amendments offered earlier, that Section 1 needed some clean up language. He was particularly concerned about deletion of language in Section 2, especially the word "consider". He felt the word is not determinative. He comented on the fact that figures in the past showed that people do like to work, that they don't like to be unemployed. He said that this bill, in its present form, would not benefit the workers; that it is detrimental to those who are now working and will be unemployed in the future. He urged the committee to reject the bill.

Chairman Banner called on Larry McCracken, executive director of the Nevada Employment Security Department, to give his comments as a neutral observer concerning this bill.

Mr. McCracken stated that Nevada ranked third in the number of claimants denied benefits. He also said AB 238 would impose several restrictions on the flexibility allowing ESD to raise the issue of suitability. A copy of Mr. McCracken's remarks on this bill is attached to these minutes as Exhibit "A". He also went on to say that the Nevada Employment Security Council has reviewed the subject in considerable detail, and as a result does not recommend any changes in the present law or procedure.

Chairman Banner asked what was the function of the Council. Mr. McCracken replied that it is a body composed of representatives from labor, management, and the public -- three from each sector -- which advises the executive director relative to the administration of NRS 612. He stated further that it was this same Council that was responsible for a meeting between labor and management and the public that resulted in the major changes made in 1975.

A.B. 239 - Changes basis for withholding unemployment compensation where employee is discharged for crimes in connection with unemployment.

Mr. Newton was again called upon by Chairman Banner to comment on this bill.

Ernest Newton, Nevada Taxpayers Assoc., said at present a person who is discharged for a major crime continues to be eligible for benefits. The purpose of this bill is to provide a method by which benefits can be withheld upon finding by the ESD that he was discharged because of a commission of a major crime.

Assemblyman Jeffrey asked what was the procedure for appealing the decision of the executive director. Mr. Newton replied that the decision can be taken to an appeals board. If the claimant is dissatisfied with the decision he can go to the district court; and to the supreme court if necessary.

Assemblyman Bremner asked how to eliminate the claim when some one is guilty of a crime and not prosecuted. Mr. Newton replied that the exeucitve director only determines his eligibility for benefits, not his guilt.

At this point, Assemblyman Webb stated that Mr. Newton had covered the subject very well. Everytime the executive director makes a decision he is determining whether a person should get benefits, based on facts available to him.

Assemblyman Brady, himself an employer, said he sees the problem; and that crime on the job is increasing. He asked if this would be an answer to the problem Mr. Newton answered he believed it would be one answer.

Assemblyman Jeffrey commented that a responsible employer owes it to the public to prosecute guilty persons in a court of law -- not put the executive director in a position to decide guilt or innocence in these cases.

Larry McCracken was requested by the chairman to explain his position on the matter. Mr. McCracken said he would be forced to disqualify anybody whose employer claims he was discharged for gross misconduct, whether or not the fact supported that conclusion. He said the statute passed in 1975 has proven satisfactory regarding this issue. He stated figures which showed that for a period of 6 months in 1978, there were 17 denials out of 36 determinations dealing with misconduct. A copy of his statement is attached to these minutes as Exhibit "B".

Mark Tully Massagli, AFL-CIO, said if this bill were passed it would put the determination and judgment in one individual -- the executive director of ESD. He hoped the committee would see fit to defeat the bill.

To which Mr. Newton requested to add one item: that he disagreed that the employer does not make the decision when a person is discharged for a commission of a crime; and rejected the idea that this is a one-sided procedure.

Assemblyman Bennett asked why this bill is necessary if there is adequate legislation. To which Mr. Newton replied that the problem is the employee who continues to get benefits even though he is guilty of a crime. He would like to see those who are denied benefits, and appeal, would continue to get benefits.

A.B. 241 - Provides for agreement as to what constitutes employee misconduct for purposes of unemployment compensation.

Gary Nielson, J.C. Penney Co., speaking in favor of the bill, suggested an amendment to the bill which would conform to the language in NRS 612.380 concerning voluntary quit. This is in regard to the experience of many employers where a claimant, if denied benefits, need only wait 15 weeks to apply.

Luther Mack, McDonalds in Reno, commented on a problem with their part time workers who come and work just enough time to put them in a position to qualify for unemployment compensation. This is one of the reasons for a high percentage of turn over in their work force.

Art Boecher, plant manager for Sweetheart Plastics Co. in Sparks and representing the Reno-Sparks Chamber of Commerce in support of the bill. He believes that instead of trying to make additional work for ESD, this bill should eliminate judgmental duties. The employee and employer should have a clear understanding of the rules, so there are no surprises if an employee is discharged for misconduct. He also objects to the word "contract" because he feels it carries too broad an interpretation. He urged the committee to consider the bill, but that the language be changed. To which Mr. Banner asked that he write his suggested amendments.

Assemblyman Jeffrey pointed out that Mr. Boecher's comments tend to show a change in his position on the bill. However, Mr. Boecher claimed all he wanted was a change in some wording.

Mark Tully Massagli, AFL-CIO, was primarily concerned about placing the decision on the executive director's determination. He objects to a person not getting a job unless he signs the rules. He felt the bill is unnecessary, and that present rules are satisfactory as they are now.

Assemblyman Brady asked if a person is fired for reasons under the termination clause in the contract, would he receive unemployment compensation. Mr. Massagli replied that, again, the determination is by ESD.

Larry McCracken,ESD, explained the subject of five times weekly benefit as compared to the proposed ten times weekly benefit. He stated that in 1975 if a person was fired for misconduct there was a penalty; but that penalty had a loophole in it. All the individual had to do was go work for a friend for one hour, or a day then gets laid off. The disqualification was nullifying. So the Council recommended to the Legislature that

anybody who quit or was fired for misconduct would have to earn at least 5 times the weekly benefit amount in subsequent employment before they could be waived for disqualification. He said one should not confuse the 10 times provision of this law with the voluntary quit provision. Voluntary quit provision, as passed in the last session, requires an individual to work 10 weeks, and in each of those ten weeks must earn an amount equal to or greater than the benefit amount. That is not what this provision intends. This bill provides that an employee earn 10 times -- not 10 weeks -- in order to waive that disqualification. This bill would also increase from one half (50%) to 90 percent the total amount by which a claimant's entitlement can be reduced for misconduct during a benefit year. (A copy of Mr. McCracken's statement is enclosed in these minutes as Exhibit "C".)

Chairman Banner asked if this would create a problem to ESD in reviewing contracts. Mr. McCracken replied it would create a great deal of inequity. He said 40% of those drawing benefits are drawing less than the maximum duration, which is 22 weeks. Disqualification varies from 6 to 16 weeks. Standard disqualification is 11 weeks for everyone. A minor infraction would be 6 weeks.

Mr. Newton directed a question to Mr. McCracken asking when an employer's rules is reasonable and it has been violated, and is stipulated in the work rules as a reason for discharge, that denial of benefits is almost automatic. Mr. McCracken said it was true. To which Assemblyman Jeffrey asked what was the need for the bill. Mr. Newton said to require it to be used.

Mr. Newton pointed out another problem, which he believes this bill would clear up. That is the problem of the next to the last employer who has discharged the employee for misconduct. He gets charged for the whole benefit because the benefit year has the 4 quarters in which the employee had worked, even if that employee had subsequently gone to work for another employer and was laid off.

There being no further discussion on the three scheduled bills, Bill Gibbens of Gibben Co. requested to make some general comments. He stated the main purpose of these three bills, and the three that will be discussed the next day, is to try to control the drain on the unemployment trust fund.

Assemblyman Jeffrey requested Mr. McCracken to comment on the funds, the attempt at solvency, and the legislation passed in 1975, A.B. 181.

Mr. McCracken stated that their prediction was that by mid 1980 funds would be solvent as a result of changes made in 1975. He said the disqualification for voluntary quit has increased substantially and the pay out was reduced by 8% in 1977. They started the year with $21 million in the fund. Contributions were $64 million, making $85 million available. They paid out $31 million, leaving $54 million in the fund. He said that to be solvent they need $85 million. He said all we needed is to have a couple of good years, which should make the funds solvent. He also stated that next year the fund will require $96 million to be solvent because of the increase in the labor force.

Chairman Banner asked Mr. Evans if he had any general comments to add.

Mr. Evans --addressing his comments to Assemblyman Jeffrey's comments, said that the taxes on the employers have increased by 100%. He's asking that the taxes be balanced a little bit more while striving for solvency.

Assemblyman Jeffrey said he didn't understand the 100% figure.

Mr. Evans said two changes were made by the last two sessions: One was the increase in the payroll subject to the tax on every worker's wages. They've gone up to 74% per year. Coupled with that was an increase in the maximum tax rate from what at that time was 3 to 3-1/2 percent of the payroll. So the balance jumped up way the amount of portion subject to tax, and the reate of taxes increase. He said the net result is an increase of 100% in tax to the employer.

There being no further discussion, the meeting adjourned at 4:50 p.m.

Respectfully submitted,

Sylvia Mays

Sylvia Mays, Assembly Attache

Encl: Exhibits A,B & C.
Guest list.

DRAFT TESTIMONY

Exhibit "A"

AB 238 - Suitable Work

Present law has worked well with little change for many years. Its flexibility allows the department to raise the issue of suitability in a maximum number of cases. This flexibility has resulted in Nevada ranking in the top three or four states in the number of claimants denied benefits as a percent of the total claimant population. For the quarter ending 3/31/78, the most recent period for which comparative data from all the states is available, Nevada ranked third in this respect.

AB 238 imposes several restrictions on this flexibility which would have the effect of reducing the number of denials which could be imposed for refusing suitable work. Such an effect would seem to be in exact opposition to the bill's intent. Most importantly in this regard, the proposal would limit suitable work to jobs paying at least 15 percent more than a claimant's weekly benefit amount.

This is especially important because the most common issue which gives rise to a dispute regarding suitability of work is wages. Under present law, claimants are referred to jobs which pay less, the same, or more than their weekly benefit amount depending upon the circumstances in each case.

AB 238 imposes additional restrictions on suitability by requiring that the job be in or near the locality where the claimant resides and by ignoring the claimant's length of unemployment. Neither restriction is in the present law and both pose difficulties which are surely not intended.

The law now permits the department to consider the suitability of a job in the light of its risk to a claimant's health, safety and morals. AB 238 continues to recognize health and safety factors in this regard, but substitutes for "morals" the following language: "Work is not suitable if the occupation is

disreputable according to accepted community standards." While the issue involved arises only infrequently, it hardly seems fair or reasonable to require the department to adjudicate what are "accepted community standards" with regard to what constitutes a "disreputable occupation."

Finally, federal representatives have advised that the changes proposed in subsection 3(c) would be a violation of federal laws and regulations to which all state laws must conform. The language now in Nevada law is exactly the same as that found in all state laws and which is required by section 3304(a)(5)(C) of the Federal Unemployment Tax Act (FUTA). All the terms found in these so-called "Labor Standards" have come to have very precise meanings over the years and no change is acceptable.

In any event, the suitable work provision as presently being administered is not a problem in Nevada which ranks at the very top in the percentage of claimants disqualified for failure to seek or accept suitable work--an indication that our law is comparatively very effective. Furthermore, the Nevada Employment Security Council has reviewed this subject in considerable detail on several occasions--most recently at a meeting on December 7, 1978. As a result of these reviews, the Council has not seen fit to recommend any change in law or procedure.

Stats: Suitable Work - Determinations & Denials

Qtr Ending 3/31/78	Nat'l Avg	1.3 dets. per thou. clmt contacts
" " "	Nev. Rank (dets.) 6	3.4 " " " " "
" " "	" " denials 3	1.5 (233) " " " "

EXHIBIT A

1978-Nev.	Determinations	Denials	Percent Denied
July	218	92	42%
August	240	88	37%
September	210	108	51%
October	193	80	41%
November	214	94	44%
December	143	60	42%
Total	1,218	522	43%

Qtr. ending 3/31/78: Suitable Work = 2% of all dets. nationally, 7% in Nevada.

EXHIBIT A

DRAFT TESTIMONY

AB 239 - Gross Misconduct

This proposal would require the department to disqualify any claimant who had been discharged for any of the reasons enumerated in the bill without requiring that the employer prove or the claimant admit to such actions. For this reason, it would be wholly unacceptable and would raise a conformity issue with federal requirements found in Section 6013 A1, Part V of the Employment Security Manual, by taking away from the department the responsibility for determining claimant eligibility for benefits.

The existing statute was adopted in 1975 and has proven very satisfactory in dealing with the really serious cases of employee misconduct.

Gross Misconduct - NRS 612.383

Stats: 1978	Determinations	Denials	Percent Denied
July	4	2	50%
August	4	3	75%
September	3	1	33%
October	6	5	83%
November	12	3	25%
December	7	3	43%
Total - 6 Months	36	17	47%

Exhibit "B"

DRAFT TESTIMONY:

AB 241 - Increases Penalty for Simple Misconduct

This proposal would double the requirement for claimants found to have been discharged from their employment for misconduct. They must now earn at least five times their weekly benefit amount subsequent to such a discharge in order to qualify for benefits. The requirement in AB 241 is that they earn ten times their weekly benefit amount in order to so qualify.

This bill would also increase from one-half to 90 percent the total amount by which a claimant's entitlement can be reduced for misconduct during a benefit year. This bill also introduces the concept of a written contract between employers and employees setting forth and describing what constitutes misconduct. In administering this law change, the department would be bound by such contracts.

Employers and employees, both interested parties in any actions growing out of these contracts, would thus in effect be making eligibility determinations via these same contracts.

This would raise a conformity issue with a federal requirement that it is the responsibility of the department to make these determinations. "This responsibility may not be passed on to the claimant or the employer." (See Section 6013 A 1 Part V, Employment Security Manual.)

A lesser but still important objection to these contracts is that there is no bar to their including ridiculous rules to which a worker might be willing to stipulate as constituting misconduct, under duress of badly needing a job.

Exhibit "C"

Feb. 12, 1979

A.B. 238
A.B. 239
A.B. 241

GUEST LIST

NAME (Please print)	REPRESENTING	IF YOU WISH TO SPEAK Pro	Con
N.C. ANTHONISEN	SUMMA CORP	X	
LUTHER MACK	McDONALD'S	X	
Roberta Kitchen	C.W.A		
Robert C Pearson	C.W.A.		
[illegible]	Nevada Resort Assoc	X	
[illegible] Evans	AFL-CIO	X	X
Charles Perkins	AFL-CIO #Local 86	X	X
MARK TULLY MASSAGLI	AFL-CIO		X
JERRY HIGGINS	SPARKS NUGGET		
Mike Swanson	Bally & Reno Chamber	X	
ART BEECHER	Sweetheart Plastics	X	
JACK YOUNG	WALDORF REST.	X	
[illegible]	[illegible]		
GARY NIELSON	JCPENNEY / NRA	X	
HARRY BRADLEY	E.S.D.		X
Tom Brien	ESD		X
BILL BOONE	I.U.O.E. LOCAL # 12		
BRUCE BARTLETT	I.U.O.E. LOCAL 501		
Harold S. Ritter	IATSE Local 720 NV		
Edward P Park	Cal-Nev-Colf Operating Engineers		
Dick Kupers	self		
[illegible]	E.D.		
Larry McCracken	ESD		
[illegible]	P.A.S. INC		

31-13

2/12/79

AB 238
AB 239
AB 241

GUEST LIST

NAME (Please print)	REPRESENTING	IF YOU WISH TO SPEAK Pro	Con
GARY NIELSON	JCPENNEY CO.	X	
[illegible]	[illegible]	X	
Frank N. Bender	Bender Warehouse Co	X	
G P Etcheverry	NEV LEAGUE OF CITIES		X
George Rodgers	J.C. Penney - Reno		
FRED DAVIS	RENO-SPARKS C of C.		
ART BOECHER	Reno-Sparks C of C	X	
Mike Swanson	Reno-Spark Co of C	X	
Harold Knudson	NAT'L CENTER LABOR		X
C Lavle Evans	AFL-C.I.O		X
~~George~~ Foster	PLUMBERS LOCAL NO. 350		X
Russell A. Pearson	J.C. Penney Co.		
SUE MORROW	NV APPEAL		
LEO HENRIKSON	TEAMSTERS 995		
JOHN MILLER	KENNECOTT CORP		
ERNEST NEWTON	NV TAXPAYERS ASSN		
BILLY BOONE	Opr Engrs Loc 12		
DON GURD	AFL-CIO, Sparks		
CAREY HARRIS	Floor Coverers, etc AFL-CIO Loc 2001		
FRANK W. BYRNE	Bldg Trades Council, Reno		