

Assembly Committee on _____

Date: 3/16/81

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MEMBERS PRESENT:

Chairman Banner
Vice Chairman Thompson
Mr. Bennett
Mrs. Cafferata
Ms. Foley
Mr. Hickey
Mr. Jeffrey
Mr. Rackley
Mr. Rhoads

MEMBERS ABSENT:

None

GUESTS PRESENT:

See attached guest list.

WITNESSES TESTIFYING:

Glenn Taylor, Nevada State Labor Commission
Merlin Anderson, Commission on Post Secondary Education
Scott Baker, State Industrial Attorney
Joe Nusbaum, Chairman NIC
Dave Gamble, Attorney
Hal G. Curtis, Labor Representative, NIC
Chuck King, Nevada Self Insurers Association
Joe Buckley, Summa Corporation
Jack Kenney, Southern Nevada Homebuilders
Peter C. Newmann, Nevada Trial Lawyers Association
Chuck Knaus, Property Casualty Actuary, Nevada State Insurance Div.
Harvey Whittemore, Nevada Resort Association and Gaming Industry Assoc.
Daryl Capurro, Nevada Motor Transport Association and
Nevada Franchised Auto Dealers Association
Bill Champion, MGM Grand Hotel
Wayne Carlson, Senior Analyst for Washoe County
George Vargis, American Insurance Association

Mr. Banner called the meeting to order at 5:05 p.m. and announced to the committee that the first bill to be heard would be AB-262.

AB-262: Authorizes labor commissioner to approve and regulate programs of training for veterans in actual employment.

Mr. Glenn Taylor, Nevada State Labor Commission, explained to the committee that AB-262 is more or less authorizing the Labor Commission Agency to continue its approval of on-the-job training programs for veterans. In the past, there was no legislation centered around the approval for same but was done by executive order and agreement between the Veterans Administration and the Nevada State Labor Commissioner's office.

He told the committee that there are now approximately 135 on-the-job training programs for veterans involving a minimum of 300 veterans. This bill addresses itself to veterans only. This bill would initiate the establishment of the Labor Commission Agency as the state approved agency for such programs.

Mr. Merlin Anderson, Commission on Post Secondary Education, expressed their concern as an additional state approving agency under contract and executive order to approve training programs for veterans. Their area is institutional training, therefore their concern is that the bill involve only on-the-job training occupations which would not interfere in their area of institutional training for veterans.

AB-263: Revises provisions concerning compensation of employees for permanent partial disability under law on industrial insurance.

Chairman Banner addressed the committee on this bill and directed their attention to page three where most of the language is amended out. He told the committee that in 1975 much of this same material was brought before the committee. The NIC fought this type of change at that time.

Chairman Banner told the committee that the evaluation of a disability is done by two doctors who work for the NIC. They rate a person on his disability by statute and by using a book entitled "Guides to the Evaluation of Permanent Impairment." The book explains how to measure a certain disability with the use of protractors and he does not believe a mathematical computation of the movement of a part of the body which is impaired should constitute a lifetime evaluation of a disability. This is not a welfare situation but rather an insurance case because of the no fault system in Nevada.

Mr. Scott Baker, State Industrial Attorney, in favor of AB-263, told the committee his office represents 50 percent of the people who find it necessary to appeal decisions regarding NIC staff determinations at the appeals officer level. He explained that the term "permanent partial disability" means the final amount of money that the claimant is being compensated for, for the rest of his lifetime as the result of an industrial injury.

The concept of this bill is to establish a system whereby some recognition of an injured worker's individuality as pertaining to his loss of earning capacity is considered.

Mr. Baker said that two sections in this bill should be deleted as they are in by mistake; Section 4, paragraph 3 on page 2, lines 23 through 26 as pertaining to the term retroactive; and Section 2, paragraph 3 on page 1, line 11 pertaining to hearing officer or an appeals officer.

The important concept of this bill is the modification of the lump sum award method. The change would allow the claimant up to 25 percent in a lump sum. Under the current system, there is no

protection from inflation and the 25 percent lump sum system would enable the person to protect himself by investing his money as opposed to leaving those dollars in the trust fund with the NIC.

A bill was passed in the last session, AB-84, and many people thought that they were getting the right to elect lump sums up to 25 percent. Under this bill, if a claimant's permanent partial disability award was 25 percent, he could take the entire amount and it would not be discretionary under the rehabilitation concerns of the NIC, as is the case now.

Mr. Baker stressed that the concept of adding other factors to this bill in addition to impairment, which is the only criteria used for ratings at the present time, is to simply bring into the system a consideration of age and occupation in the determining of the final award that the person receives from NIC.

Joe Nusbaum, Chairman of NIC, opposes AB-263 and told the committee that this subject was dealt with extensively by the Advisory Board which the Legislature set up at the last session. He reviewed the position of the Advisory Board and the NIC by reading from the Advisory Board's Report concerning the controversial permanent partial disability problem. He read to the committee pages 34, 35, 36, 37, 38 and 39 of the Report of the Advisory Board of Review for the Nevada Industrial Commission dated January, 1981, attached hereto as EXHIBIT A.

Each member of the committee has a copy of this report and a copy is on file in the secretary's office.

Mr. Nusbaum said the Advisory Board and the NIC disagree with the form of the lump sum change in AB-263.

Mr. Rhoads asked what fiscal impact was involved in the bill and Mr. Nusbaum answered that the annual increase in cost would be \$6 1/2 million which also happens to be almost identical to the cost increase of a 33 percent increase in the payments which the Advisory Board recommends, therefore, the fiscal impact is the same as the Advisory Board's benefit increase.

Mr. Dave Gamble, Attorney, supports AB-263. He told the committee that his office represents the same number of NIC claimants in the north that Mr. Baker represents. Mr. Gamble referred to the same book that Mr. Banner displayed in his testimony. He told the committee that the law in Nevada says that permanent disability is to be measured by this book but the book says it is not to be used to measure permanent disability. The book states that impairment and disability are two completely different things and the book is not to be used to measure disability. Mr. Gamble stressed that this bill would correct that problem and makes good sense. The system now in use is ultimately unfair.

Mr. Gamble noted that in Chapter 616 of the Nevada Revised Statutes, there is no section that refers to lifetime reopening of a claim. He has more claims in his office based upon the refusal of the NIC to reopen a claim than any other kind. He said there is a separate bill this session dealing with lifetime reopening.

Mr. Gamble stressed that this bill gives the claimants the individualized treatment they want. It gives them some measure of respectability and stature as claimants with the NIC.

Hal G. Curtis, Labor Representative of NIC, is in favor of AB-263 and expressed his unhappiness with the small amount of disability pay being drawn by some claimants in the amount of \$132 per month. He said the whole system needs to be overhauled.

The committee took a 5 minute recess and the meeting reconvened at 6:15 p.m.

Chuck King, Nevada Self Insurers Association, is opposed to AB-263. He told the committee that the biggest percentage of industrial accidents are caused by the employee. Most employers try to return the employee to work after an accident and he thinks the present system encourages the employee to return to work after rehabilitation, if not in the same capacity, another job with equal or better salary.

Chuck Knaus, Casualty Actuary, Nevada Insurance Division, said he is neutral of this bill but that the Commissioner of Insurance should be involved in all regulations.

Joe Buckley, Director of Industrial Relations, Summa Corporation, also a member of the Advisory Board for the NIC, opposes the bill and told the committee that pages 34 through 37 of the Report of the Advisory Board of Review clearly state the stand of the Advisory Committee and the reasons for his opposition of AB-263. Mr. Buckley also pointed out that on page 5 of the report, Nevada was ranked eleventh highest nationally in Worker's Compensation benefits and was found to be in the forefront in its emphasis on rehabilitation to return injured workers to gainful employment.

Mr. Buckley added that the job of getting bills drafted was not left to the Advisory Board members but rather to the NIC and there are some important bills which have not yet come to the attention of the Labor and Management Committee.

Jack Kenney, Southern Nevada Homebuilders, also a member of the Advisory Board for NIC, opposes this bill and does not think it gives more money to the claimant. In response to a question by Chairman Banner concerning the attitude of the NIC toward the injured worker, Mr. Kenney replied that in reference to the Advisory Board's report that testimony was not always under oath and the Board must go by the figures given to them.

AB-264: Limits exclusive remedy of coverage of industrial insurance to employer who pays premiums.

Peter Newmann, Trial Lawyers Association, supports AB-264. The basic problem that the Trial Lawyers are interested in is that many groups of employers have attempted to avail themselves of immunity from common law negligence on a construction site or employment situation. When the Nevada Legislature adopted the no-fault scheme of Nevada Industrial Insurance Compensation, it provided benefits

directly to workers who were injured on job sites and to compensate them speedily and quickly. In order to pay for that system of no-fault insurance, the Legislature had to immunize the employer from common law liability for negligence. In effect it took away the right of the employee to sue his employer for an injury which was caused to him by the negligence of his employer. This bill would limit the immunity of no-fault insurance to the actual employer as it is felt that immunity from negligence tends to create carelessness on the job; immunity breeds irresponsibility. Mr. Newmann told the committee that the NIC should be urged to support this bill because they are losing hundreds of thousands of dollars per year in subrogation rights because of the law in its present state.

Chuck Knause, Casualty Actuary, Nevada Insurance Division, told the committee that this bill should include language to include self insured employers so that the whole range of occupational type injuries is covered.

Harvey Whittemore, Nevada Resort Association in Las Vegas, and the Gaming Industry in Reno, opposes AB-264 in its present form. The breadth and scope of the language is extremely broad and covers certain employers where it was not meant to. The only employer who would be immunized as the bill now reads is the employer who actually paid the employee, leaving open all of the corporate parents who have these subsidiaries working for them. The parent corporations should not be the only ones left open to a lawsuit.

Daryl Capurro, Nevada Motor Transport Association, and Nevada Franchised Auto Dealers Association, opposes AB-264. Mr. Capurro told the committee that opposition to the bill stems from the broad scope of the language. He does not think the bill is in the best interest of the employers of the state or to the general public.

Bill Champion, MGM Grand, opposes AB-264. Mr. Champion told the committee that his concern was the broad scope of the language of the bill because of the possibility of a great impact on the convention business.

Jack Kenney, Southern Nevada Homebuilders, opposes AB-264 in its present form. The scope of the bill is too broad and suggested that it be taken up as an interim study as it effects a whole system.

Wayne Carlson, Senior Risk Analyst, Washoe County, opposes the bill on the basis of the broad language.

George Vargis, American Insurance Association, opposes AB-264. He told the committee that this bill would increase litigation as pertaining to the confusion as to who is the contractor who has the most direct authority over the employee at the time of the injury. He also pointed out a great problem with the self insurers as they would not fall under the immunity provision.

AB-49: Makes certain changes to law on industrial insurance.

Vice Chairman Thompson told the committee that he would postpone any action on this bill until Chairman Banner was present. Mr. Jeffrey pointed out that an extensive amendment had been prepared on AB-49 and the committee should have time to study the amendment before taking action on the bill. The amendment was given to the committee at this meeting and therefore it is impossible to consider it at this time. A hearing for AB-49 was scheduled for March 24, 1981 at 5:00 p.m.

Mr. Hickey moved for adjournment and the meeting adjourned at 7:05 p.m.

Respectfully submitted,



Janice Fondi
Committee Secretary

LABOR AND MANAGEMENT COMMITTEE

Date:

March 16, 1981

GUEST LIST

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	B
W.C. ANTHONSEN	SUMMA CORP	X		49
HARVEY WHITTEMORE	NEVADA RESORT ASSN & Gaming Industry Assn	*		49
Glenn E. Taylor	LABOR COMMISSION		*	269
		X		260
MERLIN ANDERSON	COMM. ON POSTSEC. EDUCATION	X		262
KAWASJI N HASAN	LABOR COMMISSION	-	-	-
Bill Champion	MGM GRAND INC		X	267
LOM STUART	THE GIBBENS CO, INC + NORTHERN NEV. PERSONNEL ASSOC.		X	263 269
		X		49
CHUCK KING	NEV. SELF INSURERS	AS 99	263 264	
			0.00 263	

LABOR AND MANAGEMENT COMMITTEE

Date: March 16, 1981

GUEST LIST

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BIL
JOHN MALLY	SELF			
BILL MALLY	SELF			
J M Vargas	Self	NO	NO	0
Marianne Jones		NO	NO	
Brod Barber	SIA	✓		263
Joe Newkirk	Neu. Ind. Council		✓	263
Bob Gibb	N.I.C	263		
DAVE CAMBIE	NITLA	264 X		
BOB SHINER	NEU. TRIAL LAWYERS ASSN.	263 264 X		
John Hall	A I L - C I O	262 263 264	49	263 264
Wayne Carlson	Washoe Co.			
HARVEY CURTIS	N.I.C	263 FOR		
GEORGE V. VARGAS	AMERICAN TRUCK DRIVERS ASSN.	AGAINST	✓	264
DARYL E. CAPURRO	NEVADA MOTOR TRANSPORT ASSN. NEVADA FRANCHISED AUTO DEALERS ASSN.		✓	264

occupation in considering benefit levels, workers should have available an active rehabilitation program of training, therapy and job placement. Compensation is based on 50% of pre-injury earnings (limited by the statewide average wage) times the percentage of disability on a body basis. Compensation continues to age 65 (or five years, whichever is greater). If the disability caused by the industrial injury becomes greater, the worker has lifetime reopening rights for medical costs and re-rating.

Perhaps no two states have identical PPD provisions; however, there are three basic concepts. One is the "impairment-rehabilitation" concept (Nevada's system). Another is the "disability-other factors" concept where the disability determination is the relationship of physical impairment to such factors as the occupation and the age of the injured worker (the system in California and a number of other states). Another is the "wage loss" concept where compensation is based solely on the wage loss after medical stability has been attained (the Florida system).

Most of those appearing before the Advisory Board who suggested major changes in Nevada's PPD system urged that factors such as age and occupation be incorporated in the determination of disability. The Advisory Board also received a very comprehensive staff report which gave the background of the issues surrounding PPD, the philosophical and operational bases for PPD, an evaluation of the various systems in terms of adequacy, equity and efficiency and the possible alternatives for Nevada. One conclusion that can be drawn from the study is that all

systems have their advantages and disadvantages; every state seems to be dissatisfied to some extent with whatever system is used in that state. The study gives Nevada a relatively good evaluation in terms of adequacy, equity and efficiency. It further implied that if any major change is to be considered, first consideration should be given to an impairment-wage loss system under which the initial rating would be on an impairment basis as is done now. After a period of time adequate to allow the claimant to return to his prior job, seek new employment or participate in rehabilitation, he could choose to be rated on a wage loss basis rather than impairment.

Following the discussions of the above suggestions and reports, the Advisory Board requested a reaction from the Commission. The Commission stated, "With regard to adding 'other factors' to Nevada's impairment-rehabilitation system, the majority of the Commission believes that Nevada's system, with its reasonably objective and consistent determination of impairment tied with lifetime reopening rights and an active rehabilitation program, may well be the best system in the nation. The majority opposes the addition of other factors because of the subjective nature of decisions, increased litigation and delays in returning claimants to work. One commissioner believes that some flexibility should be added to the rating determination by the consideration of other factors such as age and occupation." The Commission went on to comment favorably on consideration of an impairment-wage loss system but concluded, "We believe even this alternative needs further study for recommendation to the 1983 Legislative Session." The subsequent actions of the Advisory Board indicate support by a majority of its members of the majority position of the Commission.

The Commission did comment that a major source of dissatisfaction with Nevada's PPD award system is the level of monthly payments. For example, assuming a \$1,000 monthly wage of the injured worker, a 10% impairment (a majority of ratings are 10% or less) produces an award of only \$50 per month. For more major impairments in the range of 11% to 25%, the monthly benefit ranges from \$55 to \$125 per month. For very serious impairments in the range of 26% to 50% (almost all impairments over 50% become permanent total awards), the range of benefits is from \$130 to \$250 per month.

One reason for the relatively low monthly benefit is that the statutory formula provides for a factor of 50% times the monthly wage (up to the statewide average wage) times the percentage of impairment. The Commission recommended that the factor in the formula be increased from 50% to 66-2/3%. Many other states do use a 66-2/3% factor but they may also limit the duration of the benefit or the maximum amount of the benefit while Nevada pays PPD compensation to age 65. However, this may be offset by, on the average, higher disability ratings in states that take into account other factors in determining disability. A 66-2/3% factor in the PPD formula would have cost approximately \$6.5 million in fiscal year 1980.

The Advisory Board received several suggestions to increase the level of lump sum payments of PPD awards. The most common suggestion was to allow workers to receive a lump-sum award for any disability of 25% or less.

The concept of workers' compensation PPD awards in Nevada is to compensate, over the period of the claimant's normal working life, for the loss of physical capacity. The periodic income supplements what is often a reduced wage when the partially disabled claimant returns to work. To allow lump sum payments for disabilities of 25% or less would make 94% of Nevada PPD awards subject to lump sum payments, which could destroy the concept of periodic, insurance type supplements to income. The Advisory Board was aware that very often the allowing of a lump-sum payment to an unsophisticated claimant may do him a disservice. Dissipation of a lump sum in an imprudent way serves neither the recipient nor society.

Nevertheless, strong arguments are made that the present restrictions (lump sum allowed to 12% disability and 25% lump sum for disabilities in excess of 12%) fail to recognize temporary financial hardships, the inflationary erosion of benefits, and require some monthly payments so small as to be of little value to the claimant.

RECOMMENDATIONS:

A majority of the Advisory Board recommends no change in the basic permanent partial disability system. We find that the impairment-rehabilitation system with lifetime reopening is a basically sound, efficient system that encourages the return to work of injured persons. (The Commission concurs.)

Though the total value of Nevada's FPD awards are generally good, considering the longer duration of the awards compared to many other states, a majority of the Advisory Board does recommend a change in the formula to increase the factor applied to the wage and the percentage of disability from 50% to 66-23% in order to give claimants a more adequate level of monthly benefits. (The Commission concurs.)

In order to remove inconsistencies in the present law regarding lump-sum payments and to recognize the temporary financial hardship that may occur following an injury, a majority of the Advisory Board recommends that the statutory provisions regarding lump-sum payments be modified to allow an election of a lump sum of 25% of the award or up to \$10,000 whichever is greater and to continue the present provision that permits a discretionary granting of a lump sum for the total amount of the award upon a showing by the claimant that it will contribute to his rehabilitation. (The Commission concurs.)

Recognizing that new medical procedures in the treatment of injured workers occur between publications of the American Medical Association "Guides to the Evaluation of Permanent Impairment", the Advisory Board unanimously recommends legislation to permit the Commission and the Commissioner of Insurance to supplement the AMA Guides by adopting joint regulations for such supplemental guides. (The Commission concurs.)

Rehabilitation Center

The Jean Hanna Clark Rehabilitation Center was developed for the express purpose of rehabilitating Nevada employees who are injured on the job in order to return them to meaningful work as expeditiously as possible. The principle medical and therapeutic treatment building has been in operation for approximately two years.

The planning of the physical facilities and of the medical and therapeutic programs assumed a maximum of 250 patients per day within five years from the opening of the facility.

	<u>1979-80 Actual</u>	<u>1980-81 Budgeted</u>
Positions	138	152
Expenditures	2,911,233	3,851,187
Revenues from fees	952,533	1,925,594
Fees as % of expenditures	32.7%	50.0%
Average daily patients	60	126

The Advisory Board is acutely aware that the Rehabilitation Center is an aspect of NIC which most upsets employers. A great deal of concern has been expressed because the Center has attained only 40% of its physical capacity after two years of operation. In addition, some concern has been expressed about the program itself--delays in referrals, the minute number of referrals from Northern Nevada and difficulties in recruiting and retaining medical and therapeutic staff.

ASSEMBLY

AGENDA FOR COMMITTEE ON.....LABOR.....

Date.....MONDAY, MARCH 16.....Time.....5:00 P.M.....Room.....316.....

Bills or Resolutions
to be considered

Subject

Counsel
requested*

- | Bills or Resolutions
to be considered | Subject | Counsel
requested* |
|--|---|-----------------------|
| AB-262 | Authorizes labor commissioner to approve and regulate programs of training for veterans in actual employment. | |
| AB-263 | Revises provisions concerning compensation of employees for permanent partail disability under law on industrial insurance. | |
| AB-264 | Limits exclusive remedy of coverage of industrial insurance to employer who pays premiums. | |

NOTICE-THE HEARING ON THE BILL LISTED BELOW IS CONTINUED FROM 2/3/81

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| AB-49 | Makes certain changes to law on industrial insurance. | |
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*Please do not ask for counsel unless necessary.