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:

Claude Evans, Secretary Treasurer AFL-CIO
Dawn Langfitt, NIC Claimant
Leslie A. Warner, NIC Claimant
Joe Nusbaum, Chairman, NIC
Fred Davis, Greater Reno/Sparks Chamber of Commerce
Harvey Whittemore, Nevada Resort Association
Tom Stuart, Gibbens Company
Joe Buckley, Industrial Relations, Summa Corporation
Carole Villardo, Citizens for Private Enterprise - South

Chairman Banner called the meeting to order at 5:05 p.m. and directed the committee's attention to AB-433 and AB-390. He explained that these two bills are similar in nature. AB-433 pertains to the Social Security offset and AB-390 deals with total disability and death benefits.

AB-390: Provides certain increases in compensation for total disability and death benefits under industrial insurance.

Claude Evans, Secretary Treasurer AFL-CIO, spoke in favor of the bill. Mr. Evans told the committee that this bill affects 1400 residents in the State of Nevada. Even though less than 15 or 20 percent of these 1400 people were dues-paying members of any unions he represents, he supports this legislation because it's right. The Advisory Board to the NIC unanimously recommended to the NIC and the Governor that the pensions for permanent total disability workers and their dependents be increased or supplemented to substantially offset the erosion of value due to inflation since such pensions were awarded. See EXHIBIT A attached to these minutes.

Mr. Evans stated that he had personal knowledge of many of the people who this bill directly affects as a result of his seven years as a Commissioner at NIC. He personally delivered the first month's pension checks to survivors of fatally injured workers of Nevada. On behalf of these individuals and many others who have no one to speak for them, he requests passage of AB-390 as a humane piece of legislation. He also expressed the theory that more benefits should be forthcoming to injured workers and survivors of deceased workers in the state of Nevada, and less million dollar rebates to the multi-million dollar corporations of Nevada.

Dawn Langfitt, NIC Claimant, told the committee that she has been under permanent NIC disability since May of 1972. A Washoe Valley resident, she was working at St. Mary's Hospital as a Registered Nurse when she fell while assisting in surgery. The fall resulted in severe thrombophlebitis of the right leg which has extended to the left leg and hands, resulting in blood clots in addition to two embolus' in her brain. She said she had no fault to find with NIC as they have paid her hospital bills but she has received $270 per month since 1972. There has been no increase and her husband has been unemployed for over a year.

Mrs. Langfitt told the committee that it caused her some embarrassment to come before them and express her problems with this inadequate amount of compensation. She raised and educated seven children alone, working part time as a real estate broker while still maintaining her job as a registered nurse. She has never been on welfare but is finding food and utility bills increasingly hard to pay and she urged the committee to pass this bill as she finds the $270 per month totally inadequate as compensation for her many years of productive employment in this community.

Chairman Banner asked Mrs. Langfitt what her salary was at the time of her injury and she replied about $850 per month. Because of the time of her injury, she was caught in what is referred to as a "no man's land" pertaining to the rating of her permanent disability and the amount she receives as compensation.

Leslie A. Warner, NIC Claimant, told the committee that he was hurt in April of 1967 while working in a wholesale electric warehouse. His injury consisted of four ruptured discs in his back and resulted in removing part of the discs and a laminectomy, a total of four surgeries. He is totally disabled and is now receiving a total of $280 per month for his permanent disability. NIC has taken care of the hospital bills which are ongoing. However, the back injury and surgery have created stomach problems resulting in three surgeries which the NIC would not pay for in addition to nerve medication which is not covered. Mr. Warner urged support of this bill.

Mr. Evans mentioned to the committee that a list of approximately 1400 people was given to the Chairman to which this bill would apply, many of whom are paralyzed and cannot get out of bed in order to address the committee concerning their lact of adequate compensation.

AB-433: Increases compensation under industrial insurance for certain claimants and reduces certain compensation by amount of federal benefits under Social Security.

Joe Nusbaum, Chairman NIC, presented the committee with written testimony entitled "Pension Improvement for Persons Permanently and Totally Disabled", attached hereto as EXHIBIT B and covers AB-390 and AB-433. Mr. Nusbaum explained there are two distinct aspects to the subject of pensions for permanently and totally disabled persons, fatalities, and their survivors. One is the nature and scope of the problem. The other is the method of solving the problem. His comments address the problem and the solutions.

PROBLEMS:

When it is determined that an injured worker is permanently disabled to the extent that he can no longer be gainfully employed, he is declared to have a permanent total disability. A permanent total (PT) is granted a lifetime pension for himself, his surviving spouse and dependent children. A PT cannot work and thus has no opportunity to offset inflationary cost increases by higher earnings.

With the high rates of inflation the pension problem has become much more serious. Using the Consumer Price Index as a standard of measurement, pensions awarded in the early 1970's will have lost approximately half of their purchasing power by 1981. Refer to charts included in EXHIBIT B entitled "Consumer Price Index"; "Nevada Average Annual Wage"; and "Benefit Escalation Costs".

The Advisory Board unanimously recommended to the NIC, the Governor, and the Legislature that pensions for permanent total disability workers and their dependents be increased or supplemented to substantially offset the erosion of value due to inflation since such pensions were awarded.

SOLUTIONS:

The Commission believes that a clear case has been made for protecting totally disabled workers from the ravages of inflation. Industrial injuries have taken from these people the capacity to work, the capacity to protect themselves from inflation.

The Commission proposes that those pensions of claimants with totally disabling injuries occurring prior to 1971 and survivors of totally disabled persons with injuries occurring before 1973 be increased from the present 35 percent to 65 percent and be funded from the Silicosis and Disabled Pension Fund.

Because wages are a factor in the permanent total disability formula and because wage increases have not been as great as cost of living increases, the Commission proposes that the index used be the average state wage.

The Commission proposes a one-year lag in the upgrading, to the wage level effective July 1, 1980. A pension would be increased by the percentage increase in the average state wage from the date of the injury (or July 1, 1973, if the injury occurred earlier) to the average state wage effective on July 1, 1980. Since those in greatest need are the pensioners who are not covered by Social Security and since Social Security is already indexed, the Commission proposes that the improvements apply only to those who are not covered by Social Security. Further, if any improvements are identified as workers' compensation benefits, it is likely that Social Security would simply reduce its contribution so that Nevada pensioners who are also covered by Social Security would not gain from any upgrading of their workers' compensation pensions.

The total number of permanent total claimants injured prior to July 1, 1980, and their survivors or dependents, including an estimate of those not yet awarded, is 1,473. The total cost of the improvements of the system is estimated to be approximately $13.3 million.

The funding for the improvements of the system is outlined on pages 8 and 9 of EXHIBIT B attached hereto.

The Social Security Offset; the amount of the Social Security Disability Income Benefit is outlined on pages 9, 10 and 11 of EXHIBIT B attached hereto.

There is an administrative issue which should be noted. There must be a time lag between the authorization of the offset change and the actual accomplishment of the change. AB-433 requires that no reduction in state benefits can occur before January 1, 1982, before the employee has been given a written notice by mail of the intent of reduction, nor before the Social Security increases are paid. Further, AB-433 guarantees there will be no reduction in total benefits.

In conclusion, Mr. Nusbaum told the committee that the NIC recommends that the state recognize its obligation to these persons who have become totally disabled or killed through accidents or diseases occurring at work, and their survivors. They recommend that the inflation factor as expressed in average wage levels up to 1980 be reflected in their compensation on and after July 1, 1981. They do not recommend any retroactive supplementation of benefits. They recommend the improvements be restricted to those who are not covered by Social Security. They recommend that Nevada join a number of other states in making Social Security benefits primary and that Nevada use the resulting savings as one part of the funding of pension improvements. They recommend that a portion of the inflation caused surpluses of recent years in the State Insurance Fund be used to resolve the inflation caused pension problem. In short, they recommend the enactment of AB-433.

Mr. Nusbaum explained that AB-390 is a very limited version of AB-433. He said it uses the average annual wage as the index for improving pensions. AB-390 uses the July 1978 rather than the July 1980 average state wage as the target in computing the percentage of increase. It improves all pensions whether or not the recipient is receiving Social Security benefits. It does not provide for a change in the Social Security offset and thus does not reduce the state's cost by that offset change savings. It does not supplement the pre-1973 pensioner from the Silicosis and Disabled Pension Fund.

Chairman Banner asked if there was anyone who wished to speak either for or against AB-390 or AB-433.

Claude Evans, Secretary Treasurer, AFL-CIO, told the committee that they have no problem with AB-433 as Mr. Nusbaum had clearly resolved any questions they had.

Fred Davis, Greater Reno/Sparks Chamber of Commerce, explained to the committee that they are not opposed to the bill because they recognize what inflation has done to the people affected by this legislation. However, in reference to AB-390, he directed attention to the method of funding as coming from the state insurance fund. Historically the increases for this type of adjustment have come from the state general fund and their position is that present day employers should not be penalized to pay for past claims.

Harvey Whittemore, Nevada Resort Association, expressed to the committee that NIC should have anticipated in 1977 that interest rates were going up and thus the premiums from the employers should have been lower. Their position regarding the source of funding is that inflation is a social problem and not caused by the employers. He opposes the bill.

Chairman Banner interjected the point that workmans' compensation is based on a structured settlement and not a flat based settlement. If a claimant was given a lump sum of $100,000 he would have enjoyed the benefit of interest and inflation but the NIC by law must restrict that claimant to a structured settlement.

Tom Stuart, Gibbens Company wanted to stress to the committee that workers' compensation is an insurance contract. All insurance contracts are negotiated prior to an event; therefore premiums must be based upon the charge at that time, not retroactive.

Joe Buckley, Industrial Relations Director, Summa Corporation, member of the Advisory Board, asked the committee to review portions of the Advisory Board of Review's Report between pages 47 and 53. He said this would reflect the kind of discussion the Board had in regard to this particular subject. They did recommend unanimously that something should be done benefit-wise for the permanently and totally disabled claimants. They are also in favor of the NIC applying for the total Social Security offset.

Carole Villardo, CPE-South, expressed the concern that this is an insurance program and urged the committee to go back to the state general fund. She was in agreement with the three previous speakers.

Tom Stuart had a final point to make to the committee by stating that this is a recurring problem that the Legislature has addressed in various fashions, three times by tapping the general fund. He mentioned that the State of Washington has prevented tapping their general fund in a similar problem by assessing the employer and employees based upon their payroll. This fund is placed into a future inflationary fund in order to avoid having to address this problem in the future.

Since there was no further testimony, Vice Chairman Thompson adjourned the hearing at 6:25 p.m.

Respectfully submitted,

Janice Fondi

Janice Fondi
Committee Secretary

LABOR AND MANAGEMENT COMMITTEE

GUEST LIST

Date: April 13, 1981

AB433

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK FOR	AGAINST	BILL
Bill Champion	MGM Grand Las Vegas		✓	
Joe Buckley	Summa Corp.		[illegible]	
Gibbons Cahill			✓	
Harvey Whittemore				
Stan Jones				
Tom Stuart	The Gibbons Co, Inc	?		433 390
JAMES F WOOD -	MEMBER RENO CHAMBER of Com.	(Not Participating	observing	

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LABOR AND MANAGEMENT COMMITTEE

GUEST LIST

Date: April 13, 1981

AB433

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK FOR	AGAINST	BILL
[illegible]	AFL CIO			
Richard Schone	AFL-CIO	/		
Claude [illegible]	AFL-CIO	X		
Dawn Langfitt	myself	X		
[illegible]	NIC	~~433~~ X		433
Charles Langfitt		X		
[illegible]				
H. CURTIS	NIC	X		
Leslie H. Warner	My Self	X		

Testimony of Claude Evans, Executive Secretary-Treasurer of the Nevada State AFL-CIO before the Assembly Labor and Management Committee on April 13, 1981 regarding A.B. 390.

EXHIBIT A

Mr. Chairman and Members of the Committee:

I don't think it's necessary to introduce myself again, but for the record I'm Blackie Evans, Secretary-Treasurer of the Nevada State AFL-CIO.

Of the 1400 residents in the State of Nevada, which this bill affects, I doubt if more than 15 or 20 percent were dues paying members of any of our unions, but we support this legislation because it's right. We have appeared before you many times during this session of the legislature, probably in your minds too many times. I think it's time we cleared up a few misconceptions of organized labor in the State of Nevada, and our positions on respective pieces of legislation.

First, let me state that some of our positions do not effect the dues paying members of our affiliated organizations. For example, the lie detector bill that has created such a stir in this session does not affect the members of organized labor because our respective unions would not tolerate such an infringement on the basic rights of our members. We have advocated the outlaw of lie detectors for employment because it's right. We have advocated an increase in minimum wage, not because it affects our members because all their contracts call for more salary than the minimum wage, but because it's right.

Organized labor is the only voice that is raised for these forgotten, under compensated, individuals of Nevada. The representatives of the corporative structure, who will oppose this legislation and are only concerned about the profit margin, will follow me and tell you that the representatives of organized labor always want more. We agree.

We want more education and vocational education and less illiteracy.

We want more peace and less war.

We want more equality and less greed.

We want more books for our children and less guns.

We want more security and less crime.

We want more work and less unemployment.

We want more individual rights and less enforced conformity to the corporate dictates.

We want more people registered to vote and less restrictions on registration.

We want more music and art and less violence.

We want more sex equity and less exploitation of the female workers.

We want more understanding and less racial prejudice.

And, we want more benefits to injured workers and survivors of deceased workers in the State of Nevada and less million dollar rebates to the multi-million dollar corporations of Nevada.

On page 53 of the Governor's Advisory Board's Report to the Governor, we stated and I quote: "The Advisory Board unanimously recommends to the Nevada Industrial Commission, the Governor and the Legislature that pensions for permanent total disability workers and their dependents be increased or supplemented to substantially offset the erosion of value due to inflation since such pensions were awarded."

I have some personal knowledge of many of the people who this bill directly affects. For seven years as a Commissioner at NIC, I personally delivered the first month's pension checks to survivors of fatally injured workers of Nevada, approximately 29 per year for seven years.

If you really want a challenging job, I suggest you try to explain to a 45 year old widow of a man who was killed on the job in a mine cave-in why she could not sue the employer for her husband's death. And, then explain that the benefits from NIC would be $220.00 per month and explain that she was not eligible for social security because her youngest child was over 18 years of age. Then explain that there would be no increase in these benefits until such time as the Legislature passed laws to do so.

Explain to a 60 year old lady who receives $90.00 per month for her husband's death in 1960 why the benefits are not increased when she reads in the newspapers of $35 million dollars being returned to the major corporations in Nevada.

If you think that job may be a little tough, try spending 16 hours on a major fire where two Nevada workers are killed, one who is a friend of yours. They are killed through no fault of their own and you're not sure who the dead men are until you get them out of the fire. Then you have to go to their homes and tell their wives and children that their husband and father will not be returning.

If that's not enough try talking to an 18 year old boy at his home who has lost a leg in an industrial injury and feels that he has no future at all. Ask the Governor of the State, who has also lost a leg, to call the young man, which he does, and subsequently be told that this young man had committed suicide. And, explain to his parents that there will be no compensation benefits because they were not dependents of their son and he had no wife. The total cost to the employer a $1200.00 burial fee.

Try to explain to a 40 year old man who has no legs because of an industrial injury that his benefits will be $310.00 per month, and his is not entitled to social security benefits because he worked on a job not covered by social security.

I suggest that the members of the Assembly Labor and Management Committee be the voice for these individuals and work to pass this humane legislation.

On behalf of the 1400 residents and citizens of Nevada who have no paid lobbyists, who cannot afford to come to Carson City, who pay no union dues and, in many cases, are afraid to raise their voices, and who have no one to speak for them, we request passage of A.B. 390 because it's right.

EXHIBIT B

PENSION IMPROVEMENT FOR PERSONS PERMANENTLY AND TOTALLY DISABLED (AB 390 and AB 433)

Joe E. Nusbaum

Nevada Industrial Commission

There are two distinct aspects to the subject of pensions for permanently and totally disabled persons, fatalities, and their survivors. One is the nature and scope of the problem. The other is the method of solving the problem. My comments are under the two headings, The Problem and The Solutions.

THE PROBLEM

The report of the Advisory Board of Review does a good job of introducing the subject.

"When it is determined that an injured worker is permanently disabled to the extent that he can no longer be gainfully employed, he is declared to have a permanent total disability. This is not a medical evaluation alone (often the degree of impairment is only 40% to 50% under the AMA Guides) but also is a total assessment of the person and his circumstances.

"A permanent total (PT) is granted a lifetime pension for himself, his surviving spouse and dependent children. The pension is determined according to the law at the time of the disabling injury. Presently the pension is based on two-thirds of the claimant's average wage but the pension is not to exceed the statewide average wage.

"By definition a PT cannot work and thus has no opportunity to offset inflationary cost increases by higher earnings. Thus, the lower wage rates of earlier years and lower statutory benefits have frozen the income of PTs of earlier years at a low rate compared to today's cost.

"The Legislature, from time to time, has upgraded these pensions from general revenues. The most recent upgrading was in 1979 for pensions granted prior to 1973.

"With the high rates of inflation of the last few years, the pension problem has become much more serious. The Advisory Board received a report from the Nevada Industrial Commission including an analysis by its consulting actuary on the pension problem and on alternative ways of dealing with it.

"By any measure pensions are being substantially eroded by inflation. Using the Consumer Price Index as a standard of measurement, pensions awarded in the early 1970's will have lost approximately half of their purchasing power by 1981. Using the Nevada average wage as the standard for measurement, the loss is not quite as great because wages have not increased as rapidly as the Consumer Price Index. Using the average annual pension award as the standard for measurement, the loss is even greater than indicated by the CPI because this index adjusts a claimant's benefits not only for loss of earning power but also for intervening legislative actions to improve benefits."

CONSUMER PRICE INDEX

Last Quarter of Fiscal Year	Annual Loss in Purchasing Power	1980 Purchasing Power of Awards of Each Year
1973	6.2%	54.3%
1974	11.1%	60.3%
1975	9.1%	65.8%
1976	5.8%	69.6%
1977	6.5%	74.1%
1978	7.7%	79.8%
1979	9.6%	87.4%
1980	14.4%	100.0%

NEVADA AVERAGE ANNUAL WAGE

Calendar Year	% Change	1980 Value of Wage of Each Year
1973	5.5%	64.0%
1974	4.7%	67.0%
1975	6.0%	71.1%
1976	6.3%	75.6%
1977	7.0%	80.9%
1978	8.1%	87.4%
1979	7.0%	93.5%
1980 (Estimate)	7.0%	100.0%

BENEFIT ESCALATION COSTS

Fiscal Year	Weighted Average	Value Compared to 1979
1973	$243*	35.7%
1974	$378	55.5%
1975	$401	58.9%
1976	$529	77.7%
1977	$579	85.0%
1978	$643**	94.4%
1979	$681**	100.0%

*Includes legislative supplement.
**Small number of pensions makes averages and indices less reliable.

"Obviously, the above average payments at least to the mid-1970s are inadequate to maintain even a minimum standard of living if they are the sole source of income. It should be noted that these are only the workers' compensation pensions and do not include Social Security payments for those who are subject to Social Security. However, a person who is declared eligible for both workers' compensation and Social Security total disability benefits does not receive both payments in full since, under present law, Social Security offsets its payments by (a portion of) the amount received from workers' compensation (up to age 62)."

Regarding the need for improvements in pensions, the Advisory Board concluded:

"The Advisory Board unanimously recommends to the Nevada Industrial Commission, the Governor and the Legislature that pensions for permanent total disability workers and their dependents be increased or supplemented to substantially offset the erosion of value due to inflation since such pensions were awarded."

THE SOLUTIONS

The Commission believes that a clear case has been made for protecting totally disabled workers from the ravages of inflation. Industrial injuries have taken from these people the capacity to work - the capacity to protect themselves from inflation.

A number of questions remain. One group of questions deals with the mechanics of upgrading, that is, the factors to be used in the upgrading formula. Among these are: What should be the standard for indexing (Consumer Price Index, Nevada Average Wage or Average Benefit Index)? What should be the starting date for indexing? Should the pre-1973 pensions for residents be treated differently since they have been partially improved previously? How current should the indexing be (current year, one-year lag, two-year lag)? Should pensioners who are also covered under Social Security be included in the upgrading since Social Security is already indexed?

Another set of questions deals with the funding of pension improvements. Should this be viewed as a social program with general taxes solely responsible? Should the requirement that workers' compensation pensions be primary and Social Security secondary be reversed (as permitted under federal law) as one source of funding? Should a premium tax or its equivalent be enacted as a source of funding? Should surplus in the State Insurance Fund be used as one source of funding?

The Mechanics of Upgrading

In AB 433, the Commission proposes the following answers to the questions regarding the factors to be considered in upgrading.

1. Since the Legislature had previously chosen a means of upgrading resident claimants with totally disabling injuries occurring prior to 1971 and survivors of totally disabled persons with injuries occurring before 1973, and since sufficient monies are available in the funding source created by the Legislature (the Silicosis and Disabled Pension Fund), the Commission proposes that those pensions be increased from the present 35% to 65% and be funded from the Silicosis and Disabled Pension Fund.

2. Because wages are a factor in the permanent total disability formula and because wage increases have not been as great as cost of living increases, the Commission proposes that the index used be the average state wage.

3. The Commission proposes a one-year lag in the upgrading, to the wage level effective July 1, 1980. A pension would be increased by the percentage increase in the average state wage from the date of the injury (or July 1, 1973, if the injury occurred earlier) to

the average state wage effective on July 1, 1980. For example, a qualified PT who was injured on or before June 30, 1974, would have his award increased by 54% (the relationship of $688.60 to $1,061.24). Remembering from the earlier table that the weighted average of PT benefits in fiscal year 1973 was $243, that figure would be increased to $374 under this provision.

4. Since those in greatest need are the pensioners who are not covered by Social Security and since Social Security is already indexed, the Commission proposes that the improvements apply only to those who are not covered by Social Security. Further, if any improvements are identified as workers' compensation benefits, it is likely that Social Security would simply reduce its contribution so that Nevada pensioners who are also covered by Social Security would not gain from any upgrading of their workers' compensation pensions.

For those persons who qualify for the wage indexed pension improvements, the percentage of such improvements are as shown below.

Date of Injury	Percentage Increase
Prior to July 1, 1974	54%
Prior to July 1, 1975	46%
Prior to July 1, 1976	39%
Prior to July 1, 1977	31%
Prior to July 1, 1978	24%
Prior to July 1, 1979	16%
Prior to July 1, 1980	7%

The total number of permanent total claimants injured prior to July 1, 1980, and their survivors or dependents, including an estimate of those not yet awarded, is 1,473. The total cost of the above improvements is estimated to be approximately $13.3 million.

Funding

The Commission proposes the following funding for the above improvements:

1. For those persons covered by the present 35% supplementation, which under this proposal would increase to 65%, the increase in liability is estimated at $1,780,000. This cost should come from funds available in the Silicosis and Disabled Pension Fund including investment income and discounting of reserves. The original appropriation to create this fund was from general taxes.

2. The Social Security offset should be reversed (as permitted by federal law) so that Social Security becomes primary and workers' compensation secondary. This is discussed more fully below but the financial effect would be to permit a reduction in Nevada's reserves by an estimated $3 million, thus reducing the cost of the pension improvements by $3 million.

3. The balance of the cost, $8.5 million, should come from surplus in the State Insurance Fund. The State Insurance Fund has realized large gains over the last few years due to current excess investment income or projected larger investment returns

(which permits the discounting of reserves). Most of the $35 million that has been distributed to policyholders is due to this windfall gain in investment income. The same inflation that has produced these results has caused the pension problem and the Commission believes that a portion of these gains should be used to correct the inequities in the pension program.

However, if the Commission is forced to distribute a $13 million dividend this year, under the provisions of AB 49, the Commission recommends that the $8.5 million cost of AB 433 be provided from the General Fund.

Social Security Offset

The amount of the Social Security Disability Income (SSDI) benefit for which a qualified worker is eligible equals the retirement benefit which the worker would receive if he or she reached age 62 and retired on the date of the accident. This amount depends on such factors as quarters of Social Security coverage, Social Security wages, and the number of dependents.

The combined SSDI and workers' compensation benefit is limited by the Social Security law to 80% of the worker's "average current earnings" which normally is the worker's recent earnings level (usually the same as the wage used for workers' compensation purposes). Unless state law provides otherwise, the SSDI benefit is reduced in order to achieve the desired 80% limitation. Since it is permitted by federal law, 14 states provide for reductions of the state benefit payments when

SSDI benefits are paid. The worker's benefits are not reduced because of the state offset provision. The primary effect is to transfer savings related to the coordination of benefits from the Social Security System to the state.

Another feature of SSDI is that the benefit increases annually by the percentage change in the cost of living index times the unreduced SSDI benefit. This increase is not subject to the 80% limitation, that is, it is not limited by any workers' compensation offset provision. Thus, a person who is under both SSDI and workers' compensation receives an annual cost of living adjustment regardless of which benefit is primary or the proportions of his total income that is from Social Security and from workers' compensation.

The Advisory Board considered the offset question and concluded:

"The Advisory Board unanimously recommends to the Commission, the Governor and the Legislature that the offset involved in coordinating workers' compensation benefits and Social Security benefits be reversed, as authorized under federal law, to benefit Nevada's workers' compensation program but without recommendation as to the appropriate use of the savings realized."

The Commission concurs that the state should take advantage of the authorization under federal law to make Social Security primary so that the state, rather than Social Security, receives the financial benefit of the coordination required under federal law. The Commission also believes there is no point in the state upgrading pensions for those persons who are also covered by SSDI since they already have an automatic cost of living adjustment annually which is at least as much as any state supplement would be.

There is an administrative issue which should be noted. There must be a time lag between the authorization of the offset change and the actual accomplishment of the change. SB 433 requires that no reduction in state benefits can occur before January 1, 1982, before the employee has been given a written notice by mail of the intent of reduction, nor before the Social Security increases are paid. Further, AB 433 guarantees there will be no reduction in total benefits.

AB 390

AB 390 is a very limited version of AB 433. It uses the average annual wage as the index for improving pensions.

However, AB 390 differs in many respects. First it uses the July 1978 rather than the July 1980 average state wage as the target in computing the percentage of improvement. For example, pensioners of fiscal year 1974 and earlier would receive a 33% increase as compared with 54% under AB 433. Second, it improves all pensions whether or not the recipient is receiving Social Security benefits (which would likely result in a portion of the increased state spending being offset by Social Security with no net benefit to the recipient). Third, it does not provide for a change in the Social Security offset and thus does not reduce the state's cost by the Social Security offset change savings.

Finally it does not supplement the pre-1973 pensioners from the Silicosis and Disabled Pension Fund.

Though it would only recognize the increase in wage levels to 1978 and would benefit only 729 persons, the estimated cost of AB 390 to the State Insurance Fund would be $6.8 million.

In conclusion, the Commission unanimously recommends that the state recognize its obligation to these persons who have become totally disabled or killed through accidents or diseases occurring at work and their survivors. We recommend that inflation as expressed in average wage levels up to 1980 be reflected in their compensation on and after July 1, 1981. We do not recommend any retroactive supplementation for the inflation caused losses they have already suffered but that their future benefits be adjusted. We recommend the improvements be restricted to those who are not covered by Social Security. We recommend that Nevada join a number of other states in making Social Security benefits primary and that Nevada use the resulting savings as one part of the funding of pension improvements. We recommend that a portion of the inflation caused surpluses of recent years in the State Insurance Fund be used to resolve the inflation caused pension problem. In short, we recommend the enactment of AB 433.

However, if the Commission is forced to distribute the surplus in the State Insurance Fund to policyholders under AB 49, the Commission then must recommend that $8.5 million be appropriated from the General Fund for pension improvements.

* * * * * * * * *

We also recommend the following amendments to AB 433 to correct drafting problems.

Section 2, line 7. Change 1b to read: "To any <u>federal social security disability</u> income benefits [from the federal social security system]." (This underlined language specifically identifies the disability income portion of the Social Security benefits).

Section 3, lines 16, 17 and 18. Change to read: "... not entitled to an increase in those death benefits pursuant to NRS 616.628 is entitled to..." (This removes line 18 so that no dependent or survivor's Social Security benefit is affected).