MEMBERS PRESENT:

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

MEMBERS ABSENT:

None

GUESTS PRESENT:

See attached guest list.

WITNESSES TESTIFYING:

Assemblyman Hickey
James R. Rice, Nevada State Contractors Board
James A. Barrett, Association of Builders and Contractors
Thomas A. Cooke, Counsel for Nevada State Contractors Board
Joe Nusbaum, Director, NIC
Robert Gibb, NIC
Harvey Whittemore, Nevada Resort Association

Vice Chairman Thompson called the meeting to order at 5:05 P.M. and directed the attention of the committee to AB-629, AB-650 and AB-658.

AB-650: Requires certain employers to give preference in hiring to unemployed residents of Nevada and to prefer Nevada businesses in buying supplies.

Mr. Hickey explained to the committee that the thrust of this bill came from a hiring practice developed in Alaska. He recommended that Section 3 of the bill be deleted because there are some legal problems with that portion.

Mr. James Rice, Nevada State Contractors Board, favors the bill and expressed his hope that this may be one way to hold the MX Project's hiring of employees and contracting for services to Nevada residents.

In response to Mr. Jeffrey's question if this might cause problems with hiring hall's procedures, Mr. Rice answered there might be certain conflicts involved.

Mr. Hickey explained that the language was developed by comparing this bill with the Alaskan law which was similar but declared unconstitutional. This bill was then drawn up in such a manner as to be considered constitutional even though it is similar in nature to the Alaskan statutes.

Mr. James Barrett, Executive Director of Association of Builders and Contractors representing both North and South, favors this bill.

AB-658: Requires contractors to have resident agents and romoves exemption for contractors on federal projects from statutory provisions governing contractors.

Mr. Barrett explained to the committee that this bill would bring a resident agent into contracts which would be similar to the corporate contract laws of the state of Nevada for the purpose of receiving legal papers or other technicalities requiring a responsible representative of the contractor within the state of Nevada. He expressed to the committee that this bill would strengthen the contractors position in the state of Nevada and he supports this bill.

Mr. Jeffrey expressed that he had problems with the terminology "resident agent." He suggested that "qualified employer" would be more appropriate wording.

Mr. Thomas Cooke, General Counsel for the Nevada State Contractors Board, presented to the committee a memorandum on AB-629 and AB-658 attached hereto as EXHIBIT A.

Mr. Cooke told the committee that the resident agent does not have to be a lawyer or an accountant but rather can be someone employed in the office of the contractor. The requirement of the resident agent is simply to be available for service of process in the event of a lawsuit and the agent's name would be on file with the Secretary of State's office and file the annual list of officers each year. Any qualified employee may be the resident agent including the president of the company.

Mr. Cooke directed the attention of the committee to AB-658, Section 2, paragraph 4 on page 1. He suggested that if this bill is passed NRS 624 should be amended to provide that the violation of this statute would be grounds for disciplinary action by the State Contractors Board.

Mr. Cooke then directed the attention of the committee to Section 5 on page 2 as being absolutely acceptable to the Board. This provision is also contained in SB-202 which they have been trying to get through the legislative process. The annual renewal fees which this provision addresses may need to be increased and this bill would allow that to happen if necessary. The fees include application, examination and annual license fees to be paid by applicants and would increase them from $100 to $200.

Mr. Cooke told the committee that the Contractor's Board objects to Section 6, paragraph 7, lines 44 throuth 47 on page 2 of AB-658. They want this paragraph removed in its entirety.

He read from EXHIBIT A, page 6 to show that other states have similar exemptions as that contained in Nevada's NRS 624.330(7).

California Business and Professional Code Section 7047:

> "This chapter does not apply to any construction, alteration, improvement or repair carried on within the limits and boundaries of any site or reservation the title of which rests in the federal government."

Washington and Florida's Business and Occupation Code is also the same as California's.

Mr. Cooke referred to a United States Supreme Court Decision, Miller v. Arkansas, 352 U.S. 187, 1 L.Ed.2nd 231 regarding whether or not the text contained within AB-658 might be an unconstitutional invasion of the Federal Government's area. He read the Miller v. Arkansas Decision to the committee which is contained on pages 3 and 4 of EXHIBIT A attached hereto.

Mr. Hickey stated that this same information was what the Legislative Counsel Bureau had cited also in regard to this bill. He told the committee that he would pursue the correct language for this bill.

AB-629: Removes exemption contractors have on certain federal projects from statutory provisions governing contractors.

Mr. Cooke said there was a major problem as to the constitutionality of this bill in view of the United States Supreme Court's decisions and even if these controversial provisions contained within AB-629 and AB-658 were declared constitutional there would be tremendous difficulties in enforcing these bills.

Chairman Banner asked Mr. Hickey to return to the next meeting on May 19, 1981 at 5:00 P.M. with a package of these bills worked out for the committee's consideration.

AB-406: Amends provisions of industrial insurance law relating to rates, dividends and failure of coverage.

Chairman Banner explained that the committee had heard testimony on this bill on April 6, 1981 and asked Mr. Nusbaum of NIC to testify again on AB-406.

Mr. Nusbaum explained that this bill was based on the Advisory Board's recommendation that legislation be drafted to clarify the difference between rebate and experience dividends.

Mr. Nusbaum said the Senate Committee on Labor and Commerce would like to have this bill processed so that they can consider the dividend issues based on a bill that has already had a hearing specifically based on AB-406.

The committee discussed an amendment which Mr. Staub from the Insurance Commissioner's office worked on jointly with Mr. Gibb and Mr. Nusbaum from the NIC. The amendment is attached hereto as EXHIBIT B.

Objections were raised as to the amendment by Harvey Whittemore, Nevada Resort Association, even though it was pointed out by Mr. Banner and Mr. Nusbaum that the amendment would undoubtedly be the same when the bill gets to the Senate as the changes were concerned to non-appealable rate subjects within the bill itself.

Mr. Whittemore said the amendment made substantive changes in the bill.

Mr. Gibb told the committee that the amendment was drawn up by himself and Mr. Staub of the Insurance Commissioner's office. The points covered in the amendment were discussed at the last hearing on April 6, 1981.

Ms. Foley suggested the committee pass the bill without the amendment and there was discussion on this matter.

Mr. Bennett moved DO PASS AB-406; seconded by Mrs. Cafferata and carried unanimously by the entire committee. (9-0)

There being no further business, the meeting was adjourned at 6:00 P.M.

Respectfully submitted,

Janice Fondi
Committee Secretary

LABOR AND MANAGEMENT COMMITTEE

Date: _____

GUEST LIST

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL
CHARLES THOMAS	NEVADA STATE CONTRACTORS BOARD		✓	C29 C58
Thomas A Cooke	" " " "		✓	C29 C58
James A. BARRETT	Assoc. Builders & Contractors	✓	631	650 650 ~~NCR 44~~
Bill Newman	State Engineer			C50
James R Rice	Teamsters #631			

61st NEVADA LEGISLATURE

ASSEMBLY COMMITTEE ON LABOR

LEGISLATION ACTION

DATE May 18, 1981

SUBJECT AB-406: Amends provisions of industrial insurance law relating to rates, dividends and failure of coverage.

MOTION: DO PASS

Do Pass X Amend _____ Indefinitely Postpone _____ Reconsider _____

Moved By: BENNETT Seconded By: CAFFERATA

AMENDMENT: _____

Moved By: _____ Seconded By: _____

AMENDMENT: _____

Moved By: _____ Seconded By: _____

VOTE:	MOTION		AMEND		AMEND	
	Yes	No	Yes	No	Yes	No
FOLEY	X					
RHOADS	X					
HICKEY	X					
THOMPSON	X					
BANNER	X					
BENNETT	X					
JEFFREY	X					
CAFFERATA	X					
RACKLEY	X					
TALLY:	9	0				

ORIGINAL MOTION: Passed X Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

Attached to Minutes May 18, 1981

EXHIBIT A

Memorandum on A.B. 629 (Proposed Amendment to NRS 624.330(7)) and A.B. 653 (Proposed Amendment to NRS 624.330(7))

> "The United States Supreme Court at an early date laid down a broad formula which from that time has been the general principle governing the possibility of state exercise of power. The court held that the states may exercise concurrent or independent power in all cases except three: (1) Where the power is lodged exclusively in the federal constitution; (2) Where it is given to the United States and prohibited to the states; (3) Where, from the nature and subjects of the power, it must necessarily be exercised by the national government."
>
> 16 Am.Jur.2nd 790, Sec. 289
> (Citing Gilman v. Philadelphia, 70 U.S. 713, 18 L.Ed.96; Houston v. Moore, 18 U.S. 1, 5 L.Ed.19

Although a state has jurisdiction over federal lands within its territory, Congress retains the power to enact legislation respecting those lands pursuant to Article IV §3 Cl.2 of the U.S. Constitution (the property clause) which confers upon Congress the power to dispose of and make all needful rules and regulations respecting property belonging to the United States.

> See Kleppe v. New Mexico, 426 U.S. 529, 49 L.Ed.2nd 34
>
> "The relative importance to the state of its own law is not material when there is a conflict with a federal law; any state law, however clearly within a state's acknowledged power, which interfers with or is contrary to federal law must yield. Moreover, the state has no right to interfere, or by way of compliment to the legislation of Congress, to prescribe additional regulations and what they deem auxilliary provisions for the same purpose."
>
> 16 Am.Jur.2nd 793, Sec. 291
>
> "The states cannot tax interstate commerce by laying a tax upon the business which constitutes such commerce, upon the privilege of engaging in it, upon the receipts, as such, derived from it, or upon persons or property in interstate commerce."
>
> 15 A Am.Jur.2nd 345, Sec. 23
>
> "The police power of the states is not surrendered when general power to regulate commerce with foreign nations and among the several states was conferred upon Congress. The commerce clause in no way relieves or obstructs the states in the exercise of their police power. Although most exercises of the police power effect interstate commerce to some degree, not every exercise is invalid under the commerce clause. And state regulation, based on the police power, which does not discriminate against interstate commerce or

operate to disrupt its required uniformity, may constitutionally stand. Thus, the states or municipalities, in the exercise of the police power, may enact statutes and ordinances to protect the public health, public morals, public safety, and public convenience, concurrent with laws passed by Congress in the exercise of its jurisdiction over the same subjects, provided such laws or ordinances are local in their character and affect interstate commerce only incidentally or indirectly, and do not conflict with the provisions of federal legislation, or the federal constitution."

15 A Am.Jur.2nd 431, 34

"In recognition of the commerce clause of the United States Constitution, it has often been declared that a state cannot make the payment of a license tax or the securing of a license a condition to carrying on interstate commerce and cannot tax the privilege of carrying on interstate business."

51 Am.Jur.2nd 28, Sec. 22
See Annotation: 52 ALR 533, 534, 115 ALR 1105; 126 ALR 590

For particular activities where the imposition of a state license tax or requirement may or may not be valid see 51 Am.Jur.2nd 33, Sec. 26.

"Legislation purporting to impose license restrictions or charges against instrumentalities of the federal government has frequently been described as 'void.' . . . Accordingly, it has been said that a contractor whose bid for the construction of federal facilities in a particular state has been accepted by the United States and who has begun work on the project may not be convicted by court of that state for working as a contractor in the state without obtaining the contractors license required by the state's law, where the effect of imposing the state's licensing restrictions would give state authorities a virtual power of review over the federal determination of whether an award of a particular contract to a particular contractor was consonant with federal policy as set out in express federal legislation. . . . It has however, been declared that a state may extend a privilege tax to contractors with the federal government, where the locus in quo is within the territorial limits of the state and exclusive jurisdiction over the same has not been ceded to the federal government, and where there is no discrimination against such contractors and no unlawful interference with interstate commerce.

Annotation 96 L.Ed.263, 269, 2 L.Ed.2nd 1789, 1791

"There is authority to the effect that a state may impose a license tax on the business of an individual that is conducted on land owned by the federal government. Thus it has been held that one who conducts a business in a

railroad station situated on land ceded to the federal government or an approach of an interstate bridge must obtain a license required by state statute for a retail merchandise business. However, where the United States has acquired exclusive jurisdiction over land within the boundaries of the state, and has not relinquished such jurisdiction, license fees and regulations may not be imposed by the state or subdivision thereof upon those performing work upon such land under contract with the United States."

51 Am.Jur.2nd 18, Sec.11
Citing James v. Dravo Contracting Company, 302 U.S. 134, 82 L.Ed. 155; Annotation 114 ALR 347, 348; 115 ALR 371, 372; 127 ALR 827.

A contractor whose bid for the construction of federal facilities at a place in Arkansas over which the United States had not acquired jurisdiction had been accepted by the United States, and who had begun work on the federal project, was convicted by the Circuit Court in Arkansas of working as a contractor within the law without having the license required by Arkansas. The case was appealed to the Supreme Court of Arkansas which affirmed the conviction.

However, on appeal by the contractor, the United States Supreme Court reversed the conviction. In a per curiam opinion the Court stated that to subject the federal contractor to Arkansas licensing requirements would frustrate federal policy in the awarding of bids for federal projects to the lowest bidder. The federal law or Procurement Act authorizing the awarding of bids for federal projects was similar in many respects to the Arkansas contractors licensing law. The Court said:

"Mere enumeration of the similar grounds for licensing under the state statute and for finding 'responsibility' under the federal statute and regulations is sufficient to indicate conflict between this license requirement which Arkansas places on a federal contractor and the action which Congress and the Department of Defense has taken to insure the reliability of persons and companies contracting with the federal government. Subjecting a federal contractor to the Arkansas contractor license requirements would give the states licensing board a virtual power of review over the federal determination of 'responsibility' and would thus frustrate the expressed policy of selecting the lowest responsible bidder. In view of the federal statute and regulations, the rationale of Johnson v. Maryland, 254 U.S. 51, 57, 65 L.Ed.126, 129, 41 S.Ct.16, is applicable: 'It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends

> to a requirement that they desist from performance until they satisfy a state officer under examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the government servants remotely by a general rule of conduct; it lays hold of them in their specific attempts to obey orders and requires qualifications in addition to those that the government has pronounced proficient. It is the duty of the department to employ persons competent for their work and that duty it must be presumed has been performed.'
>
> Miller v. Arkansas, 352 U.S. 187, 1 L.Ed.2nd 231 Supra

In the landmark case of Johnson v. Maryland, Supra, it involved the question whether a state might require a post office employee to cease driving a government truck in the transportation of mail over a post road until he obtained a license by submitting to examination before a state official and paying a fee, that the immunity of the instruments of the United States and state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary party of them and pay a fee for permission to go on, since such a requirement does not merely touch the government servants remotely by a general rule of conduct, but lays hold of them in their specific attempts to obey orders and requires qualifications in addition to those that the government has pronounced sufficient.

The principle involved here was first enunciated in the famous case of M'Cullouch v. Maryland, 4 L.Ed.579, 607, 600 (1819). Chief Justice Marshall delivered the opinion of the Court holding that the states have no power by taxation or otherwise to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress, to carry into effect the powers vested in the national government.

In the case of Johnson v. Maryland, 65 L.Ed.126, Supra the United States Supreme Court held that a state may not require a post office employee to cease driving a government motor truck in the transportation of mail over a post road until he shall obtain a license by submitting to examination before a state official and

paying a fee. The Court stated:

> "It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer, upon examination, that they are competent for a necessary part of them competent and pay a fee for permission to go on. Such a requirement does not merely touch the government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders, and requires qualifications in addition to those that the government has pronounced sufficient."

The Federal Constitution in Article I, Section 8, Clause 17, grants to Congress the power to exercise "exclusive legislation" over all places purchased by the consent of the legislature of the states in which the places are located "for the erection of forts, magazines, arsenals, dock yards, and other needful buildings." State and local regulations will be held inapplicable to construction contractors engaged in work for the federal government if the regulations are found to conflict with this provision. This principle, by its nature, is applicable only in the case of contractors working on land which has been purchased by the federal government. In cases involving work for the federal government, but on land not actually owned by the government, the rule seems to be that state and local regulation will also be held inapplicable to federal construction contractors where its application would be inconsistent with policy expressed in relevant federal statutes.

See Anno: 1 L.Ed.2nd 1729

Other states that have contractors licensing statutes also have similar exemptions as that contained in Nevada's NRS 624.330(7).

> "This chapter does not apply to any construction, alteration, improvement or repair carried on within the limits and boundaries of any site or reservation the title of which rests in the federal government."

California Business and Professional Code Section 7047.

Washington's Business and Professional Code Section 18.27090 reads the same as California's.

Florida's Business and Occupation Code is also the same as California, except that it adds "or with respect to which federal law supersedes this act."

EXHIBIT B

AMENDMENTS TO A.B. 406

Amend section 2, page 2, line 21 after "rebate." by inserting:

The filing and notice procedures of this subsection specifically exclude the following:

1. Policy risk classifications.

2. Experience dividends.

3. Experience modification factors.

4. Case reserves.

Amend section 2, page 2, line 24 after "change" by deleting "(.), concerning the matters described in paragraph (b)." and inserting:

, charge or rebate. The only matters appealable to the commissioner of insurance are those matters specifically described in paragraph (b) wherein the commission must file with the commissioner of insurance and notice affected employers.