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NANCYANN LEEDER  
SB 292

BDR \_\_\_\_\_  
A.B. \_\_\_\_\_  
S.B. 292

NON-EXECUTIVE AGENCY  
FISCAL NOTE

STATE AGENCY'S ESTIMATES

Date Prepared 2/28/03

Agency submitting Nevada Attorney for Injured Workers

Items of Revenue or Expense, or Both	Fiscal Year 2000-03	Fiscal Year 2001-2004	Fiscal Year 2002-05	Continuing (Y/N)
	N/A	\$7,159,733	\$7,160,770	Y
	N/A	\$31,076,626	\$29,047,277	Y
	N/A	\$4,338,553	\$4,535,035	Y
	N/A	\$31,076,626	\$29,047,277	Y
<b>Total</b>		<b>\$73,651,538</b>	<b>\$69,790,359</b>	

Explanation (Use Additional Sheets or Attachments, if required)

The following criteria were used to calculate the above totals\*:

1. NAIW is appointed to 41% statewide, of all cases filed with the Department of Administration's Appeals Office.
2. If NAIW is appointed to 100% statewide, of all cases filed with the Department of Administration's Appeals Office, using the actual AO FY03 projected caseload based on to-date experience, including its anticipated 5% caseload increase for each year of the biennium, this would create a 293% increase in FY04 and 313% increase in FY05, and the need to hire additional staff.
3. NAIW is currently understaffed. NAIW attorney staff are carrying an average of 84 cases per attorney in the Carson City office and 119 cases per attorney in the Las Vegas office. To reduce current workload to the goal of 75 cases per attorney NAIW would need an additional 8 attorney staff, 4 legal secretaries and 4 legal research assistants.

The total in each column above represents increased required funding for operating expenses associated with required staffing, in addition to current staff and taking into consideration the current under-staffing, for each proposed caseload incremental increase,

as set forth in paragraph 4, for a total cost of \$73,651,538 in FY04 and \$69,790,359 in FY05.

4. The above figures take into consideration 86 additional personnel (FY04) 92 (FY05) and proposed increases in operations expenses for NAIW to represent injured workers on all AO level appeals, 388 for NAIW to represent injured workers at HO and claims stages, 53 (FY04) and 56 (FY03) for NAIW to appeal to DC and SC unless case is frivolous, and 388 for NAIW to represent at vocational rehabilitation stage, for a total increase of 925 (FY04) and 934 (FY05).
5. NAIW has no access to statistics regarding the number of claims filed, nor the number of claims in which the worker cannot return to his injury job due to medical restrictions resulting from his workers' comp injury or disease. Therefore, NAIW has based its calculations for purposes of this fiscal note upon the number of requests filed with the Hearings Division.
6. NAIW based its estimate of number of cases for appeal to district and supreme court upon the total number of cases lost at the AO level under NAIW's current level and rules for representation.

\*All figures are in addition to NAIW's currently proposed Governor's Recommended budget for FY04 and FY05.

N.B.: This is a reasoned estimate based upon 10 hrs. work by the NAIW, 36 hrs. by NAIW's LOM, and 2 hrs. by NAIW's acct. asst.III, and an estimated 2hours contributed by the Hearings Division to provide requested statistics and related information.

**SB292 - This bill proposes that any claimant may request NAIW representation with regard to a claim or an appeal. Upon receipt of the claimant's request, NAIW "shall" represent the claimant without charge, before any hearing officer, any appeals officer, the Administrator, any district court or the Supreme Court, unless NAIW determines that the claim or appeal is frivolous or lacks merit. This proposal removes the discretion NAIW has had in representing cases on appeal.**

**The following is an estimate as to what expenses we would incur across all categories.**

The following figures are actual through 2/28/03.

1. SB 292 would have NAIW represent claimants in all AO cases.

	FY99	FY00	FY01	FY02	FY03
AOLV	2811	2550	1823		1735
NAIW	818	789	540	1039	660
NAIW%	29%	31%	30%		38%
AOCC	1028	901	727		859
NAIW	538	458	331	550	380
NAIW%	52%	51%	46%		44%
Total caseload increase/decrease		-9.9%	-26%	+59%	-4.4%

AO STATEWIDE FOR FY02 was 4063; NAIW was appointed to 1589 (39%).

AO FY03 Projected Statewide is 4266 (projection based on a 5% population increase). Based on year-to-date actuals (average), the Appeals Office will receive approximately 3891. (For these purposes, NAIW is using the projected based on actuals thus far.)

These figures are AO projections and NAIW projections

FY04 Projected statewide

FY05 Projected statewide

AO 4479  
NAIW 1570  
NAIW % 35%

AO 4702  
NAIW 1575  
34%

NAIW is appointed approximately 41% of all cases statewide. 59% of the cases remain for the private sector.

If NAIW were to represent each claimant for workers' compensation:

The following figures will take into consideration the AO figures for FY03 statewide 3891 (projected based on current count) cases, and current and projected DC (75) and SC (24) (total 3990) divided by 75 (attorney caseload goal) = 53 attorney staff required (rounded for the purpose of this estimate). The following projections for FY04 and FY05 are anticipating a 5% increase in caseload each year of the next biennium (per AO projection):

<u>FY04</u>		<u>FY05</u>	
Caseload	4190	Caseload	4399
Caseload increase			
from FY03	293%		313%
Required attorney staff	56		59
NAIW staff increase			
Atty	44		47
LSII	20		22
LRA	17		18

NAIW currently has 12 attorney staff. **NAIW would need an additional 44 attorneys (FY04) (47-FY05) to handle the current number of cases with no increase in workload.** NAIW currently has 7 LSII's and 2 SLS (2 SLS can only handle 1 atty each). NAIW needs 1 secretary to every 2 attorney staff. **NAIW would need an additional 20 secretaries (FY04) (22-FY05).** NAIW needs 1 LRA to every 3 attorneys. NAIW has 2 LRA's on staff. **NAIW would need an additional 17 LRAs (FY04) (18-FY05).**

**Administrative staff would have to be increased to a manager at each location, and a fiscal assistant at each location. It would be necessary to employ a computer/systems administrator in addition to 2 (one at each location) employees for data input. (For such a large staff, the AAI could not handle all phone calls and input into the data base).**

If NAIW were to pick up the additional 59% of all AO cases, then it would have to increase staff and operating expenses by approximately 293% (FY04) 313% (FY05) (this includes covering the current deficiency in staff).

Allocation and assessment costs have been based on staff % increase in addition to Gov Rec. It would take a much more intensive search for formulas used by these agencies to determine what the actual costs might be and that too could be dependent on other factors that we have no way of projecting.

#### INCREASE ONLY

	<u>FY04</u>	<u>FY05</u>
01 Salaries (44/47 atty, 20/22 LSII, Off mgr. Asst., 17/18 LRA, 2 data input, 1 DOIT tech	5,725,785	6,194,622
02 1,490 x 370%/390%	5,513	5,811
03	28,426	30,612
04	474,802	503,557

05	263,730	17,966
26	300,724	20,104
30	18,834	20,148
31	4,400	4,700
80 To B&I x 307% & 328%	176,706	191,237
87 - Purchasing Assessment 794 x 307%	2,438	2,604
794 x 328%		
88 - State cost allocation 42,571 x 307%	130,693	139,633
42,571 x 328%		
89- AG cost allocation 9,017 x 307%	27,682	29,776
9,078 x 328%		
	<b>7,159,733</b>	<b>7,160,770</b>

**This would involve the hiring of approximately 86 new staff members in FY04, plus an additional 6 in FY05.**

2. NAIW is not currently appointed by the Hearing Officer. SB292 would add representation at the HO level to NAIW's duties. In addition, it would add representation at the claims stage to NAIW's duties. NAIW does not have access to total claims figures. NAIW used Hearings Division statistics to calculate is level of cases under two new mandates.

The following estimates are based upon the following case counts for claims filed with the Administrator, hearings held at the Hearings Office level and the number of vocational rehabilitation cases during the months of July, 2002 through February, 2003 and projected through FY04 and FY05.

	Dates	HO Hearings Requested	HO Hearings	Voc Rehab
Carson City:	7/1/02-2/28/03		1851	107
Las Vegas:	7/1/02-2/28/03		2562	187
Both Offices:	7/1/02-2/28/03	7681	4413	294
FY02		11637	6116	564

There are currently no statistics on the number of claims filed for workers' compensation. The Hearings Division does have an accounting of the number of hearings requested at the Hearings Office level. Through 2/28/03, the total number requested is 7681, of those 4413 have been heard. For the purposes of the following calculations, we will assume that NAIW must be available for representation on all claims in which a hearing has been requested. These figures will likely fall short of the potential as we have no way of knowing the number of claims filed in total.

7681 divided by 8 x 12 = 11,522 cases per year

All cases will require assistance to thoroughly investigate the injury and medical status and prepare cases for the HO level. In addition, for NAIW to represent injured workers with "claims", NAIW would need to amass the facts for attorney review. It will be necessary to employ investigators at the rate of one for each three attorney staff to assist with the investigations.

NAIW currently does not provide representation at the HO level. NAIW currently has a caseload of 1066 cases (inc. SC & DC) from 7/2/02 through 2/28/03 divided by 8 mos. x 12 = 1827 cases in FY03, divided by 75 (cases per attorney goal) = 24 attorneys. NAIW currently has 12 attorneys, being short 12 attorneys, 6 support staff and 6 LRAs. (NAIW has an average revolving caseload of approximately 1400, which is 18 attorneys' worth, leaving us short approximately 6 attorneys, 3 support staff and 4 LRAs.)

For NAIW to handle its current caseload of approximately 1827 cases, plus the proposed 11,522 HO caseload, (total of 13,349) NAIW would need 178 attorneys, 89 LSII, 6 SLS, 59 LRAI, 4 LRAII, 59 Investigators, 4 Investigation supervisors, 2 ASOs, 2 LOMs, 4 Accounting Assistants, 2 DoIT techs, 4 Data Input and Case Processors. NAIW currently has 12 attorneys, 7 LSII, 2 SLS, 1 LRAI, 1 LRAII, 1 LOM, 1 Accounting Assistant. It would require the following additional staff to handle and process the proposed caseload: 166 attorneys, 82 LSII, 4 SLS, 58 LRAI, 3 LRAII, 59 Investigators, 4 Investigation supervisors, 2 ASO, 1 LOM, 3 Accounting Assistants, 2 DoIT techs, 4 Data Input staff.

For the purposes of these calculations, NAIW has used the personnel costs associated with a Legal Research Assistant I position as covering the position of investigator.

This is an increase of 631% caseload.

#### INCREASE ONLY

	FY04	FY05
01 Salaries (166atty, 82 LSII, 4SLS, 58 LRAI, 3 LRAII, 59 Invest. 4 Invest Sup., 2 ASO 1 LOM, 3 Acc. Asst., 2 DoIT, 4 Data Input,	24,813,161	25,142,448
02 1,490 x 1383%	20,607	20,607
03	119,496	119,496
04	2,027,870	2,017,454
05	1,206,004	
26	1,154,192	
30	84,972	84,972
31	16,600	16,600
80 To B&I x (57559x1486% 58304x1486%)	855,327	866,397
87 - Purchasing Assessment 794x1486%	11,799	11,799
88 - State cost allocation 42,571 x 1486%	632,605	632,605
89- AG cost allocation 9,017 x 1486% 9078 x 1486%	133,993	134,899
	<b>31,076,626</b>	<b>29,047,277</b>

This would involve the hiring of approximately 388 new staff members in FY04

3. NAIW currently takes many factors into account in making the decision whether to appeal a case to the district or supreme court. SB292 removes that discretion. Instead it requires appeal to district or supreme court unless NAIW finds such to be frivolous or lacking in merit. Those are two descriptions of the same legal concept. It means there is no legal argument which can plausibly be made to support an appeal. That is a very difficult legal decision to make, and thus requires a great amount of legal and medical research to be able to make, as well as attorney time analyzing the facts of accident and injury or disease, and witness support.

Thus, in addition to the above, removing legal discretion of NAIW regarding appeal to District and Supreme Court and restricting court appeals to the standard of frivolous or lack of legal merit would also increase costs as follows:

AO Losses:	Carson City	Las Vegas		
FY02	134	414	Total: 548	35% loss ratio
7/1/02-2/28/03	101	294	Total 395	38% loss ratio

From 7/1/02 through 2/28/03, NAIW completed 1040 cases and lost 395 for 38%. For the purpose of these calculations, we are basing the total loss ratio at 38%. However, this is a conservative figure, as it is believed that when all losses are taken into consideration the total count would be much higher, but NAIW does not have access to statistical information as to the total number of losses at the AO level.

AO projects 4479 cases in FY04 (38% loss ratio would mean 1702 cases) and 4702 cases in FY05 (38% loss ratio would mean 1787 cases). Currently NAIW takes 2% of its AO losses to DC on appeal and .7% of its DC cases to the SC on appeal. Based on the AO's projections, that would be 34 DC cases in FY04 and 36 in FY05; and 12 SC in FY04 and 13 in FY05. This represents an increase of:

From 395 to 1702 = 1307 cases an increase of 431%  
From 395 to 1787 = 1392 cases an increase of 453%

NAIW currently has 12 attorney staff. **NAIW would need an additional 26 attorneys (FY04) (28-FY05) to handle the same number of cases with no increase in workload.** NAIW currently has 7 LSII's and 2 SLS (2 SLS can only handle 1 atty each). NAIW needs 1 secretary to every 2 attorney staff. **NAIW would need an additional 11 secretaries in FY04 (12-FY05).** NAIW needs 1 LRA to every 3 attorneys. NAIW has 2 LRA's on staff. **NAIW would need an additional 11 LRAs (FY04) (11-FY05).**

**Administrative staff would have to be increased to a manager at each location, and a fiscal assistant at each location. It would be necessary to employ a computer/systems administrator in addition to 2 (one at each location) employees for data input. (For such a large staff, the AAI could not handle all phone calls and input into the data base).**

If NAIW were required to appeal all AO losses when cases are not frivolous, it would have to increase its staff and operating expenses by approximately 184% (FY04) 185% (FY05) (this includes covering the current deficiency in staff).



Allocation and assessment costs have been based on staff % increase in addition to Gov Rec. It would take a much more intensive search for formulas used by these agencies to determine what the actual costs might be and that too could be dependent on other factors that we have no way of projecting.

### INCREASE ONLY

	FY04	FY05
01 Salaries (26/28atty, 11/12 LSII, Off mgr., Asst., 11/11 LRA, 2 data input, 1 DOIT tech	3,474,792	3,745,363
02 1,490 x 184%/\$185%	2,742	2,757
03	17,275	18,368
04	288,823	404,584
05	162,405	8,983
26	176,236	9,002
30	11,388	12,045
31	2,600	2,800
80 To B&I x 288%/299%	165,770	174,329
87 - Purchasing Assessment 794 x 288% 794 x 299%	2,287	2,374
88 - State cost allocation 42,571 x 288% 42,571 x 299%	122,604	127,287
89- AG cost allocation 9,017 x 288% 9,078 x 299%	25,969	27,143
	<b>4,452,891</b>	<b>4,535,035</b>

**This would involve the hiring of approximately 53 new staff members in FY04, plus an additional 3 in FY05.**

4. SB292 adds to NAIW's duties in that NAIW would represent injured workers in vocational rehabilitation plan and buyout in lieu of plan status. Therefore, NAIW would need to investigate the facts, and medical and legal status of the injured worker it would represent at that stage of the claim. In some instances NAIW would have already represented the worker at another stage of the claim, in some instances another attorney would have represented the worker, and in some instances the worker would have had no prior representation because there had been no prior benefit disagreement, and perhaps no present disagreement. SB292 does not prohibit injured workers from choosing to retain the attorney they want.

NAIW has no access to statistics regarding the number of claims filed, nor the number of claims in which the worker cannot return to his injury job due to medical restrictions resulting from his workers' compensation injury or disease. Therefore, NAIW has based its calculations for purposes of this fiscal note upon the number of requests for hearings filed with the Hearings Division.

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All cases will require assistance to thoroughly investigate the injury and medical status and prepare cases for the HO level. In addition, for NAIW to represent injured workers with "claims", NAIW would need to amass the facts for attorney review. It will be necessary to employ investigators at the rate of one for each three attorney staff to assist with the investigations.

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For NAIW to handle its current caseload of approximately 1827 cases, plus the proposed 11,522 HO caseload, (total of 13,349) NAIW would need 178 attorneys, 89 LSII, 6 SLS, 59 LRAI, 4 LRAIIs, 59 Investigators, 4 Investigation supervisors, 2 ASOs, 2 LOMs, 4 Accounting Assistants, 2 DoIT techs, 4 Data Input and Case Processors. NAIW currently has 12 attorneys, 7 LSII, 2 SLS, 1 LRAI, 1 LRAII, 1 LOM, 1 Accounting Assistant. It would require the following additional staff to handle and process the proposed caseload: 166 attorneys, 82 LSII, 4 SLS, 58 LRAI, 3 LRAII, 59 Investigators, 4 Investigation supervisors, 2 ASO, 1 LOM, 3 Accounting Assistants, 2 DoIT techs, 4 Data Input staff.

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