

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Fifth Session  
February 13, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 12:04 p.m. on Friday, February 13, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/75th2009/committees/](http://www.leg.state.nv.us/75th2009/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Marcus Conklin, Chairman  
Assemblyman Kelvin Atkinson, Vice Chairman  
Assemblyman Bernie Anderson  
Assemblyman Morse Arberry, Jr.  
Assemblywoman Barbara E. Buckley  
Assemblyman Chad Christensen  
Assemblywoman Heidi S. Gansert  
Assemblyman Ed A. Goedhart  
Assemblyman William C. Horne  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman Mark A. Manendo  
Assemblywoman Kathy McClain  
Assemblyman John Ocegüera  
Assemblyman James A. Settelmeyer

**GUEST LEGISLATORS PRESENT:**

Assemblyman Tom Grady, Assembly District No. 38

**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Dan Yu, Committee Counsel  
Earlene Miller, Committee Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

David Peri, Chief Executive Officer, Peri and Sons Farms, Inc., Yerington, Nevada  
Cynthia A. Jones, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation  
Steve Zuelke, Manager, Employment Security Division, Department of Employment, Training and Rehabilitation  
Donna Clark, Chief of Contributions, Employment Security Division, Department of Employment, Training and Rehabilitation

**Chairman Conklin:**

[Roll called.] We have a quorum. We will open the hearing on Assembly Bill 124.

**Assembly Bill 124:** Revises provisions governing unemployment compensation. (BDR 53-667)

**Assemblyman Tom Grady, Assembly District No. 38:**

With me today are David Peri, Lori Gianotta, and Stephani Enochson of Peri and Sons Farms, Inc. in Yerington, Nevada. Peri's is one of the larger farm operations in Nevada, with onions, lettuce, and hay products. They are also one of the largest employers of H-2A guest workers (temporary agricultural workers under federal H-2A visas) in the country, and they are under very strict guidelines for the H-2A program. The guidelines are for housing, transportation, working conditions, and pay. Peri and Sons Farms, Inc. have gone to great expense to provide housing and other amenities to their guest workers. I would invite anyone traveling between Carson City and Las Vegas to stop for a tour of this operation ([Exhibit C](#)).

This business, while using the very latest technology in irrigation practices, packaging, and marketing, is still very labor-dependent and uses guest workers. The three onion operations are major employers in our area. Since Peri and Sons Farms, Inc. are the largest user of the guest program, they are here today to tell you why this legislation is necessary.

This is a fairness issue. The bill corrects legislative language that charges employers for services neither the employee nor the employer can collect.

**David Peri, Chief Executive Officer, Peri and Sons Farms, Inc, Yerington, Nevada:**

The employees on the H-2A visas have no Social Security numbers, so they are not eligible for any benefits. We have a problem paying unemployment tax for employees who can never receive the benefits.

**Chairman Conklin:**

Could you give us a brief explanation of the H-2A program?

**David Peri:**

It is a work visa for seasonal agricultural workers. We need large workforces for short periods of time. To harvest onions, we need 1,100 to 1,200 people for a six-week period. When they are done, they go home. We like the program because the workers are not a burden to society. They are not eligible for any programs because they do not have Social Security numbers. The visa is only for Peri and Sons Farms, Inc., and they can work only for us. When we are done with the job, they go home.

**Chairman Conklin:**

Do you bring them in and transport them home?

**David Peri:**

We are required to bus them from the Mexican border and back.

**Chairman Conklin:**

Are there any questions from the Committee?

**Assemblyman Anderson:**

Do you provide housing?

**David Peri:**

We are required by law to provide housing. The housing is all inspected by the United States Department of Housing and Urban Development. We have to go through the inspection process before we are issued the permits to get the visas.

**Assemblyman Anderson:**

Do they bring any other family members with them?

**David Peri:**

All our housing is for single males only.

**Chairman Conklin:**

This bill would change the statute so the State Unemployment Tax Act (SUTA) taxes would no longer apply to workers who are under an H-2A visa. It is a tax you cannot legally collect out of their pay, and it is a benefit which could never be collected by the employee.

**David Peri:**

That is correct.

**Assemblyman Grady:**

The employers are under very close guidelines for housing, as well as pay. They are inspected by both state and federal agencies. The housing is a substantial investment for the employer to bring in guest workers. This bill will not affect the other employees in the ranch operation. It will only affect the guest workers who are employed under this visa.

**Assemblywoman McClain:**

How many employers do we have in this situation?

**Cynthia A. Jones, Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation:**

Approximately 16 employers in the State of Nevada will bring guest workers into the state to work under the H-2A program. Based on the most recent yearly tax collection data, this statutory change would impact the Unemployment Insurance Trust Fund by approximately \$25,000 per year. I have seen the projections Peri and Sons Farms, Inc. have provided, and it appears they are expecting some growth in their program, so the impact could be greater. The testimony provided is correct. The taxes paid cannot result in benefits being paid to these workers because they have to leave the country as soon as their visas expire.

**Chairman Conklin:**

Are there any other questions for Mr. Grady or Mr. Peri?

**Assemblywoman Kirkpatrick:**

Is the amendment from the Department of Employment, Training and Rehabilitation a friendly amendment?

**Assemblyman Grady:**

No, it is not.

**Chairman Conklin:**

Are there any other questions for the sponsor of the bill? Ms. Jones will explain her amendment.

**Cynthia A. Jones:**

The Division has no issue with this bill. The exclusion of wages under the H-2A program for agricultural workers from SUTA liability would bring consistency between the reporting requirements under state and federal law for the Federal Unemployment Tax Act (FUTA). Employers currently pay taxes on these workers. Given the temporary nature of this work permit, the workers would never be eligible to file for unemployment insurance benefits.

The Department is requesting an amendment that seeks to harmonize the minimum threshold for when an employer becomes liable for unemployment insurance taxes and that will lessen confusion between the SUTA law and the FUTA law ([Exhibit D](#)). We are seeking to insure that we have no conformity issues with FUTA law. A conformity issue could result in a FUTA "offset credit denial" to Nevada employers, currently valued at \$475 million. It is unknown whether there is a conformity issue, and we will be working with the Department of Labor to determine that. We look forward to working with the bill's sponsor and the Committee on this amendment ([Exhibit D](#)) and the bill.

**Chairman Conklin:**

Our legal counsel's opinion is that the amendment you are offering does nothing, legally, to the bill and does not address the issue you are trying to change, because that issue is already covered. Are there other questions from the Committee? Is there anyone else to speak?

**Assemblyman Tom Grady:**

I want to remind the Committee that there are only two states, Nevada and Alaska, who have not adopted this language.

**Chairman Conklin:**

Is there anyone in Carson City or Las Vegas wishing to testify in support of this bill? Is there anyone to testify in the neutral position? Is there anyone opposed? Seeing none, we will close the hearing on A.B. 124. We will open the hearing on Assembly Bill 84.

**Assembly Bill 84: Revises provisions governing unemployment compensation.  
(BDR 53-546)**

**Cynthia A. Jones, Administrator, Employment Security Division, Department of  
Employment, Training and Rehabilitation:**

Through Assembly Bill 84, the Division seeks to continue with program improvements, including those recommended in a review by the Internal Audit Division of the Department of Administration, that seek to protect the Unemployment Insurance Trust Fund against benefit fraud. As federal funding of unemployment insurance programs has been reduced over time, there has been a national shift to providing benefit services remotely, via the internet or by telephone. These methods of providing claim services have significantly assisted states in providing services under a growing work load, but have increased the potential for unemployment insurance fraud. The major provisions of A.B. 84 define unemployment insurance fraud, increase the penalties for the commission of fraud, and enhance the Division's ability to collect overpaid benefits due to fraud.

Sections 1 through 8 of the bill reduce the administrative burden and streamline due process to garnish wages to recover fraudulently paid benefits. The Division is seeking to mirror unemployment compensation statutes with those utilized in collecting outstanding child support debt through the garnishment process.

Section 9 provides a definition for the term "fraud," which is not currently in this chapter. It also describes fraudulent activities and provides penalties for the commission of fraud. Section 9, subsection 4, specifies that the act of filing an unemployment claim for benefits while incarcerated, or causing another person to do so on their behalf, is fraud. Section 9, subsection 5, categorizes fraudulent activities in excess of \$250 as theft and indexes the punishment to Chapter 205 of *Nevada Revised Statutes* (NRS).

In addition to requiring repayment of benefits that were fraudulently obtained, section 9, subsection 6, adds a penalty of 50 percent for committing benefit fraud. This provision was recommended by the Division of Internal Audits to act as a deterrent against benefit fraud. Nevada is one of only six states that have yet to enact a penalty or fine for committing unemployment insurance fraud.

Section 9, subsection 7, precludes a person who has fraudulently claimed benefits from receiving further benefits until they have repaid all illegally-claimed benefits, penalties, and interest or have entered into a payment agreement to do

so. Section 10 provides the authority to use penalty and interest funding to enhance programs in the future that are designed to protect trust fund assets.

Sections 11 and 12 follow a recommendation, from the Workers' Compensation and Insurance Fraud Unit of the Office of the Attorney General, that resolves inconsistencies between NRS Chapter 612, sections 715 through 725, and NRS Chapter 205. This change to the statute provides the opportunity for the Attorney General's Office to prosecute substantial fraud activities as felonies.

The Division has presented two amendments. One amendment is to section 9, subsection 8 ([Exhibit E](#)). The intent is to provide the Administrator with the latitude to waive longer-term disqualifications in cases where there is good cause for such waivers. Waivers may occur in instances that did not significantly alter a person's entitlement to benefits, such as a person claiming two weeks of benefits while knowingly receiving a vacation check or working for two weeks. We want to ensure that the punishment fits the crime and the penalties are not too harsh.

Another amendment has been submitted ([Exhibit F](#)) that would allow the Division to recover fraudulently paid benefits through an offset against federal income taxes. The Department of the Treasury will charge a fee for that recovery. This amendment seeks the ability to charge the claimant those fees.

Given the rapidly decreasing trust fund balances, resulting from historically high benefit payments, it is more important than ever to protect the Unemployment Insurance Trust Fund in behalf of Nevada employers and workers from those who deliberately seek to financially enrich themselves through fraudulent benefit claims.

**Chairman Conklin:**

Do you have a documented problem with fraudulent claims?

**Cynthia A. Jones:**

As with all states who administer the unemployment insurance compensation program, we do have a documented problem with fraudulent claims. In 2008, we determined there had been 3,792 cases of unemployment insurance fraud, with an impact of \$3.8 million.

**Chairman Conklin:**

Are there any questions from the Committee?

**Assemblywoman Gansert:**

The first notice is sent by first-class mail with no certification. I am wondering how you make sure the person is employed by the company where you send this notice.

**Cynthia A. Jones:**

The notices are sent to the employee who collected the benefits fraudulently, not to the employer. We seek to send that notice to the last known address and do what we can to locate employees through "skip tracing" and other methods.

**Assemblywoman Gansert:**

I am reading, "The Administrator shall mail, by first-class mail, a notice to withhold income to the employer of a person required to pay money to the Administrator...."

**Cynthia A. Jones:**

In regard to the garnishment, we have a number of methods to track the person, through the regular wage reporting system and through the national directory of new hires.

**Assemblywoman Buckley:**

Is the garnishment subject to the same limitations as other debts?

**Cynthia A. Jones:**

I believe that is the case. Mr. Zuelke verified that is so.

**Assemblywoman Buckley:**

Where is that, or is it just by virtue of other existing law?

**Cynthia A. Jones:**

It is by virtue of existing law.

**Assemblywoman Buckley:**

If the person is making below minimum wage or is employed part-time, would the Department seek repayment subject to the limitations of the exemptions in NRS?

**Cynthia A. Jones:**

Yes, they would apply.

**Assemblywoman Buckley:**

Can you outline the penalties? How do you calculate the interest?



**Cynthia A. Jones:**

The penalty would be 50 percent of the overpayment.

**Steve Zuelke, Manager, Employment Security Division, Department of Employment, Training and Rehabilitation:**

Interest is calculated on a fraudulent overpayment only in the event that the individual has chosen not to repay the fraudulent overpayment and the state is forced to go to the civil judgment process.

**Assemblywoman Buckley:**

Where is that written?

**Steve Zuelke:**

That is not specifically contained within this particular bill. That provision is contained in NRS 612.365, which provides the Division collection opportunity. We seek all other alternatives before going to these measures. We encourage individuals to repay benefits through a series of letters, including notices of delinquency and "demand notifications" requiring repayment. Whether the overpayment is fraudulent or not, the Division allows individuals to enter into an installment payment agreement in order to restore these funds. The Division takes the application of both civil judgment and wage garnishment extremely seriously, and does not attempt to collect in those manners unless all other efforts have failed.

**Assemblywoman Buckley:**

If they have failed, how would you calculate the interest?

**Steve Zuelke:**

The interest is based upon the prime interest rate and is provided to my unit, for entry into our mainframe computer systems on a biannual basis, by the Contributions Unit.

**Assemblywoman Buckley:**

What is the assessment?

**Steve Zuelke:**

There is no assessment at this point. The use of the term "assessment" is a placeholder, in the event the Legislature adds additional penalties to those implemented in this bill.

**Assemblywoman Buckley:**

I think it would make sense to remove it. Future interpretations could be confusing. What is the rationale for the 50 percent penalty? Such a large amount could hurt collection efforts.

**Cynthia A. Jones:**

The recommendation to assess a 50 percent penalty was made by the Department of Administration as the result of a comparison of state laws. The bill provides the opportunity to negotiate those penalties down, so we do not thwart our collection activities. It is my expectation that we would only assess those penalties in the most egregious cases, when all other efforts to negotiate have failed.

**Assemblywoman Buckley:**

Does it make sense to put that in the statute?

**Cynthia A. Jones:**

I believe it does. It will, hopefully, act as a deterrent. Washington State has implemented similar types of penalties and has improved their collections and reduced fraud significantly. There is some model legislation on the federal level that would require states to add penalties as well. I think it is right to protect the trust fund assets from those who seek to defraud the system. We would only apply the most stringent penalties against those with the most egregious cases.

**Assemblywoman Buckley:**

Where does it say that? If you are going to modify penalties with various factors, does it not make sense to list those in the bill?

**Cynthia A. Jones:**

It is not listed in this specific bill. We have the word "may," which means we may impose the fine. The phrase "equal to not more than 50 percent" provides flexibility in the language. The variety of fraud cases would be too numerous to delineate in statute. That is why we made the language permissive and flexible. Through internal processes, procedures, guidelines, and regulations, we can establish those thresholds.

**Assemblywoman Buckley:**

I am not completely comfortable with that, and I will review it further.

**Assemblyman Anderson:**

How are you doing in collections?

**Cynthia A. Jones:**

This legislation only impacts the benefit collection side of the house. We already have existing statutes for the contribution side.

**Assemblyman Anderson:**

Would we see a correlation between the two?

**Cynthia A. Jones:**

I think they are completely different. One is from workers who seek to defraud the system, and the other is a tax liability issue. The tax liability issues are far less frequent than the benefit fraud issues.

**Assemblyman Anderson:**

Who will do the actual collecting?

**Cynthia A. Jones:**

The Division does the collecting. We have a collections unit on both the benefit side of the unemployment insurance program and on the contributions, or tax, side.

**Donna Clark, Chief of Contributions, Employment Security Division, Department of Employment, Training and Rehabilitation:**

The balance we had for unemployment insurance (the receivable balance) as of December 31, 2008, was \$13 million.

**Assemblyman Anderson:**

What method do you use to collect that?

**Donna Clark:**

We have a wide variety of methods under NRS Chapter 612. We use monthly billing statements, payment agreements, summary judgments, notices to withhold, garnishments, and attachments. This balance of \$13 million has accrued over a long period of time. Our process for uncollectible unemployment insurance accounts dictates that we do not designate a portion of the account as uncollectible. We wait until the entire account becomes uncollectible. We have to wait until two years after the inactivation date of the account, because the experience rating of the employer is still alive. This has a long life cycle. Our average collection, on a yearly basis, is approximately \$390 million.

**Cynthia A. Jones:**

On the benefit side of the Division, we currently have \$17.7 million of overpayments on the books, of which \$8.1 million is from fraudulent collection of benefits.

**Chairman Conklin:**

Are there any other questions from the Committee? Is there anyone else wishing to testify on A.B. 84? Ms. Jones, this bill is going to need some work.

**Cynthia A. Jones:**

We will be happy to work with you and the Committee.

**Chairman Conklin:**

Is there anyone in Carson City or Las Vegas wanting to testify in support of A.B. 84? Is there anyone wishing to testify from a neutral position? Is there anyone wishing to oppose? We will close the hearing on A.B. 84.

The meeting is adjourned [at 12:41 p.m.].

RESPECTFULLY SUBMITTED:

---

Earlene Miller  
Committee Secretary

APPROVED BY:

---

Assemblyman Marcus Conklin, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** February 13, 2009

**Time of Meeting:** 12:04 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 124	C	Assemblyman Grady	Statement of Facts
A.B. 124	D	Cynthia A. Jones	Proposed Amendment
A.B. 84	E	Cynthia A. Jones	Proposed Amendment
A.B. 84	F	Cynthia A. Jones	Proposed Amendment