

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

**Eighty-First Session
May 24, 2021**

The Committee on Commerce and Labor was called to order by Chair Sandra Jauregui at 1:46 p.m. on Monday, May 24, 2021, Online and in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, 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/App/NELIS/REL/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Sandra Jauregui, Chair
Assemblywoman Maggie Carlton, Vice Chair
Assemblywoman Venicia Considine
Assemblywoman Jill Dickman
Assemblywoman Bea Duran
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Susie Martinez
Assemblywoman Elaine Marzola
Assemblyman P.K. O'Neill
Assemblywoman Jill Tolles

COMMITTEE MEMBERS ABSENT:

Assemblyman Edgar Flores (excused)
Assemblyman Jason Frierson (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Marjorie Paslov-Thomas, Committee Policy Analyst
Sam Quast, Committee Counsel
Terri McBride, Committee Manager
Louis Magriel, Committee Secretary
Cheryl Williams, Committee Assistant

Minutes ID: 1340



OTHERS PRESENT:

Shannon Chambers, Labor Commissioner, Office of Labor Commissioner,
Department of Business and Industry
Victoria Carreon, Administrator, Division of Industrial Relations, Department of
Business and Industry
Brian Reeder, representing the National Association of Professional Employer
Organizations
Todd Ingalsbee, President, Professional Fire Fighters of Nevada
Jason Mills, representing Nevada Justice Association
Tom Dunn, Northern District Vice President, Professional Fire Fighters of Nevada;
Vice President, International Association of Fire Fighters, Local No. 731; and
representing International Association of Fire Fighters, Local No. 2955
Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO
Bill Gardner, Secretary-Treasurer, International Association of Fire Fighters, Local
No. 1607
Ryan Green, Secretary-Treasurer, Professional Fire Fighters of Nevada; Secretary,
International Association of Fire Fighters, Local No. 2955; and Member,
International Association of Fire Fighters, Local No. 731
Dalton Hooks, representing Nevada Self Insurers Association
Shaun Meng, representing Nevada Self Insurers Association

Chair Jauregui:

[Roll was called.] Good afternoon Committee members, those joining us on Zoom, and those here with us in person today. We do have a short agenda. I think everyone is familiar with the housekeeping items, so I am going to go ahead and bypass those, and jump straight into our hearings for today.

We do have two bills, Senate Bill 55 (1st Reprint) and Senate Bill 295 (1st Reprint), that will be heard today. I will be taking those in order. With that, I will open the hearing on Senate Bill 55 (1st Reprint), which revises provisions governing the licensing and regulation of employee leasing companies.

Senate Bill 55 (1st Reprint): Revises provisions governing the licensing and regulation of employee leasing companies. (BDR 53-317)

Shannon Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry:

[Ms. Chambers read from written testimony submitted to the Committee, [Exhibit C](#).] I am here today to present Senate Bill 55 (1st Reprint) and to give you a quick statement of what this bill does. Let me first say that this is a bill that makes a great deal of sense. This is an issue that has been before this body for about 25 years regarding how to deal with something called an "employee leasing company."

Going back in time, there was this thing called the leasing of employees that used to take place. That has now been replaced by what are called "private employment agencies," which the Labor Commissioner also licenses—think of a temporary agency, such as Manpower of Northern Nevada or LaborMAX Staffing. Working with the National Association of Professional Employer Organizations, we came to the realization that we need to come up with a correct and proper term for this industry and a new definition of what this industry does.

I will go ahead and outline what the bill does, and then I am happy to answer any questions that you may have. I do know that we also have the Administrator of the Division of Industrial Relations of the Department of Business and Industry, Victoria Carreon, at this meeting today as well. Currently, they are responsible for the registration of employee leasing companies, so she is here today to answer any questions.

First of all, what we are going to do is we are not going to call these entities "employee leasing companies" anymore. They are going to be called "professional employer organizations." This is the terminology that this industry has used for over 25 years. Going back through the legislative history, like I said, it was known going back all the way to 1995 that the correct terminology was a professional employer organization.

The second thing we are going to do is we are going to define them based on the activities that they are actually doing now. What these entities are doing now is providing labor compliance services. For example, they provide guidance on labor laws, benefits, and other human resources issues. We are going to add that to the definition of a "professional employer organization."

We are still going to leave the language in there about the ability to lease employees. However, it will be the goal of the Labor Commissioner to identify which entities are actually still doing that and then transition them to a private employment agency license. By moving this under the Labor Commissioner, the Labor Commissioner will be able to review these entities, find out exactly what they are doing, and then get them in the proper licensure status.

The other thing we are going to do instead of a certificate of registration is we are going to call it a professional employer organization license. Let me address that issue because this came up on the Senate side of the bill. We are not adding any new requirements or fees for the license. We are just changing it from a certificate of registration to a license. This is more consistent with what other states have done and with industry terminology. Nothing will change; it is just a change in terminology.

The Labor Commissioner did explicitly put language in Senate Bill 55 (1st Reprint) that if the license application was denied or nonrenewed, they specifically have a right to appeal. That is new. It is my position that you have a right to dispute if your license does not get approved or renewed, so we explicitly put that language in Senate Bill 55 (1st Reprint).

We also changed the penalty structure that was in the previous statutes to an administrative penalty of \$5,000. That is discretionary and at the option of the Labor Commissioner. That is a maximum. It can be anywhere from \$0 to \$5,000 and is at the discretion of the Labor Commissioner.

That is also less than the existing penalty structure and, quite frankly, it will offer a much more expedited process. The Labor Commissioner's appeal process typically takes 30 to 60 days at maximum, so it is trying to provide some oversight, but also some avenues for due process to a professional employer organization should they need that. With that, I can go ahead and walk through the main sections of the bill that are going to be changed, and then I am happy to answer any questions.

In sections 1 and 1.5, we are going to replace the term "employee leasing company" with "professional employer organization." "Professional employer organization" will now be part of the entire statute that the Labor Commissioner then has authority over. Those conforming changes will be made throughout the bill and the statutes once they get codified.

We will also add the new definition of "professional employer organization" to the definition of "client company" [section 1.5, subsection 2]. For the client company that uses what are called "professional employer organizations," or PEOs, their definition will also be incorporated into that definition.

The Division of Industrial Relations will still retain the enforcement provisions over workers' compensation insurance. That is appropriate. The Labor Commissioner does not enforce the statutes on workers' compensation, so that will stay in the bill. Just for reference, that is the same with a private employment agency as well. The Labor Commissioner does not verify or approve workers' compensation insurance, so that will still be left with the Division of Industrial Relations.

Sections 2 and 3 of the bill, as I said, change it from a certificate of registration to a license, and transfers the licensing responsibility to the Labor Commissioner. The Labor Commissioner currently licenses private employment agencies, so we have staff who are experienced in reviewing applications and bond applications. This will not be a new process. There is no request here for additional staff for our office to take on this responsibility. I am confident that we have existing staff who can do this.

I mentioned the right of appeal. If a license was denied or is nonrenewed, a PEO will now have that right. In sections 4 through 7, we are moving the licensure authority and then adding the authority for a discretionary, \$5,000 per-violation administrative penalty that PEOs would have the right to appeal. The next sections—sections 4.2 through 4.8, 8 through 15, and 19—just make conforming changes throughout the bill that will ultimately be in the statute.

I said this bill makes sense because I reached out to the National Association of Professional Employer Organizations (NAPEO) and had a very healthy and nice discussion with them about why this is needed and why Nevada probably should have done this 20 years ago. These entities have expanded. There are now 203 of them in the state of Nevada.

Of that 203, there are only 3 that actually have physical locations in Nevada. This is an organization and entity where you can do business outside of the state. With everything that has gone on in the past year and a half with teleworking and remote working, these entities are providing some very valuable services to employers and employees. The labor compliance part of this is something that the Labor Commissioner needs to have jurisdiction and authority over to find out what exactly these organizations are doing and to make sure that it is consistent with Nevada law.

I do not anticipate any problems. I will tell you that with my conversation with NAPEO, as it is called, we look forward to working together and think that this is going to be a very healthy relationship. It is something we can leverage on the Labor Commissioner's side to spread the word to employers about new laws, postings, and requirements.

We are not approaching this as an industry that needs to be fixed. This is an industry that just needs to be under the proper regulations and the enforcement of the Labor Commissioner. I did reach out to other organizations as well such as the trade organizations and the chambers of commerce. Most of them felt that this was a really good idea and that it belongs with the Labor Commissioner.

That is where we are at. I am happy to answer any questions from the Committee. If Administrator Carreon would like to add to what I have just testified to, I would be happy to let her do that as well.

Chair Jauregui:

Ms. Carreon, would you like to give remarks or are you here for questions?

Victoria Carreon, Administrator, Division of Industrial Relations, Department of Business and Industry:

[Ms. Carreon read from written testimony submitted to the Committee, [Exhibit D](#).] I would like to give remarks. We appreciate the partnership with Shannon Chambers, the Labor Commissioner, in looking at this and at the appropriate place where employee leasing companies should be regulated.

The Division of Industrial Relations is currently responsible for the registration of these employee leasing companies. The fee is \$500 annually. We have 203 leasing companies right now. The actual revenue that we brought in for fiscal year 2020 was \$114,115.

We currently have about 0.4 FTE [full-time equivalent] staff time allocated to this function. It is a Compliance/Audit Investigator II position that is within our workers' compensation

enforcement unit. That position is better equipped to do enforcement of workers' compensation coverage and compliance issues and does not really have the type of expertise needed to review these employee leasing company applications. It really is a much better fit to have this function under the Labor Commissioner.

As Ms. Chambers mentioned, in our office we will continue ensuring that the employee leasing companies have workers' compensation coverage. Failure to apply could result in administrative fines, so that function will remain within our office.

Just to help clarify for the Committee, we previously did not have any true enforcement authority over the registration requirements. If there was an employee leasing company that was not complying, we had to refer the matter to the Attorney General's office. Under the new structure, this would be able to be addressed within the Labor Commissioner's office directly. I am available for any questions if you have any.

Chair Jauregui:

We will now go to questions from Committee members. I just want to start really quickly to make sure I understood this correctly. We are basically taking employee leasing companies and renaming them to professional employer organizations. Then we are changing the registration from a registration to a license, but we are not changing the fees, so for issuance and renewal that is staying at \$500. We are just calling it something different. Then we are taking professional employer organizations from the Administrator of the Division of Industrial Relations and moving them under the Labor Commissioner. That is in essence what the bill does.

Shannon Chambers:

Madam Chair, you are absolutely correct. You got it three for three, a trifecta.

Assemblywoman Tolles:

Many, many moons ago, I used to work for Automatic Data Processing, Inc. (ADP). I was the regional manager for them, and we always had people who confused us with employee leasing agencies. However, I am curious if we are going to fall right back into that a little bit. By looking at the definition under section 1.5, subsection 4, we are now adding a definition that:

"Professional employer organization" means a company which, pursuant to a written or oral agreement intended by the parties to create an ongoing relationship:

- (a) Provides labor compliance services for a fee, including, without limitation, the management of human resources, employee benefits, payroll and workers' compensation; or
- (b) Places any of the regular, full-time employees of a client company on its payroll, and, for a fee, leases them to the client company.

Paragraph (b) definitely falls more in line with what we are now calling, with the new terminology, "professional employer organization." I am just curious. By putting that "or" in there, is it possible that this is now going to be interpreted to apply to those payroll companies? Because that is exactly what we did. We sold services to help with payroll processing. We actually added on a human resources component and workers' compensation components with some alliances that we had created with other businesses. I just wonder, by having that "or" in there, if this could be interpreted to apply to the ADP, Paychex, and Intuit companies of the world.

Shannon Chambers:

I think what we are trying to do here—your points are good ones—is take the first step to get what are now called "employee leasing companies" under the authority of the Labor Commissioner, find out what they are really doing, and then determine exactly whether we need to transition those companies that are still "leasing" employees to a private employment agency. However, by adding the new definition of "professional employer organization," it allows them to provide those labor compliance and human resources services.

As the Labor Commissioner, I did not want to just close the door on those companies that may have contracts out there where they have actually leased employees. The goal will be to work with all 203 of these entities, find out exactly what they are doing, and make sure that they fit either under the "professional employer organization" definition or the "private employment agency" definition.

Assemblywoman Tolles:

I do think it would be important and that we may need some clarifying language there because as it reads right now with that "or"—I understand you are trying to just capture those 203 or so agencies, but I think that it could open the door to incorporate all of these businesses. Perhaps legal counsel could correct me, but that is quite a large net. Just look at how many people use QuickBooks, right? If we were to interpret that as covering Intuit, ADP, Paychex, or those other payroll services companies out there, you might capture a huge portion under the way I see it as it is written right now.

Shannon Chambers:

I would be happy to work with legal counsel. We are still in the hearing stage right now and not at work session. If there is finer language that might be needed, I am certainly open to it.

Chair Jauregui:

I am going to turn to Mr. Quast, our legal counsel, to see if he wants to address that.

Sam Quast, Committee Counsel:

I really do not have too much to add to this conversation. I believe you are right, Assemblywoman Tolles, that if you were engaging in either one of those activities, you would be required to be licensed under that definition.

Victoria Carreon:

I did want to point out that entities like ADP are currently registering as employee leasing companies. I believe they would still be covered under the new legislation.

Chair Jauregui:

Committee members, are there any other questions?

Assemblywoman Kasama:

I just wanted to clarify because Chair Jauregui had a great summary of what we are doing. We are just moving it over and it is very similar. However, under section 7, subsection 2, that penalty of "not more than \$5,000" is new, correct?

Shannon Chambers:

It is new. Under the existing authority of the Division of Industrial Relations, the potential penalty can be up to \$10,000 per violation. So we are bringing this under the Labor Commissioner and the Labor Commissioner's statutes. Typically, the administrative penalty provisions are up to \$5,000. However, it is new in this section.

Assemblywoman Kasama:

It is new in this section, but under the previous Administrator, there was already a penalty of up to \$10,000.

Shannon Chambers:

Correct.

Victoria Carreon:

Just to clarify, the only authority that our Division had in terms of levying administrative fines was if the employee leasing company did not have proper workers' compensation coverage. Otherwise, we did not have any authority to levy a fine if they were not registering as an employee leasing company. We were referring those items to the Attorney General's office.

Chair Jauregui:

Committee members, are there any other questions? [There were none.] We will go ahead and move on to the testimony portion of the hearing. Is there anyone here in Carson City wishing to testify in support of Senate Bill 55 (1st Reprint)?

Brian Reeder, representing National Association of Professional Employer Organizations:

We just want to thank the Labor Commissioner for her proactive outreach to our industry and for working with us on this bill. We urge your support.

Chair Jauregui:

Could we check the telephone line for anyone wishing to testify in support? [There was no one.] Is there anyone in Carson City wishing to testify in opposition to Senate Bill 55 (1st Reprint)? [There was no one.] Can we check the telephone line for anyone in opposition? [There was no one.] Is there anyone in Carson City wishing to testify in neutral? [There was no one.] Could we check the telephone line for neutral testimony? [There was no one.]

Before I go to you for closing remarks, Labor Commissioner, I do want to go back to a question. I overlooked our member who is joining us digitally.

Assemblywoman Dickman:

I just had a quick question about why this is a two-thirds bill because licensure is not really different from registration. Does it have to do with the penalty structure? Is that what might be causing this to require a two-thirds vote?

Shannon Chambers:

What it is, Assemblywoman Dickman, is there is going to be a transfer of revenue of a little over \$114,000 from the registration fees that will be transferred from the Division of Industrial Relations to the Labor Commissioner's budget account if this bill is successful and passes. That is my understanding of why it is in the two-thirds world. That is basically what I know and can tell you.

Assemblywoman Dickman:

As far as we know, it is just because we are transferring money, right?

Shannon Chambers:

As far as I know, that is the reason.

Chair Jauregui:

I do want to check with our legal counsel on that two-thirds. Mr. Quast, could you explain to us what your understanding of the two-thirds is?

Sam Quast:

It is my understanding that the two-thirds is due to the expansion of the definition of "professional employer organization." Currently, under "employee leasing company," it just regulates companies that lease their employees. Under this new definition, there are new activities that would require persons to get a license. Therefore, you could possibly receive increased revenue due to the increased number of people who may have to get a license.

Assemblywoman Carlton:

To clarify with legal counsel, they were being registered before, but now we are calling it a license. So, it is not necessarily the expansion component; it is the change in how it ends up in that particular area because it was a registration and now it is going to be a license.

It is moving from one division to another: from the Division of Industrial Relations to the Labor Commissioner. So, it is new for Ms. Chambers, but it existed before. It is because it is new in this chapter that it would generate the two-thirds.

Sam Quast:

I do not believe that the change of the name between the license and the registration or the transfer of authority is the reason for the two-thirds. It is the expansion of the definition of what is actually being regulated.

Currently, if you are a company that is leasing employees, then you would be required to be licensed as an employee leasing company under this particular license. Now we are saying that these companies that provide labor compliance services—which are not currently included within the definition of "employee leasing company"—would also be required to be licensed. Therefore, a person who was providing labor compliance services prior to this would not be required to be licensed under this; after this bill, they would be required to be licensed under this and to pay the fees.

Chair Jauregui:

Labor Commissioner, I will come to you for closing remarks.

Shannon Chambers:

That was what was represented to me as far as the fiscal requirement and the two-thirds. That is why I communicated that to the Committee. Just to be clear, all of those entities that currently have a registration—unless they do not meet the requirements—will automatically be rolled over to a license. That is built-in here. There are no new fees or positions. Certainly, defer to legal counsel on how that two-thirds decision was made. I know that whether that was needed or not was a discussion on the Senate side. I just wanted to address that.

I would urge your support for this bill. It makes sense to bring these entities under the Labor Commissioner. Like I said, I look forward to working with the industry and to getting this issue where it probably should have been 20 years ago, when this legislative body was first starting to hear the term "professional employer organization" and was deciding what should be done with employee leasing companies.

Chair Jauregui:

Ms. Carreon, would you like to give closing remarks?

Victoria Carreon:

We do appreciate Labor Commissioner Chambers and all of her help to find a good home for employee leasing companies. We totally agree that renaming them "professional employer organizations" and regulating them under the Labor Commissioner is the best course for the state.

Chair Jauregui:

With that, I will close the hearing on Senate Bill 55 (1st Reprint). Next up on our agenda is Senate Bill 295 (1st Reprint). I do believe that the Majority Leader is still on the floor of the Senate but has instructed that Todd Ingalsbee and Jason Mills present the bill. Committee, with that, we will open the hearing on Senate Bill 295 (1st Reprint), which revises provisions relating to industrial insurance.

**Senate Bill 295 (1st Reprint): Revises provisions relating to industrial insurance.
(BDR 53-996)**

Todd Ingalsbee, President, Professional Fire Fighters of Nevada:

First, I will just go over what the bill does. I will have some remarks, and then I will pass it over to Mr. Mills in case he needs to add anything. He will be available for any legal questions regarding the bill as well.

Senate Bill 295 (1st Reprint) simply clarifies existing law for firefighters and police regarding heart, lungs, and hepatitis cases where those diseases cause partial disability but cause one not to be able to be a firefighter, police officer, or arson investigator. Such members may elect the benefit for permanent total disability, thereafter called PTD.

Please note that it is not an actual finding of total disability. No existing law allows for any offset or reduction of PTD benefits; thus, S.B. 295 (R1) is a clarification bill. Existing law allows insurers to remove PTD if they can show the disability is gone. This bill does not change that rule or statute at all.

Every day, firefighters put their lives on the line, and the Nevada Legislature has consistently recognized the sacrifices associated with our profession. Part of that sacrifice is the chance of suffering a career-ending disability due to a work-related injury or disease. We have recently had an issue where third-party providers of workers' compensation have been ignoring the existing law by denying permanent total disability payments, even though the firefighter or police officer can no longer work in their profession.

We believe this bill will provide language to help clarify existing statutes and to prevent these third parties from trying to get out of the disability benefits we are due. In working with stakeholders on this bill, we have accepted an amendment to help alleviate concerns and narrow the scope of protection, which you will see reflected in the current amendment and reprint.

We appreciate the Majority Leader for always being a champion for our first responders and for bringing this important piece of legislation. I also want to introduce Jason Mills to the Committee who is here to answer any questions you may have. We urge your support.

Chair Jauregui:

Mr. Mills, welcome to the Committee. Do you have prepared remarks or are you here for question and answer only?

Jason Mills, representing Nevada Justice Association:

Yes, I just have some short remarks. I wanted to point out that the amendment Mr. Ingalsbee brought up is important because it only applies to police, firefighters, and emergency technicians for heart, lungs, and hepatitis claims. These are distinct, separate, and apart from all other types of claims.

They are so important because one can receive a benefit for permanent total disability, even if they are not permanently and totally disabled. This is because the statute says that if you have a partial disability but you have lost your ability medically to continue as a police officer, firefighter, or first responder, then you are entitled to these PTD benefits due to the damage from your heart, lungs, or hepatitis case. Being knocked out of this position of being a police officer, firefighter, arson investigator, or emergency responder entitles you to be paid the PTD benefit.

What this bill does is clarify that existing law does not indicate you can remove this benefit if you continue to work in some non-police officer, non-firefighter, or non-arson investigator capacity. For example, if you were to go be a greeter at the local Megamart or something along those lines, you could continue to work and receive your PTD benefit if you still have a heart, lungs, or hepatitis disease and still can no longer be a police officer, arson investigator, or firefighter.

Existing law—the same statute that is being amended—says that if the insurer can prove that the disability is gone, then they can remove the PTD benefits. Thus, even with this change being put into effect, if they can show that the heart or lungs disease is gone and that they can become a police officer, firefighter, or arson investigator again because the heart or lungs disease is gone, then that PTD benefit would be able to be removed.

This law does nothing to alter, change, or amend existing law. It is just clarifying that they cannot remove the benefit because the guy or girl is working at the library on the weekends or is opening up a little business on the side to augment his or her income because he or she has been knocked out of being a police officer or firefighter, often prematurely.

If you have been working these positions for 10 years, 12 years, or 15 years and you get knocked out of that position, your earning potential—not withstanding receiving these PTD benefits—is still greatly reduced. They need to be able to add these additional ways to earn income, again, as long as the heart disease is not gone, they are not practicing as a police officer, firefighter, or arson investigator, and the doctor has said that it is okay for them to work.

This bill simply clarifies that these benefits would not be cut off. I bring this up because over on the Senate side, much of the discussion was about how this rule is somehow going to change, alter, or amend existing law. That is really not true. What it really does is clarify existing law. We looked at old Legislative Counsel Bureau work-ups on this for previous

chairmen that have concluded the same thing we are presenting to you today through the Professional Fire Fighters of Nevada and on behalf of myself with the Nevada Justice Association. I am available for any questions or comments that you or any of the Committee members may have.

Chair Jauregui:

Mr. Ingalsbee, I do have one question. When you are referring to the amendment, are you referring to a new amendment that you are providing to the Assembly, or the amendment that was adopted in the Senate?

Todd Ingalsbee:

Yes, the amendment we adopted in the Senate. I just wanted to make sure that you were aware of it and to bring your attention to it. We did work with all the self-insurers to come up with that language to narrow that scope down. I just wanted to make sure you are aware that is where that came from.

Chair Jauregui:

Committee members, are there any questions for our presenters?

Assemblywoman Carlton:

It has been a long time since I have had to look at workers' compensation statutes, thank goodness, especially these. However, if my recollection is correct, under the PTD that would apply, they are paid at a rate of 66 2/3 percent. Is that correct? So, in essence, they take a pay cut because they are disabled.

Todd Ingalsbee:

That is correct.

Jason Mills:

That is correct, and not only that; it is capped, Assemblywoman Carlton. Remember that their wages can far exceed the cap. It caps at either 66 2/3 percent of their wages or at 66 2/3 percent of the cap, which usually, for the actual wages of police officers and firefighters, is much higher than the cap. So, it is more than just saying two-thirds of their actual wages.

Assemblywoman Carlton:

I do not remember what the cap is or if it has changed. What is the cap?

Jason Mills:

It is currently about \$6,000 per month, so the award is just shy of \$4,100 per month. Most professional firefighters, arson investigators, and police officers in this state who have been on for any amount of time typically earn more than \$6,000 per month in wages.

Assemblywoman Carlton:

It is just good to be able to put some relationship points in this because not only do they have a heart or lungs disease, or hepatitis—so they have got a chronic illness—but they have lost their job, got a pay cut, and now someone wants to decide that if they go and open up a little side business, that they want to take that benefit away. I just want to make sure we have got what has actually happened from start to finish.

I will say from personal experience that it is not easy to get heart and lungs coverage. You can have a heart attack on the job, and they will still deny you heart and lungs coverage, and you will have to fight for years to get it. Just a personal point of privilege; I know what going through that is like.

Assemblyman O'Neill:

Thank you, Assemblywoman Carlton, for bringing forth some of the information that I wanted to bring forward. I appreciate that. Mr. Mills, I just have a question, and it may be a little confusing, so give me a second to work with it.

Let us say that a firefighter, emergency technician, medical technician, or police officer has developed a specialty, whether it is in arson investigation and specifically dealing with chemical explosions, or it is a police officer who deals specifically with firearms or violent death investigations. They acquire the PTD and are retired. The community college wants to hire them on as a professor. Would they be able to do that? Or do we lose that knowledge that we have learned or the capability of continuing with it. Is that lost? Because it seems appropriate to me that the answer is yes, they are not allowed to teach.

Jason Mills:

We believe that the current law does not allow them to do that already. However, there have been some rulings that have come through the hearing and appeals offices that would indicate you are exactly correct. No, you cannot get the benefit according to a particular appeals officer down at the administrative hearing offices if you do any amount of work because it would show that you are not permanently and totally disabled, notwithstanding that police officers and firefighters are not permanently and totally disabled when they received this benefit under existing law.

The point of this was to clarify that they could continue to do such work like that—teach at the local community college, earn wages, et cetera—as long as they are not engaging in the work of being a police officer, firefighter, or arson investigator, and they still have this disease of the heart or lungs, or hepatitis. What we are seeking to do is clarify that they cannot do that, Assemblyman O'Neill.

Assemblywoman Tolles:

First, let me just say that I have always said our firefighters and law enforcement are our first responders and veterans. We talk a lot about benefits for our veterans and taking care of our veterans. I am the sister of two law enforcement officers. I appreciate the risks you put yourself through every day for the public in keeping us safe.

If I understand it correctly—that was a wonderful example Assemblyman O'Neill gave—the idea here is that you have somebody who is on PTD, but they are presumably taking a less risky job. For example, they are consulting, teaching, or what have you. This is not written into the statute, but is there ever a case where somebody might find themselves in another scenario where they are in a job and get injured again? What would happen in that case? Would it be a doubled-up workers' compensation claim? How would that work? Hopefully, that would not happen, but just thinking through the different scenarios, it is not written in there that it is necessarily less risky; it is just not the same.

Jason Mills:

Existing law already indicates that there can be no greater than 100 percent benefits being provided on all workers' compensation claims that one is receiving. Let us say a person was out on permanent total disability benefits due to his or her heart disease—he or she got knocked out at year ten because of his or her disease and could not be a police officer anymore. He or she then goes to work at the local community college or elsewhere while receiving that benefit from the permanent total disability and gets injured. The roof falls in during the day and they break their arm. They would be entitled to medical care for the workers' compensation injury that they received, but they will receive zero dollars in any indemnity award because they have already achieved 100 percent of what the workers' compensation system can provide as a monetary benefit to the claimant. That is existing law in an existing statute and is unamended and unchanged by S.B. 295 (R1).

Chair Jauregui:

Committee members, are there any other questions?

Assemblywoman Kasama:

I think this is a great bill. I just want clarification. We are saying with regard to permanent disability that it is two-thirds, basically. In one of the examples, if a person were receiving \$6,000 a month and it then goes down to 66 2/3 percent, their disability benefit would now be \$4,000. Then it gives them the ability to go out and get another job such as teaching or whatever it might be. That is great.

My question is, What happens if they go get another job and now they earn \$4,000? They are getting \$4,000 in benefits and earn \$4,000, so now their total monthly income is \$8,000. In the example, that is \$2,000 more than what their salary was of \$6,000. Is there any reduction if their income is more than what their normal salary or cap would have been?

Jason Mills:

Remember that typically, what happens is that the two-thirds is of the maximum wage that they could be earning. A firefighter or police officer could earn \$10,000 or \$12,000 a month with their overtime and other things.

If this happens to them and they get knocked out of that particular job, and now they are only receiving \$4,000 per month from these PTD benefits at current rates—if you were older, your rates would be lower, by the way—and they go out and earn any income, current law, which

this does not alter, change, or amend, does not provide for any offset. It is very important I bring that up because I think some of the opposition in the Senate was saying that we do this all the time and we are allowed to do this. There is no statute, regulation, or Nevada Supreme Court case law that says you can offset PTD benefits for earning additional wages. That does not exist in current law, which is why we were somewhat stunned when an appeals officer did this to one of our police officers down here in the south in making such a ruling.

Of course, the police and fire unions were rightly upset when they saw the assault on their heart and lungs benefits that that case stood for. So no, existing law does not allow that to be done, Assemblywoman Kasama. This bill would clarify, codify, and make absolutely clear that the law does not allow that.

Chair Jauregui:

At this time, we will go ahead and move on to testimony in support. Is there anyone in Carson City wishing to testify in support of Senate Bill 295 (1st Reprint)?

Tom Dunn, Northern District Vice President, Professional Fire Fighters of Nevada; Vice President, International Association of Fire Fighters, Local No. 731; and representing International Association of Fire Fighters, Local No. 2955:

We sit here today in support of S.B. 295 (R1). It is important to recognize that as a police officer or firefighter, if you are diagnosed with heart disease in our profession, your chances of having another cardiac event are exponentially higher once you are diagnosed with that heart disease. There is definitive data to that. There are National Fire Protection Association standards that address it specifically for firefighters. Once you are diagnosed with heart disease, your chances of having another cardiac event are exponentially higher, and the potential of having a significant event such as death—we cannot put a number to that.

Assemblywoman Carlton, based on your statements earlier, I have a story for you that just happened this past week. It happened to be in a workers' compensation hearing where the third-party administrator had accepted the claim for heart disease; however, they are denying the employee permanent total disability because they are saying it is possible that the employee could take a light duty job or an administrative job with their fire agency.

Well, unfortunately, this fire agency does not have a light duty assignment for a full-time, paid, professional firefighter. That is why that benefit resides in the statute currently; it is because you are getting a benefit because you are no longer allowed to work your primary profession, which is being either a police officer, firefighter, or arson investigator. Once again, we are in support of this legislation and I am here to answer any questions you may have as well.

Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO:

We are in support of this legislation. As someone who has worked on firefighter and police officer workers' compensation benefits for over 20 years, I can say that this is a bill that is

needed. It has not been something that has been brought up before in the past because some of these third-party administrators had never gone in this direction before. It is something we contemplated that could happen over the course of time, though.

As a matter of fact, years ago, I went through former Assemblyman Conklin, who was the Majority Leader of the Assembly at the time. I asked the question of the Legislative Counsel Bureau (LCB) about whether or not firefighters or police officers were allowed to—should they choose to take a permanent total disability even though they were only partially disabled like the law allows—go out and seek further employment later on.

The response back from LCB to him was that, under existing statutes, regular employees or workers who were injured could not, but that the statutes allowed for those workers—the police officers or firefighters who had been injured in a heart or lungs claim—to do so. This is just to try and clarify that position. It has already been in statute. It is not something that has changed. It is just trying to clarify what is already there so we do not have hearings officers guessing what may or may not be legal. We are in support of this.

Chair Jauregui:

Could we check the telephone line for those wishing to testify in support of Senate Bill 295 (1st Reprint)?

Bill Gardner, Secretary-Treasurer, International Association of Fire Fighters, Local No. 1607:

I just want to let you guys know how much we really support this bill. I want to echo everything that Mr. McAllister just said and ask that you please move this from the Committee.

Ryan Green, Secretary-Treasurer, Professional Fire Fighters of Nevada; Secretary, International Association of Fire Fighters, Local No. 2955; and Member, International Association of Fire Fighters, Local No. 731:

I am asking you to please pass this bill through the Committee here. It is very important to our members. We appreciate you taking the time to listen to us.

Chair Jauregui:

Is there anyone in Carson City wishing to testify in opposition? [There was no one.] Can we go to the telephone line for opposition?

[There were technical difficulties.]

Dalton Hooks, representing Nevada Self Insurers Association:

Senate Bill 295 (1st Reprint) affects a complex statutory scheme where police officers and firefighters are able to choose two different paths to being made financially whole. [The call was disconnected.]

Chair Jauregui:

We did have difficulties hearing you, so my recommendation would be to submit your testimony in opposition in writing and we will include it in the meeting record. If we could move on, is there anyone else in opposition? [There was no one.] Is there anyone in Carson City who would like to testify in neutral? [There was no one.] Could we check the telephone line for neutral testimony?

Shaun Meng, representing Nevada Self Insurers Association:

I am partners with Dalton Hooks, who was just on the phone but experiencing technical difficulties. I am testifying on behalf of the Nevada Self Insurers Association in opposition to the current bill, Senate Bill 295 (1st Reprint).

I am calling in today just to briefly explain our opposition here. As Mr. Hooks was trying to say over the phone, there are two methods for these partially disabled firefighters and police officers to obtain the permanent total disability benefits from the heart and lungs bill when they meet the criteria that are suggested in this bill. They can choose to either be vocationally retrained into another occupation, or they can elect to receive permanent total disability benefits, or those benefits that are generally reserved for individuals who have been deemed by a physician to be permanently and totally disabled and incapable of employment in any degree. They can elect those benefits.

The problem here is that the proposed bill, in essence, is allowing for those individuals to elect those permanent total disability benefits; forego the vocational retraining benefits that are provided in the act; obtain payment of these tax-free wage replacement dollars; and then go and double up by getting another job. In essence, they are doubling up the benefits that we provided under the complex benefits in the Nevada Industrial Insurance Act. Even more than that—in addition to doubling up—they can still get their Public Employees' Retirement System of Nevada (PERS) benefits, these retirement benefits, at the same time as all this. In essence, they are receiving triple their wages that they received as a firefighter.

That creates a huge problem here, of course, and a huge cost to the state and to these local agencies. We would ask that this not pass through the Assembly and that the bill as written be stricken or amended—exactly what Mr. Mills was talking about—so that the employers, the state or local municipalities, can offset any additional pay in wages from the permanent total disability statute by the amount up to the deemed wage.

Chair Jauregui:

Before you jump off the line, we do have a question for you from a Committee member.

Assemblywoman Carlton:

The connection was bad, so I just want to make sure that I understood correctly. Your position is that because they are currently permanently and totally disabled—the classification that we have put in statute—and getting 66 2/3 percent of their deemed wage, they should not be allowed to take a job someplace else. In essence, the proposal that I believe you are headed towards is if they take a job someplace else, you do not want to pay

them the 66 2/3 percent anymore. That does not mean that they do not have heart, lungs, or hepatitis issues. You just do not want to pay them for it. You want to take that benefit away. What I am hearing is that the goal is to just remove the benefit. Was that correct?

Shaun Meng:

Not exactly, ma'am. The goal here would be to eliminate the wage replacement benefits that are tied to the permanent total disability statute and to reduce those benefits by the amount that they have supplemented through their new occupation.

Assemblywoman Carlton:

You made it perfectly clear right there, so let us go ahead and stop there for just a second. The grand bargain in workers' compensation is that if you have a worker who has been hurt, you either make the man whole—or woman whole, but the old statute was man whole—or you give them the compensation for not being able to go back to their job. These folks cannot go back to their job. It has been deemed that they may not. They had their jobs taken away from them through no fault of their own because they acquired a disease.

You, in essence, want to penalize them a second time because they go get another job. Now, if they were getting 100 percent, we might have a conversation. But because they are only getting 66 2/3 percent, you want to lower that amount even more because they went out to get another job to help make up the difference of their pay cut? Is that what I am hearing you say?

Shaun Meng:

As the law currently sits, there are two channels at the culmination of this permanent total disability analysis of this heart and lungs bill sitting up there. First, an individual can choose vocational retraining where they get retrained into a new profession and choose not to receive these wage replacement benefits. A large majority of these individuals with the heart and lungs bill go out and get retrained into a new career or occupation. They go forward without these deemed or elected permanent total disability benefits.

There is another channel where an individual can choose to forego those vocational rehabilitation benefits and instead elect to receive a permanent total disability, wage replacement benefit. Those individuals are set up to be deemed permanently and totally disabled for the remainder of their career.

What is being proposed through this bill is that, instead of those individuals electing to go through with specific vocational training, we allow those firefighters and police officers to elect to receive the deemed permanent total disability benefits. They will get two-thirds of their wages tax free—so they do not have to pay any taxes in association with this workers' compensation benefit and are getting very close to their normal wage—and they are then allowed to go get the same benefits of those who have chosen to get vocational retraining because they secure a second job and double up on their wages. This is all with no effect on the elected permanent total disability benefits. In addition to that, there are PERS and retirement benefits.

Assemblywoman Carlton:

I am going to stop you right there because that has nothing to do with the bill. I believe you are bringing in an item that has nothing to do with the bill. I apologize, Madam Chair, but I am going to continue. Those items have nothing to do with this bill. They are benefits that are earned with years' worth of service and should not be part of the conversation at all.

We are talking about an employee who is suffering a chronic illness and who elected to take the PTD. I believe you are getting a little squishy in some of the comments because part of this election choice is whether you want to take a lump sum or a monthly payment. The vocational rehabilitation fits in another component.

A lot of the things that you are saying, if folks are not thoroughly versed in workers' compensation, can be very, very confusing. That is part of the problem with having folks testify over the phone; it can make it very difficult. However, what I am basically hearing from you is you are saying that if one of these folks has a PTD and is only making 66 2/3 percent of their wage, you believe that if they then go and get an outside job, it should be credited against that wage. That is the position I am hearing from you. Is that correct?

Shaun Meng:

Yes, that is correct.

Assemblywoman Dickman:

I had a question since you brought up PERS.

Chair Jauregui:

I am sorry, Assemblywoman Dickman; I am going to have you take that question offline. The Public Employees' Retirement System is not a part of this bill, so I just want to keep our questions regarding Senate Bill 295 (1st Reprint).

Assemblywoman Dickman:

Okay, I will leave out PERS. When you take this permanent total disability, does it stop at retirement age?

Shaun Meng:

No, it does not. Ordinarily, permanent total disability benefits are generally offset by any retirement benefits. However, in the situation that we are in right here, the suggestion is that there would be no ability to offset these elected, permanent total disability benefits.

Chair Jauregui:

Assemblywoman Dickman, what I think we will do is we can probably have the bill sponsors answer that question when they come up for closing remarks. That might be a question better addressed to the bill sponsors. Committee members, seeing no other questions for this presenter, I am going to move on to our next caller.

I would like to remind those on the line that we are actually in neutral testimony. I know that the caller called in opposition and we were hearing testimony in neutral, so we will go ahead and move them into opposition, but in this virtual world, I wanted to go ahead and take his testimony. If we could check to see if there are any other callers in the neutral position. [There was no one.]

At this time, I would like to call Mr. Ingalsbee back to the table for closing remarks. Mr. Ingalsbee, if you would just address Assemblywoman Dickman's question regarding whether benefits continue at retirement age.

Todd Ingalsbee:

Thank you for hearing this. I do want to touch on how it seems the opposition is always talking about how it is elective. It is elective because we have to sign a piece of paper saying that we will retire out so our PERS benefits and stuff can kick in based on disability, which has to be in front of the PERS board. Otherwise, we get terminated from our position and let go, which causes another thing regarding when you can start collecting your PERS benefits and et cetera, if that makes sense, Assemblywoman Dickman.

It is elective in that we have to sign it because we basically get two options. We get told by the doctor, who we have to have a physical from every year, that we can no longer do this job. The municipality then says that they do not want to also take that liability of you doing the job, even if you want to; they will go with what the doctor says. Therefore, your option is to take permanent total disability, if that clears up your question, Assemblywoman Dickman. Mr. Mills, if you want to add anything on that, you can as well.

Jason Mills:

You got it fine, Mr. Ingalsbee; that was great.

Todd Ingalsbee:

I want to thank everybody for hearing our bill. If anybody has any questions, we know it is a time when everybody is working a lot of hours. I know the Committee is extremely busy. You can definitely reach out to me or I can follow up with you as well.

[[Exhibit E](#) is a letter in opposition to Senate Bill 295 (1st Reprint) that was submitted but not discussed and is included as an exhibit of the hearing.]

Chair Jauregui:

At this time, I would like to close the hearing on Senate Bill 295 (1st Reprint). Because we are getting towards the end of the 81st Legislative Session and I know that there have been some concerns from my colleague regarding Senate Bill 55 (1st Reprint), at this time, I would like to move into a work session on Senate Bill 295 (1st Reprint) so we can go ahead and get that moving. I am going to hand it over to Marjorie Paslov-Thomas so she can walk us through the Senate Bill 295 (1st Reprint) work session.

Marjorie Paslov-Thomas, Committee Policy Analyst:

We just heard Senate Bill 295 (1st Reprint), which is sponsored by Senator Cannizzaro and revises provisions relating to industrial insurance. There are no proposed amendments.

Chair Jauregui:

Committee members, at this time, I would be looking for a motion to do pass. Before I accept the motion, I want to ask if anyone has questions on the bill before you. [There were none.]

ASSEMBLYMAN O'NEILL MOVED TO DO PASS SENATE BILL 295 (1ST REPRINT).

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN FLORES AND FRIERSON WERE ABSENT FOR THE VOTE.)

I would like to assign that floor statement to Assemblyman O'Neill. Committee members, at this time, the last item on our agenda is public comment. While we give those listening over the Internet time to call in for public comment, I am going to see if there is anyone here in Carson City wishing to give public comment. [There was no one.] Can we check the telephone line for anyone wishing to provide public comment? [There was no one.] Committee members, we do have a couple more bills that have been sent to the Commerce and Labor Committee, so we will be meeting Wednesday, May 26, 2021. I will see you Wednesday afternoon. Thank you, everyone; we are adjourned [at 2:57 p.m.].

RESPECTFULLY SUBMITTED:

Louis Magriel
Committee Secretary

APPROVED BY:

Assemblywoman Sandra Jauregui, Chair

DATE: August 9, 2021

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is written testimony dated May 24, 2021, submitted and presented by Shannon Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry, regarding Senate Bill 55 (1st Reprint).

[Exhibit D](#) is written testimony dated May 24, 2021, submitted and presented by Victoria Carreon, Administrator, Division of Industrial Relations, Department of Business and Industry, regarding Senate Bill 55 (1st Reprint).

[Exhibit E](#) is a letter submitted by Wesley Harper, Executive Director, Nevada League of Cities and Municipalities, in opposition to Senate Bill 295 (1st Reprint).