

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Eighty-first Session
February 10, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:07 a.m. on Wednesday, February 10, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Dina Neal, Vice Chair
Senator Melanie Scheible
Senator Roberta Lange
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Wil Keane, Counsel
Kim Cadra-Nixon, Committee Secretary

OTHERS PRESENT:

Elisa Cafferata, Director, Department of Employment, Training and Rehabilitation
David Schmidt, Chief Economist, Research and Analysis Bureau, Department of
Employment, Training and Rehabilitation
Jeff Frischmann, Administrator, Employment Security Division
Troy Jordan, Senior Legal Counsel, Employment Security Division, Department
of Employment, Training and Rehabilitation
Christopher Daly
Alexander Marks, Nevada State Education Association
Sue Matuska, Counsel, Nevada State Education Association
Jason Gateley
Bryan Wachter, Senior Vice President, Retail Association of Nevada
Tyler Winkler, Legal Aid Center of Southern Nevada

Senate Committee on Commerce and Labor
February 10, 2021
Page 2

Amber Hansen, Claimant Advocate, Pandemic Unemployment Assistance
Facebook Creator
Paul J. Moradkhan, Las Vegas Chamber
Thea Bell
Brittany Sheehan
Jan Giles, President, Education Support Employees Association
Toni Duncan
Dawn Etcheverry, Vice President, Nevada State Education Association
Chassidy Luke
Jennifer Demoss
Adam Francis
Dora Martinez
Michael Ross

CHAIR SPEARMAN:

We will open the hearing with a presentation from the Department of Employment, Training and Rehabilitation.

ELISA CAFFERATA (Director, Department of Employment, Training and Rehabilitation):

I am presenting a brief overview of the Department of Employment, Training and Rehabilitation (DETR) ([Exhibit B](#)).

The vision of DETR is to empower a vibrant and equitable workforce and economy. Our mission is to empower Nevadans to realize his or her potential through meaningful work. We strive to build economic prosperity in every community through our programs. These programs include the Nevada Equal Rights Commission, Employment Security Division and Rehabilitation Division.

The core focus of DETR is to help Nevadans get jobs and help businesses find workers.

The organizational chart is explained on Slide 4. Our administration divisions include Financial Management, Information Development and Processes, Research and Analysis, as well as Human Resources.

Another division of DETR includes the Nevada Equal Rights Commission. It is the only State-mandated training and enforcement commission monitoring equal opportunity compliance for Nevadans.

The Research and Analysis Division provides reports on employment, unemployment and wages. The Rehabilitation Division is focused on employment opportunities for people with disabilities.

The Employment Security Division has three major programs: Workforce Development, Unemployment Insurance and the Commission on Postsecondary Education.

I will review the highlights from 2020 and the impact of the pandemic.

In the DETR Rehabilitation Division, 529 people were successfully employed and average wages increased to \$13.40 per hour. We are the first state in the U.S. to implement online orientations and program applications for persons with disabilities. Approximately 25,000 people seeking disability benefits were served in 2020. Nevada beneficiaries of social security disability programs were paid over \$1.3 billion in benefits.

The Nevada Equal Rights Commission received over 1,600 complaints and closed over 660 discrimination charges on behalf of Nevadans. This Commission also provided guidance to employers on Covid-19-related discrimination cases. Nevadans were awarded over \$2 million in settlement funds. We will also be providing information to employers about vaccines.

The Research and Analysis Office and our State Economist shared insights on the historic high unemployment rates.

Unemployment grew to over 30 percent in 2020, the highest of any state in the history of unemployment tracking. Benefit payments by DETR grew from 20,000 per week to 369,000 per week. This represents a 20-fold increase in unemployment claims. Refer to the historic levels of unemployment claims in the graph on Slides 12 and 13. Earlier spikes in unemployment claims were more gradual than the spikes in 2020 due to Covid-19. No other historic event compares to the magnitude of unemployment claims filed in 2020.

In addition to the large number of claims, DETR handled a significant number of new unemployment programs. Self-employed and gig workers were included in new unemployment programs. The Pandemic Emergency Unemployment Compensation (PEUC) program was also new. These new programs needed to be developed on the DETR website. We had seven new programs to handle in

addition to the significant number of claims. Refer to Slide 14 for a list of the new unemployment programs.

The Continued Assistance Act of 2020 (CAA) is an additional federal benefits package requiring new programming.

We also grappled with unrelenting fraud. We have approximately 1.5 million Nevadans in the workforce. As of December 26, 2020, we received almost 1.6 million applications for unemployment. We have received more applications for unemployment assistance than are actually in the workforce. This provides a picture of the magnitude of the fraudulent applications.

The Employment Security Division, Benefit Payment Control Unit is engaged with national and local law enforcement agencies to prosecute fraud and recover improper payments. This agency is also working with the National Association of State Workforce Agencies Integrity Center to implement technology to prevent fraud. We have recovered \$1 million in fraudulent payments.

We redeployed hundreds of staff from within DETR to address the pandemic. We also implemented a call center to address questions regarding Pandemic Unemployment Assistance (PUA). Our IT department did an excellent job keeping the DETR website functional.

Governor Steve Sisolak created a Rapid Response Strike Force in August of 2020. Under this program, we brought in 200 workers from the Department of Health and Human Services, Division of Welfare and Supportive Services. We also brought in a contract staffing company, returned the call center to DETR management, implemented additional fraud measures, and rebuilt the leadership teams of DETR and of the Employment Security Division. We have reduced 95 percent of the backlog of cases from August 2020.

What went right for DETR? We have helped 300,000 Nevadans receive weekly benefit payments. We have also paid out over \$9 billion in benefit payments. There are still people waiting for benefits in our backlog of cases. Over the past 12 years combined, we have only paid out \$6.4 billion in benefit payments.

The vast majority of our money comes from federal programs. Only 3 percent of DETR's funds are from the State General Fund. This is for rehabilitation programs and the Nevada Equal Rights Commission.

I will now address specific questions from the Committee. The first question concerns the comparison between this pandemic and the Great Recession of 2009. Please refer to Slide 20, comparing the number of initial claims in both years. Slide 21 compares the continued claims in these two historic years.

The question regarding demographics is explained on the DETR website as well as Slides 22 and 23.

The Committee also asked what DETR is doing to pivot back to providing workforce services. Most of our workforce employees are deployed to the unemployment backlog. We have a small task force reviewing registrations within our employment website, EmployNV. We are aware of the importance of returning to workforce duties in 2021.

We are supporting diverse communities in our State. We are working to meet the needs of indigenous job seekers in Hawthorne. In southern Nevada, we are working with Nevada Hope to assist low-income populations as well as Black, Indigenous and People of Color (BIPOC).

Our focus on supporting diverse communities in disadvantaged zones in Nevada is also evident in our work implementing the provisions of A.B. No. 354 of the 79th Session.

We are partnering with the Office of Workforce Innovation to help dislocated individuals. We are also utilizing the H-1B Rural Healthcare Grant Program to target BIPOC populations.

SENATOR NEAL:

Will the federal program, Pandemic Emergency Unemployment Compensation and the Children's Advocacy Alliance cause wage inflation when we calculate the total taxable wages of those receiving unemployment benefits?

DAVID SCHMIDT (Chief Economist, Research and Analysis Bureau, Department of Employment, Training and Rehabilitation):

The taxable wage base and benefits will be calculated based on wages in covered employment. This relates specifically to what employees earn.

If lower-wage workers were disproportionately displaced, there could be some impact to average wages in the State. We do not have the data yet to analyze this. Based on historical data, I do not think this will cause a large impact.

The wage replacement rate of \$300 per week under CAA will not cause the same effect as the \$600 per week PEUC wage replacement. The \$600 per week PEUC wage replacement caused some employees to be at 110 percent of industry average wage replacement.

SENATOR NEAL:

Will the 100 percent to 105 percent wage replacement rate cause an effect on the contribution rate for employers?

MR. SCHMIDT:

I do not think the impact will be large enough to affect the contribution rate for employers. The total covered wages for the State would not be affected because unemployment is down to 9.2 percent across the State. Historically, the impact of a few percentage points is not unlike what we have seen when the economy is booming and wages increased rapidly.

CHAIR SPEARMAN:

During the pandemic, people have relocated, and tragically some have died. How does this play a role in future trends?

MR. SCHMIDT:

We analyze our solvency Unemployment Trust Fund by using our current experience to project future needs. The federal average cost multiple takes the rate of benefit payouts in a particularly bad period and adjusts for current wage and employment levels.

We have used this calculation over the past 15 years to anticipate funding needs. Solvency calculations would include the criteria you mentioned.

In considering future solvency calculations, 2020 will stand out as what the State may face. Average high-cost multiple calculations average the three worst years in the last ten years, as noted in my Section 1 Explanation ([Exhibit C](#)), page 3.

SENATOR PICKARD:

The presentation of DETR's accomplishments in 2020 conflicts with the information I am hearing from my constituents. The Division of Welfare and Supportive Services reports receiving over 800,000 additional applications from people who could not get unemployment benefits. For months, applicants tried to contact DETR unsuccessfully.

I understand we are receiving payments from the federal government in arrears, rather than in advance. While we still need to verify their identity, we are not taking appropriate steps to put money in the hands of people. We are sending letters to claimants demanding repayment without due process.

The Special Master's Report, issued in July, included 140 pages of findings and recommendations. These have yet to be incorporated.

What are we doing structurally to address the issues which have failed many Nevadans?

MS. CAFFERATA:

We presented the information to demonstrate both the magnitude and the impossibility of the task before DETR. We were not able to operate in the manner we did in any other recession. The intention of the presentation was not to say there were no problems; the intention was to report what went right. We are aware of the frustrations you voiced.

The Special Master's Report, in my opinion, does not represent 140 pages of solutions. We have implemented many improvements to the system. We are not tracking the recommendations from the Special Master's Report we have implemented. We can highlight the recommendations implemented. Not all of the recommendations in the report can be implemented according to the Department of Labor guidelines.

Because the incidence of fraud was so great, we implemented fraud prevention measures that may have slowed the process to approve claimants. We have

recovered over \$100 million in fraudulent payments. For the hundreds of thousands of people not receiving benefits, we estimate we have prevented over \$2 billion in fraudulent payments. We continue to reexamine our processes.

We have corrected the problem of requiring repayment of benefits without the opportunity of due process. This technical issue lasted for two weeks.

JEFF FRISCHMANN (Administrator, Employment Security Division):
Senator Pickard, to clarify, was your question suggesting the State was getting funding from the federal government in arrears?

SENATOR PICKARD:

Yes, that was my question. More importantly, I am most concerned we are denying our innocent victims due process rights. Due process is not an impossible choice.

In respect to the Special Master's Report, the Rapid Response Strike Force Report, which came out six months later, pointed out many of the same issues as the Special Master's Report. Why are we not implementing the recommendations so we can fix the problem as we go, rather than wait until we get through the backlog and then figure out what we did incorrectly?

MS. CAFFERATA:

We have been implementing recommendations as we go along. In regard to your question of denying innocent people unemployment benefits, unemployment insurance (UI) is governed by federal law. For applicants to receive benefits, they must meet the defined criteria. We have tens of thousands of applications we must adjudicate. Many of these investigations include speaking with both the applicant and the employer. This is a time-consuming process.

Hundreds of thousands of people denied benefits without cause is not an accurate characterization of facts. The court found, when DETR had clear and convincing evidence of ineligibility, we were not required to have a hearing. If applicants do not upload required documents, they are probably submitting fraudulent claims.

CHAIR SPEARMAN:

Am I correct in understanding only 3 percent of the DETR budget comes from the General Fund?

Senate Committee on Commerce and Labor
February 10, 2021
Page 9

Ms. CAFFERATA:
Yes, that is correct.

CHAIR SPEARMAN:
Does the rest of the budget come from the federal government?

Ms. CAFFERATA:
Yes, that is correct.

CHAIR SPEARMAN:
If federal funds were adequate, especially from May through December, could some of the concerns in unemployment benefits been avoided?

Ms. CAFFERATA:
There is no minimum amount of funding DETR receives from the federal government to administer programs. Funding is based on the number of claims we receive. We receive a base budget amount, and quarterly we receive above-base funding to administer the program. The way we receive funding does create a lag in implementing solutions to staffing and technology.

CHAIR SPEARMAN:
It is important for the federal government to act expeditiously and with empathy.

Equal pay issues were addressed in S.B. No.166 of the 80th Session. Is DETR able to collect data and note trends in pay and gender equality? Are you able to look at trends around gender identity?

I am looking for ways to use the data already collected to make sure there is not only equality but equity for the people of Nevada. Marginalized communities are often lumped together. We can find trends and do a better job helping with equity if we disaggregate the information.

Ms. CAFFERATA:
The Nevada Equal Rights Commission provided a brief report outlining cases of discrimination. We need to work together to publicize the cases. We do receive reports on discrimination, but we do not receive a lot of information on equity. We will provide this report to you and uncover ways to aggregate the statistics.

CHAIR SPEARMAN:

We will now open the hearing on Senate Bill (S.B.) 75.

SENATE BILL 75: Revises provisions relating to unemployment compensation.
(BDR 53-349)

Ms. CAFFERATA:

This bill addresses the issues we have faced due to the coronavirus disease or Covid-19. These issues include a lawsuit and updated federal guidance. The overall goal is to ensure DETR is able to effectively handle future economic disruptions.

We are in conversations with several organizations who have concerns about the bill. This bill is not intended to raise unemployment contribution rates; however, rates will need to be increased. The bill is intended to stabilize the unemployment contribution rates and ensure the Unemployment Trust Fund is sustainable.

We will discuss two types of employers, those paying into the unemployment system and reimbursable employers. Reimbursable employers pay the Trust Fund for the actual unemployment benefits paid out. Most governments, school systems, religious organizations and non-profit organizations are in this category. Employment benefits are based on an employees' previous wages.

Section 1 sets the contribution rates for unemployment benefits, and section 14 defines the calculations. This bill will provide a more stable tax rate for employers and will not increase or decrease rates by more than 10 percent in any given year. We will continue to invest in the Trust Fund to ensure it is sustainable.

Section 2 removes the alternative base calculation option from statute. Currently, unemployment benefits are based on the first four quarters of the last five quarters. Under law, if an applicant does not have enough wages to qualify for benefits, the applicant may use the most current quarter to qualify for benefits. This creates additional administrative work and historically has not benefited many applicants. This practice contributed to the backlog of unemployment cases in 2020.

We are in conversations with the Nevada Coalition of Legal Service Providers, and they object to the revisions in section 2. We can provide additional information that led us to include the provisions of this section.

Section 3 brings confidentiality of beneficiaries and employers into compliance with federal law.

Section 4 corrects a math error while still allowing the provisions of *Nevada Revised Statutes* (NRS) 612.350.

Sections 5, 8 through 13, 15, 17 and 18 grant permission to provide notice by electronic transmission as well as mail through the postal system.

Section 15 in the proposed conceptual amendment ([Exhibit D](#)) puts the charging relief for contributory employers for the second and third quarters of 2020 into statute to ensure these charges are not applied to those employers in subsequent years. The amendment puts the charging relief of 50 percent for reimbursable employers for the same quarters of 2020.

Section 6 clarifies who is disqualified from unemployment insurance benefits. Federal law prohibits teachers from receiving unemployment insurance benefits in the summer if they have a position to return to in the fall. In Nevada, this statute also applies to support services personnel. An error is corrected in the conceptual amendment, section 6 and section 7, [Exhibit D](#).

We have been contacted by the Nevada State Education Association (NSEA). The Association would like this section amended to allow education support services personnel to receive unemployment eligibility for 9-month, 10-month and 11-month support professionals.

This is a policy issue for the Legislature and is allowable under federal guidelines. The school districts are reimbursable employers. If support professionals are included in unemployment insurance, the school districts would be required to reimburse the Trust Fund for benefits paid.

The errors in section 7 are corrected in the proposed amendment, [Exhibit D](#).

Section 14 is a companion piece concerning rates and removes a nonbinding calculation or unemployment premiums.

Section 16 clarifies Indian tribes and nonprofit organizations have an option to be included as contributory or reimbursement employers.

Section 19 conforms to federal legal requirements. This section prohibits the jury commissioner to select jurors from lists of the Employment Security Division of the Department of Employment, Training and Rehabilitation.

In response to Covid-19, we are proposing new sections covered in the proposed amendment, [Exhibit D](#). Section 20 ensures DETR is aware of petitions for judicial review and can respond within legal timelines.

Section 21 of the proposed amendment prevents the Board of Review or Administrator from charging fees to DETR or any person claiming benefits.

Section 22 of the proposed amendment is needed to provide extended benefits during periods of high unemployment without a 13-week waiting period.

Finally, we request an effective date of July 1, 2021 in the proposed amendment, section 23.

SENATOR SETTELMAYER:

We reduced the budget for DETR in the Eightieth Legislative Session, and this proved to be problematic. I do not place blame on DETR for the problems we are experiencing; however, we need to fix these problems. I am concerned S.B. 75 does not include any recommendations from the Special Master's Report, the Rapid Response Strike Force report by former Nevada Assembly Speaker Buckley and a program to advocate for claimants.

Why are the unemployment contribution rates changing in the proposed bill? Why are we going to a new unproven concept? The special assessment plan has worked in the past. I do not see the benefit of going to a plan that examines peaks over a 20-year period.

The concept of an 11-day response and electronic transmission appears to take away the ability of constituents to get information from DETR to file his or her claim.

I am concerned about this proposed legislation.

MS. CAFFERATA:

Several of the recommendations from the Rapid Response Strike Force will be addressed in other bills. In regard to the Claimant Advocate, we are implementing this policy in a budget bill.

Our request for electronic transmissions will be an option for claimants. We will continue to mail information through the postal system. Electronic transmissions have been requested by employers.

This legislation is intended to stabilize unemployment contribution rates and add more stability and predictability for the business community.

MR. SCHMIDT:

The federal government recommends reviewing peaks in unemployment benefits over a 20-year period, and this will make us more consistent with other states. Two of our last three economic expansions have lasted ten or more years.

Before Covid-19, the formula in statute would rapidly drop and would recommend something far lower than would be historically necessary. A broader standard is necessary to smooth out the highs and lows in formulas now in statute.

The existing process does work well because we have flexibility, but it also has the risk of large swings in premium rates for employers.

In the Great Recession, unemployment tax rates fluctuated almost 50 percent for the average employer. Under the proposed statute, this would not be allowable and would smooth out fluctuations in premium payments over a longer period of time. Employers would be able to plan for this expense in advance. If we tried to repay the Unemployment Compensation Fund in one year, it would be a hardship on employers.

SENATOR SETTELMAYER:

During catastrophic events, have we ever tried to repay the Unemployment Compensation Fund in one year?

MR. SCHMIDT:

No, we have not tried to repay the Unemployment Compensation Fund in a single year. With the new legislation, we can inform employers of rates for more than one year.

SENATOR SETTELMAYER:

I want to ensure this legislation requires DETR to also mail information to claimants even when they receive electronic transmissions.

SENATOR NEAL:

Mr. Schmidt, please explain the economic cycles listed in section 1, subsection 1, paragraph (b).

MR. SCHMIDT:

In calculating the average high-cost rule, the number of economic cycles we examine depends on conditions. We may only need to examine two economic cycle peaks. We see the largest number of unemployment claims shortly after the economy peaks.

SENATOR NEAL:

If this bill is passed, in future analysis of recessions, will the recession caused by Covid-19 be analyzed? What indicators are examined in the peak?

MR. SCHMIDT:

The key item measured is the benefit cost rate. This is calculated by considering the total benefits paid out divided by taxable wages at that point in time. This is updated for the current year. The total taxable wages are higher if we assume the economy has been growing.

If you needed to pay out claims, you take that rate and multiply it by our current taxable wages. The three highest benefit cost rates are averaged. This would be the current rate for 2020, 2010 and 2009, the three highest years.

SENATOR NEAL:

Would you prepare a chart with the old model of calculations and the proposed new model?

What is the purpose of the date change from June 30 to March 1?

MR. SCHMIDT:

The date change is needed to allow time to receive the information we need to make these calculations.

SENATOR NEAL:

If we put into statute conditions based on this economic downturn, will it be appropriate for future economic downturns that are not so drastic?

MR. SCHMIDT:

Preparing for the future by looking back at economic conditions during this pandemic would affect any measure. We need to change procedures to prepare the Trust Fund to weather economic conditions in the future.

If we provide a more stable unemployment tax rate for employers and build the reserves, we will be prepared for future economic downturns similar to what we have seen in the past 10 to 15 years.

I have submitted a document to demonstrate the relationship between UI tax rates and benefit cost over time. If we had adopted the proposed language in 1985, we would have had sufficient funds to withstand periods like the Great Recession or the current recession caused by Covid-19, [Exhibit C](#), page 5.

SENATOR HARDY:

I support the opt-in for electronic correspondence in conjunction with mail through the postal system.

What is the unemployment tax rate now, and what will the change be from month to month and year to year?

We have used the federal government to support us in unemployment insurance funds. Do we always rely on the federal government? Did we borrow from the federal government, and will the State need to repay these funds?

MS. CAFFERATA:

We have noted your concerns regarding mail correspondence.

The employer contribution rate is based on a yearly rate. Traditionally, employers pay rates based on the number of claims filed against them. The

experience rating of employers could go up, just as a driver's insurance rates may go up due to the number of automobile accidents a driver is involved in.

Because of the unusual and dramatic nature of this pandemic, we adopted regulations without charging employers on the experience rating during quarters two and three of 2020. The experience rates for 2021 will be set at the same rate as 2020. We are proposing a slow and gradual rate change in the bill.

The federal government has been involved with unemployment funding since the 1930s. This allows us to borrow money to provide unemployment benefits without interruption. We are required to repay the federal government. Before this pandemic, we had over \$2 billion in our Trust Fund.

We anticipate borrowing \$250 million from the federal government. These loans are interest-free until March 2021. We have not formulated a plan to fund the repayment. We are borrowing less than we borrowed in the Great Recession of 2009.

The federal government covers all extended unemployment—those claims beyond six months.

MR. FRISCHMANN:

The average tax rate for employers will not change. Some employers may see an adjustment based on their experience rate.

SENATOR SCHEIBLE:

I am concerned about the Trust Fund adequacy level described in section 1; I see the term three times in the bill, and it is used to inform the high-cost multiple. I do not see a trigger for the level we need to achieve. How does the adequacy level interact with the high-cost multiple to ensure we have adequate funds in unemployment benefits?

MR. SCHMIDT:

The adequacy level is the dollar amount of the average high-cost multiple. The high-cost multiple is a ratio; 1.5 would mean you have one-and-a-half years' worth of benefits in the Trust Fund. Adequacy is similar to solvency in this context. An average price cost multiple of 1, prior to Covid-19, was about \$1.3 billion. An average high-cost multiple of 1, post-Covid-19, is closer to \$3.5 billion.

In essence, how many dollars would represent a years' worth of benefit payments? If the adequacy level is measured against the multiple of 1.5, how many dollars do you need in the Trust Fund to represent one-and-a-half years' worth of benefits at the high-cost payout?

SENATOR SCHEIBLE:

What part of the bill addresses a shortfall in the Trust Fund?

MR. SCHMIDT:

This is addressed in section 1, subsection 4.

SENATOR SCHEIBLE:

This appears to be related to the alternative base period and to removing school professionals from eligibility. Are we looking at additional ways to reduce the number of claims we are required to pay? Are both of these measures in the bill with the purpose of getting us to the adequacy level or for some other reason?

MS. CAFFERATA:

Clarification around school professionals and removing the option for alternative base periods is not related to the Trust Fund. We included the language concerning alternative base periods (ABP) in the bill because it requires a manual review and contributed to the backlog of cases.

Few applicants requested a review of alternative base periods. These claimants would be better served by applying for PUA. A proposal concerning this is up for policy review.

School professionals may not apply for unemployment benefits so these potential claims are not considered in the Trust Fund. If policy changed allowing school professionals to apply for unemployment benefits, claims would be paid under a direct reimbursement policy.

MR. FRISCHMANN:

We are performing a cost-benefit analysis on these two issues. In 2019, there were 2,318 ABP claims processed and 1,302 claimants were approved for unemployment insurance payments.

It requires an additional 57 minutes to process ABP claims. In 2020, we processed 11,604 ABP claims and paid 8,313 claimants. This took away from

servicing other claimants. By removing the ABP claims, we could service more people.

SENATOR SCHEIBLE:

The money involved in processing ABP claims comes from a different source than the money paid to claimants. Am I correct?

MR. FRISCHMANN:

Yes, you are correct.

SENATOR SCHEIBLE:

Why does this bill propose DETR stop providing information to jury commissioners?

TROY JORDAN (Senior Legal Counsel, Employment Security Division, Department of Employment, Training and Rehabilitation):

The Department of Labor has asked us to cease the program, and this is explained in section 3 of the bill. This sections amends NRS 612.265 in accordance with the requirements in 20 CFR Part 603.

The Department of Labor ruled jury commissioners are not elected officials and do not qualify as public officials for data sharing. Jury commissioners are in the Judicial Branch as employees of the Judiciary, not employees of the judges.

We are not able to provide information to jury commissioners under the current structure in our State.

SENATOR SCHEIBLE:

In your testimony, are you referring to the federal U.S. Department of Labor?

MR. JORDAN:

Yes, I am referring to the federal U.S. Department of Labor.

SENATOR PICKARD:

I understand one-third of our claimants are 1099 or gig workers. I do not see any proposal to help these workers. Is this bill the only measure proposed to fix some of the unemployment problems we are facing?

MS. CAFFERATA:

The PUA is a new program, implemented by Congress. The rules and regulations are guided by the U.S. Department of Labor. Senator Pickard, is there a specific item you were expecting to see in proposed legislation?

We wish Congress would provide more guidance to make new programs easier to implement. We have additional budget bills, but no other policy bills.

SENATOR PICKARD:

We can discuss my ideas of what should be in a bill offline. In section 3 of this bill, employees are not expressly given access to information of contributions made. Is this the intent? Are there problems with the authorization to information? We seem to be making the information less transparent.

MR. FRISCHMANN:

The unemployment insurance program is funded by employer contributions. Employees do not contribute to the unemployment insurance program. Many employees feel they have paid into the system; however, they have not contributed.

SENATOR PICKARD:

Thank you. I did think there was a deduction on my paycheck for State unemployment insurance. I would argue any employer contribution is coming out of employee deductions.

Federal statute requires due process when claims are denied or overpayments are required to be repaid. Will you address how this bill fixes those problems?

MR. FRISCHMANN:

Since PUA is a federal program, it is completely separate from unemployment insurance. The two programs work differently. In order to be eligible for unemployment insurance benefits, a claimant must have earned covered wages over a specific period of time of the first four of the last five completed quarters.

The Pandemic Unemployment Assistance program is intended for independent contractors and is a new program for us. Since this is a temporary program, we are not recommending statutes to address this program.

In the hearing process, DETR collects as much information as possible from both the claimant and the employer. A determination is made by DETR for payment or denial. Both parties have the ability to appeal the decision through the appeals tribunal. If claimants are not content with the decision, they may go to the Board of Review, the court system and finally to the Supreme Court.

In PUA, there is only one party, the independent contractor. If claimants disagree with determinations, they may appeal. We are hearing appeals from these claimants, although there is a backlog of cases.

SENATOR PICKARD:

I understand the difference between an appeal and an initial determination, but is it not true federal statute requires a hearing before payments can be suspended?

My constituents tell me they were approved but are not receiving payments. Additionally, my constituents report receiving notifications regarding fraud, and payments are withheld without a hearing.

MR. FRISCHMANN:

Yes, Senator Pickard, there must be a hearing in the situations you described.

To establish fraud, the Department of Labor requires DETR must be able to prove it is willful, and to do so we must speak with both parties. It is impossible to speak with both parties when someone is an imposter in another state or country. We cannot find them to speak with them. Therefore, technically, under the requirements of the Department of Labor, imposter and stolen identity claims are not considered fraud.

SENATOR PICKARD:

You have highlighted the concerns of my constituents, they know who they are and you have an opportunity to learn who they are. Additionally, Nevadans do not have a process to report false applications filed in their names.

People are not getting benefits and they are not getting a hearing. This is the problem with the unemployment system as it exists today. I believe this violates federal law.

The first thing we do is fix this problem. Setting PUA aside, it is the unemployment benefit claimants that are not getting paid in a timely manner. They need these benefits.

The Division of Welfare and Supportive Services suggests 814,000 people went on welfare because they could not get unemployment benefits. I suggest the unemployment insurance system in our State needs immediate improvement.

MR. FRISCHMANN:

With great certainty, we have stopped 244,000 fraudulent claims. We also have holds on an additional 250,000 claims. There may be approximately 10,000 real claims. It is our objective to pay all legitimate claims.

MS. CAFFERATA:

We are paying 300,000 people weekly. This is consistent with our unemployment of 20 percent.

The idea that 800,000 people are applying for welfare because they have not received unemployment benefits implies, on top of 20 percent unemployment, half of the workers in Nevada are applying for welfare because they are unable to receive approvals for unemployment benefits. The numbers do not appear to be accurate.

SENATOR PICKARD:

I will work directly with Ms. Cafferata on this issue.

CHRISTOPHER DALY:

... (unintelligible statement) ... Job opportunities are limited for 9-month to 11-month education employees due to Covid-19. They are struggling to make ends meet. It is likely we will have another summer with limited job opportunities leaving thousands of Nevada school support professionals with no income. An amendment to S.B. 75 ([Exhibit E](#)) will allow support professionals to be eligible for unemployment benefits. ... (unintelligible statement) ...

ALEXANDER MARKS (Nevada State Education Association):

The Committee has probably received over 160 emails from education support professionals in support of the proposed amendment to S.B. 75. The proposed amendment [Exhibit E](#) was submitted by the Nevada State Education

Association. Education Support Professionals (ESPs) are the backbone of school districts. I would like to read some of the comments sent to the Committee.

I was a school bus driver before the pandemic. I had to leave that job, a job I loved, because I could not get a second job over the summer and did not qualify for unemployment. Had I had been able to draw unemployment, I would still be driving a school bus full time, rather than working elsewhere.

With the shortages in the education field, not allowing 9-month to 11-month employees to draw unemployment makes that shortage worse. We lose good folks by not adapting with the times.

Another story. I am at a loss for words; my husband has been unemployed for 11 months and still waiting for unemployment. We are just now finding work for him. Our savings are gone, we are living paycheck to paycheck. Jobs are hard to find in the summer, and I was unable to work my regular summer job due to Covid-19. Clark County School District did not allow me to collect unemployment.

I have received the vaccine, so hopefully I will be able to find a position this year during the summer. But who knows what the market will be like. If all else fails, please allow me and many others like me to collect unemployment for just the two months, at the very least, to stay afloat.

Whether we are saying lifeblood or backbone, ESPs make our schools run. They repair kid's cuts and scrapes to keeping our schools safe; they do it all. We ask you to adopt this amendment so our ESPs can make a living wage. I think we owe this to them.

What looks good on paper does not necessarily look good in the real world. Every dollar in the district's pocket is a dollar not being used by our members to buy food or pay rent.

We are seeking this amendment because the school district received help, the ESPs did not.

CHAIR SPEARMAN:

Mr. Marks, are you in opposition or in support of S.B. 75?

MR. MARKS:

We are in opposition to the bill unless our proposed amendment is included.

SUE MATUSKA (Counsel, Nevada State Education Association):

As Mr. Daly and Mr. Marks indicated, we have a proposed amendment to S.B. 75. I will walk the Committee through the amendment, [Exhibit E](#).

We propose a revision to the language in the statute requiring denial of unemployment benefits for education support professionals between academic terms or during holiday recesses.

We propose revisions to NRS 612.432 and NRS 612.434, in section 6 and section 7. This will remove the prohibition preventing education support employees from receiving unemployment benefits. These NRS sections are already being amended in the bill.

The other capacity mentioned in the sections refers to nonprofessionals or support staff. We propose removing the language "other service" and "other capacity" employees so there would no longer be a prohibition to provide unemployment benefits to these nonprofessional employees.

This is consistent with the federal statute giving the states the discretion to make policy decisions regarding nonprofessional education employees.

JASON GATELEY:

I am speaking in opposition to the bill unless the amendment proposed by NSEA is added. When PUA was passed by the federal government, it was created for those not traditionally covered by unemployment insurance. My understanding was no citizen hurt by the pandemic would be left behind.

Nine-month, 10-month and 11-month employees, school bus drivers and other nonprofessional education employees are left out of the unemployment system. These low-wage earners are unable to find work and unable to collect unemployment benefits during the summer months. This group is left to struggle financially without assistance.

I would like to see these issues corrected in S.B. 75.

BRYAN WACHTER (Senior Vice President, Retail Association of Nevada):

We stand opposed to S.B. 75. We are even more opposed to the amendment presented by DETR. During these trying times, the Unemployment Trust Fund was one of the few portions of DETR working as intended.

The Trust Fund is strong. The current system balances the need for a strong fund with the need for businesses to hire the employees they need to survive and expand.

This new bill would make the process more complicated. While there are no good taxes, the worst taxes are those that are overly complicated. To administer the complicated process outlined in this bill would increase the cost of government.

We specifically disagree with building in three peaks, additionally, 20 years is far too long and a needless attempt to increase rates in a nonsensory defining economic condition.

While the Covid-19 pandemic is unique in modern history, the sudden need to utilize the Trust Fund in excess of its current assets is not new. During the Great Recession, businesses and DETR worked together to restore confidence and liquidity in the Trust Fund. The mechanism utilized the last time Nevada was forced to borrow money from the federal government was clean, easy to understand and as temporary as the situation merited.

The Trust Fund was robust according to DETR. We adamantly disagree. The policy choice of the Legislature should be to attempt to avoid any loan from the federal government, especially at a time when DETR has been unable to stop hundreds of thousands of fraudulent claims filed in the names of Nevadans.

Businesses are struggling and, for the foreseeable future, operating at reduced capacity. The Department of Employment, Training and Rehabilitation is struggling to allocate funds from the Trust Fund. Now is not the time to quickly and without proper vetting completely change and make more complicated the process for deciding the rate of unemployment insurance.

The Retail Association of Nevada is committed to doing our part to contribute to a strong and vibrant Trust Fund which provides employees with the assurance the funds will be available when they are needed. The current system does that.

TYLER WINKLER (Legal Aid Center of Southern Nevada):

I am speaking in opposition; specifically to section 2 of S.B. 75. This section relates to the alternate base periods.

We hope to work with Ms. Cafferata to ensure access to unemployment assistance is not reduced at a time when workers need it most.

The alternate base periods simply allow unemployed workers to receive benefits sooner by using earnings from more recent working periods. These workers have sufficient earnings to qualify for unemployment, but without the alternative base periods may have to wait up to six months before earnings can be counted. Denying unemployment benefits to otherwise eligible workers by using the traditional base period test undermines the goals of unemployment insurance.

For example, the Legal Aid Center assisted a claimant in March 2020. She had been denied unemployment due to a lack of work history during her base period. The lack of work history was due to a medical leave during the first three quarters of her base period. When she returned to work following maternity leave, she was soon laid off due to the Covid-19 shutdown.

She is a single mother with a new baby and no family to assist her with expenses. With the alternative base period, she was able to receive benefits until her workplace reopened.

Another client was on disability leave due to hip replacement surgery and recovery. This disability leave occurred during the first two-and-a-half quarters of her base period. She returned to work full time until her business closed due to Covid-19. She was denied unemployment benefits but was able to receive benefits under the alternative base period.

Without the alternative base period consideration, these individuals and many others would not have received assistance when they did. Reviewing an unemployment applicant's alternative base period does require some administrative time and cost; however, this time and cost is not substantial.

This administrative time is more than justified considering the long way it goes to provide immediate relief to workers who need to pay their bills.

AMBER HANSEN (Claimant Advocate, Pandemic Unemployment Assistance Facebook Creator):

I am running a large Facebook group consisting of 19,000 PUA claimants. First and foremost, I commend DETR and Ms. Cafferata for taking on such an arduous task.

I wish to discuss claimants with potentially legitimate claims who are stuck in loopholes and appeals. Many of these claimants have not received a dime. While I know fraud is a priority, we cannot continue to negate the fact many Nevadans are eligible for the program. These Nevadans need to speak to human beings and be treated with the dignity and respect they deserve.

We were asked to stay home for Nevada. We were asked to shut our businesses down. We were asked to do all these things, and we complied.

We would like DETR to continue the work being done and also take into consideration the recent Rapid Response Strike Force Report by Barbara Buckley. I had the opportunity to work with her in conjunction with the Rapid Response Strike Force to provide feedback from the claimants' perspective. Additionally, I worked with Jason Guinasso on the Special Master's Report concerning claimant feedback.

I know Ms. Cafferata has expressed the Special Master's Report provided valuable feedback. I would like to see the report pipelined so we can work collectively.

It is important to have a neutral conversation from both sides, not only DETR speaking to claimants with a lack of compassion and empathy for their circumstances.

In this meeting, many have expressed their constituents tell them an exact opposite story of what is being reported by DETR. I appreciate what was reported today.

Senate Committee on Commerce and Labor
February 10, 2021
Page 27

PAUL J. MORADKHAN (Las Vegas Chamber):

The Chamber is testifying as neutral until we understand how the proposed amendment in section 1 and section 14 of S.B. 75 will impact our members.

I thank the Director of DETR for speaking with me yesterday regarding the bill.

As an informational component, the Chamber did support the assessment levied in 2013 to stabilize the Trust Fund and repay the federal government. The Trust Fund, with over \$2 billion in funds, was solvent in January 2020. The Chamber does believe, as a policy, DETR has been operating as it should. ... (unintelligible statement)...

THEA BELL:

While my comments are not related to this bill, I do believe they need to be heard.

When a claimant calls the PUA phone line, the person answering the call only has the ability to put notes on their claim and escalate the claim to adjudication. In reality, the claim does not seem to get escalated to adjudication so nothing gets done.

If the staff answering the phone lines could actually handle the reason you called, then we would not have all the problems, delays, anger and frustration we have now.

BRITTANY SHEEHAN:

It is inappropriate to allow only 20 minutes of public comment in opposition. The manner we are doing this is truly an embarrassment to the right of Nevadans to have their voices heard. I yield the remainder of my time.

JAN GILES (President, Education Support Employees Association):

Our association represents support professionals in Clark County. The Education Support Employees Association is concerned with the impact of summer employment for our 9-month, 10-month and 11-month education support professionals. We ask the Committee to support the amendment presented by the Nevada State Education Association. If adopted, this amendment will allow ESPs to receive unemployment benefits during the summer months.

Most educators are ineligible for unemployment benefits during the summer months. Many rely on additional income during the summer months simply to make ends meet.

I would like to share one story from an ESP in Clark County. She is a specialized program teacher's assistant for Clark County School District. Although she applied for extended full year work, due to the pandemic, she was not able to work during the summer months.

She is a single mother, struggling to make ends meet, and had no income last summer. She was not eligible for unemployment benefits because she was assured she could return to her job in the fall. She suffered because she was not eligible for unemployment benefits.

Their food ran short all summer and it was impossible to play catch-up with their bills and mortgage. The stay-at-home order and other circumstances caused by the pandemic created an extreme hardship for them and others like them.

Unfortunately, with the pandemic, job opportunities are limited. The ESPs need your help. They are not hopeful they will see anything different this summer.

This is just one of hundreds of stories from our ESPs across the State. Job opportunities this summer have a high probability of being just as bad as last summer.

Education Support Professionals are the heartbeat and backbone of our school district. School districts need dedicated, experienced workers who care about students. This amendment could make all the difference in the world for ESPs, and I ask the Committee to adopt it.

TONI DUNCAN:

I belong to the Pandemic Unemployment Assistance Facebook Group, created by Amber Hansen.

I am not eligible for regular unemployment benefits. I had secured a job working for the Department of Commerce, Census Bureau, and then due to the pandemic, businesses closed down, and I was unable to start the job.

I am a single mom with two kids and a former foster youth with nowhere to go. The rates of homelessness in foster youth are high in Nevada. I am not receiving benefits under PUA, and it is a big deal.

I have received multiple letters stating I am eligible and I should be getting unemployment benefits. Each time I call, I am told I was denied on accident.

I have all of my information uploaded in the system and have been asked to wait until my appeal goes through. I appealed in August.

I mentioned to a PUA representative many people in our collective were denied unemployment on the same day. They responded there must have been an error. I am constantly told I was denied in error but still have to wait for my appeal to go through.

I have been sitting in appeals since August 7. It is frustrating. I do not know what to do. I want my circumstance to be heard.

DAWN ETCHEVERRY (Vice President, Nevada State Education Association):

I am testifying neutral out of concern for our ESPs. Last March, when schools shut down, the support staff still went to work. Food service workers quickly developed a plan to make sure children who depended on them for milk were still receiving milk. We are still receiving milk. Paraprofessionals ensured every child had the supplies he or she needed to continue learning. They worked every day in the classroom by attending Zoom, Microsoft Teams or Meets with their students.

Bus drivers delivered their milk and supplies and even parked their buses in locations to give children access to Wi-Fi.

In May, these same employees sought summer employment with many of the children they worked with during the school year. Our ESPs worked in summer learning programs, city recreation camps, and boys and girls clubs. The list goes on.

Last May, other summer employment opportunities were not available. The employees who made sure Nevada's children's needs were met were left to figure out how to feed their families and pay their bills.

Being an ESP is more than a job; it is a passion. It is time we take care of the ESPs. We must ensure they do not have to choose between their families and Nevada's families again this summer.

CHASSIDY LUKE:

I am calling because this issue has not been addressed.

In Las Vegas, we all have two jobs. I work for the school system a minimum of four days per month. I was also a full-time gig worker. Because of the limbo between PUA and regular UI, DETR required me to go back and reclaim all under regular UI. It took seven months to receive an appeal.

I am a single mother and I am trying my best. I feel DETR has really let down so many people. I apologize that I am crying, but this has been such an emotional journey with DETR.

I thank Barbara Buckley for having a voice for everyone. Most people living in Las Vegas have two jobs, and I hope PUA and DETR address this fact. As a community, we are greatly affected by the pandemic.

I am speaking for the single moms and dads out there who are struggling every day to do the best they can for their children.

JENNIFER DEMOSS:

I do not have an opinion as to the outcome of this bill. I would like to point out DETR reported everything was going great and they were having no issues prior to the pandemic.

If that is the case, why are they here today to address issues relating to regular unemployment? It is insulting and a shame DETR is only trying to change the items they discussed today and not trying to do anything to solve the current problems.

CHAIR SPEARMAN:

If you did not have an opportunity to testify today, you may submit your testimony in writing.

SENATOR LANGE:

I am meeting with the Director of DETR next week to discuss the bill.

CHAIR SPEARMAN:

Director Cafferata, I believe it is a good idea to meet with those in opposition and have submitted amendments. We would like to see this resolved as expeditiously as possible.

We will now close the hearing on S.B. 75 and open the hearing to public comment.

ADAM FRANCIS:

It has been difficult to listen to the presentation from DETR. I applied for unemployment benefits in March and have not received a dime.

Apparently, DETR could not verify my identity. I have uploaded over 30 documents proving my identity. The only document I did not have was my social security card. My DD214 separation papers from the U.S. Army did not qualify with DETR.

Due to Covid-19, it took me months to receive an actual social security card. I have submitted this card, but it has still been months. I have only received information that my case has been escalated to adjudication. It has been escalated, but nothing happens.

So here I sit, since March, with no money and no idea of what to do next. I am only told I have an option to appeal, but there are no issues pending on my account. So why am I not being approved?

I am a U.S. veteran, and all of my required documents have been submitted to DETR. The DETR website states no pending issues with my case. Why am I not being paid?

People are struggling, people have been pushed so low they are committing suicide over this. People from DETR sat there today laughing and joking as if they had a great time in 2020. They said they did great things.

Apparently, DETR saw a different 2020 than the rest of us.

DORA MARTINEZ:

My comments are directed to DETR and are specifically about the rehabilitation program for the blind and disabled. I graduated three years ago, and DETR has not helped with my employment.

I tried the 700-Hour Program with DETR. It provides a temporary limited employment appointment for individuals with disabilities. However, DETR does not know how to help visually impaired or disabled people.

I think DETR should enroll their employees in sensitivity training. They need to train the employees to help disabled people find jobs.

My friend with disabilities has also been trying to receive unemployment benefits.

MICHAEL ROSS:

I will continue to speak out. I have been silent for 11 months and will not continue to be silent. I no longer have my apartment. I want to go to the news.

I am a musician and moved here from California ten years ago. I believe in Nevada; it is the best state in the Country. I work very hard in this town. I give love, light and smiles to the world. People like to visit here to be entertained. Do not leave us out.

I have both denial and approval letters from DETR. Hit that pay button. I have completed all the work I need to do with my application.

Thank you, Amber Hansen, for the work you have done informing us about DETR's activities.

Fill my refrigerator, give me my insulin and give me my benefits. You guys will be relying on me when those doors open to bring business back into town. I will be up there performing. I will be there.

I am in distress at this time. Please help me and please help the entertainers who have not received unemployment benefits for 11 months. Hit that pay button and get me out of your hair. I want to get back on stage.

Senate Committee on Commerce and Labor
February 10, 2021
Page 33

CHAIR SPEARMAN:
We will adjourn the meeting at 11:29 a.m.

RESPECTFULLY SUBMITTED:

Kim Cadra-Nixon,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
	B	1	Elissa Cafferata / Department of Employment, Training and Rehabilitation	DETR Overview
S.B. 75	C	3	David Schmidt / Department of Employment, Training and Rehabilitation	Section 1 Explanation
S.B. 75	D	2	Elissa Cafferata / Department of Employment, Training and Rehabilitation	Proposed Conceptual Amendment
S.B. 75	E	1	Christopher Daly / Nevada State Education Association	Proposed Amendment
S.B. 75	E	1	Alexander Marks / Nevada State Education Association	Proposed Amendment