

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

**Seventy-fifth Session  
April 17, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:47 p.m. on Friday, April 17, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Maggie Carlton, Chair  
Senator Michael A. Schneider, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Dean A. Rhoads  
Senator Mark E. Amodei  
Senator Warren B. Hardy II

**STAFF MEMBERS PRESENT:**

Kelly S. Gregory, Committee Policy Analyst  
Daniel Peinado, Committee Counsel  
Suzanne Efford, Committee Secretary

**OTHERS PRESENT:**

Don Jayne, C.P.C.U., Administrator, Division of Industrial Relations, Department of Business and Industry.  
Randy Soltero, Sheet Metal Workers' Union Local 88, Southern Nevada; Sheet Metal Workers' Union Local 26, Northern Nevada  
Pat Sanderson, Laborers International Union Local No. 872  
Gail Tuzzolo, Nevada State AFL-CIO  
Steve Redlinger, Southern Nevada Building and Construction Trades Council  
Jack Hisey, Safety Manager, A & K Earth Movers  
L. Tom Czehowski, Chief Administrative Officer, Nevada OSHA, Division of Industrial Relations, Department of Business and Industry

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Bart Hiatt, President and General Manager, A & K Earth Movers  
Megan Jackson, Government Affairs Liaison, Associated Builders and Contractors, Inc., Sierra Nevada Chapter  
John Martin, Bison Construction Co.  
Dale Walsh, President, American Society of Safety Engineers, Southern Nevada Chapter  
Buzz Harris, Associated General Contractors of America, Inc., Nevada Chapter  
Dee Stueve, Safety Coordinator, Associated General Contractors of America, Inc., Nevada Chapter  
Joe Adams, Associated Builders and Contractors, Sierra Nevada Chapter

CHAIR CARLTON:

I will open the hearing on Senate Bill (S.B.) 288. This was a difficult bill. There is a proposed amendment to S.B. 288, amendment 4511, from which we will be working ([Exhibit C](#), original is on file in the Research Library).

The issue is that families were not getting enough information when there was a fatality on the job. Under this bill, when there is a fatality, there will be an investigation, and a citation will be issued. Fifteen days after the citation has been issued, there will be an informal conference. In those 15 days, the Division of Industrial Relations (DIR), Department of Business and Industry will meet with the family, explain the process, give them all pertinent documents and share with them all the information they need in order to make it through the rest of the Occupational Safety and Health Administration (OSHA) investigative processes.

The other portion of the bill pertains to the "OSHA-10" and "OSHA-30" training. This is the same language that is being processed in the Assembly. It was not appropriate to change it since the Assembly had done so much work on it. I know there are still some questions and concerns about this language.

**SENATE BILL 288**: Revises provisions relating to occupational safety and health.  
(BDR 53-163)

DANIEL PEINADO (Committee Counsel):

The changes that have been made are only in section 47. Those changes revert the language, which previously had been changed from Division to Board, back to Division.

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DON JAYNE, C.P.C.U. (Administrator, Division of Industrial Relations, Department of Business and Industry):

We had some concerns with S.B. 288, but with the revisions that have been made, the DIR will be able to perform the functions as outlined in the bill.

CHAIR CARLTON:

Do you see any problems in instituting these policies we have put together?

MR. JAYNE:

In relation to the OSHA standpoint, I see no problems with those. Of course, we will have to review them with our federal counterparts, but they appear to be above and beyond the State plan. We do not anticipate any problems with them.

RANDY SOLTERO (Sheet Metal Workers' Union Local 88, Southern Nevada; Sheet Metal Workers' Union Local 26, Northern Nevada):

This is the most important legislation in this Session. The issues this bill addresses for the families are most important, considering the testimony from prior hearings.

The October 1 date for getting everyone trained and issued training cards is something we are happy to work with. It is important for workers to have training and proof of the training. It is better for them to be trained and be safe on the job sites.

CHAIR CARLTON:

It may be determined that the October 1 date is too soon, and we may need to move it back. I realize it takes time to prepare for a program like this. As this process moves forward, I will keep this open for discussion.

MR. SOLTERO:

Absolutely, we agree with that as well.

PAT SANDERSON (Laborers International Union Local No. 872):

This is so important, because in the old days there was absolutely no training. You got out on the job, you watched the most competent person that you were around and you hoped to stay safe.

Without training and experience, you did not stand a chance, on a big job or a little job, whether it was a ditch caving in or working on a high-rise, of understanding the perils involved. You just saw the big paycheck, and you thought that things were going to run smooth.

What we like about this is giving, from the apprentice to the journeyman, some additional safety training to protect lives and prevent injuries. No matter what it does, if it saves one life, or helps a person to stay safe, it is a wonderful thing, because we did not have this in the old days. It is something long in coming, and we are happy to see it.

GAIL TUZZOLO (Nevada State AFL-CIO):

Training will make a huge difference. The additional language for the families of the victims of fatalities on the job will give them a way to move forward instead of being stuck in a system with no information.

We are very much in favor of S.B. 288, and we are willing to continue to work on any issues that may arise.

STEVE REDLINGER (Southern Nevada Building and Construction Trades Council):

This bill will provide greater access and accountability to the process for the families of injured workers. We have worked with a lot of people on the OSHA-10 and OSHA-30 training, and we are happy to give our support to this bill.

JACK HISEY (Safety Manager, A & K Earth Movers):

I am neutral on S.B. 288 and have submitted written testimony on safety training for construction workers ([Exhibit D](#)).

Before 2000, the Mine Safety and Health Administration (MSHA) had the same "cookie cutter" safety training at all of the aggregate pits in the United States. They learned that it did not work. Every pit is different, just like every construction site is different. In 2000, MSHA developed the "part 46 training plan." They advised the mines that they should develop their own safety plans, submit them to MSHA to approve, and then train their employees according to their approved safety plans. Our pits are visited by MSHA twice a year to verify that our safety plans are being implemented. We train our people in safety specific to their jobs.

Scaffolding is included in the OSHA-10 training. We do not own scaffolding. Cranes and rigging are also included in the OSHA-10 and OSHA-30 training. When we need a crane, we rent it, and they provide the certified operator and the certified rigger.

SENATOR HARDY:

I understand your point. The 10- and the 30-hour training have about 4 hours of mandated training, and the rest is pretty flexible. There is room to adjust the ten-hour course to include what you are doing. A lot of the training you are talking about is acceptable under the ten hour course. Is that true Mr. Jayne?

MR. JAYNE:

Senator Hardy is correct. In the OSHA-10, there are some core training hours that may be as much as 8, with 2 hours that could be customized. There are different choices of the core-type training.

SENATOR HARDY:

We need to be mindful of this issue, that to train someone who does underground work in scaffolding is not an effective use of their time.

L. TOM CZEHOWSKI (Chief Administrative Officer, Nevada OSHA, Division of Industrial Relations, Department of Business and Industry):

I do not have the specific outline for the OSHA-10 and OSHA-30 with me. I do know that part of the OSHA-10 and OSHA-30 is elective. Part is basic safety courses, and part is elective hours of training. We need to remember that the OSHA-10 as well as the OSHA-30 are basic safety awareness courses.

Every employer still has the responsibility to do the job-specific safety analysis of the individual tasks performed within their facility or job site, and to train their employees to be aware of those hazards.

CHAIR CARLTON:

Mr. Hisey, I am still learning a lot about the OSHA training. We took the language in S.B. 288 directly from what the Assembly had been working on. It was done as a courtesy to make sure this training was dealt with. Did you testify on this issue in the Assembly?

MR. HISEY:

No, I did not.

CHAIR CARLTON:

It was my understanding that the training is flexible. We are not going to make your employees take training that has nothing to do with their jobs.

MR. HISEY:

I understand there is some customization that can be done to the OSHA training. Does any of the training that we have been doing qualify?

SENATOR HARDY:

If you have the certification now, you do not have to retake it. The certification is good for five years. If you currently have a 10- or 30-hour training certification card, you do not need to retake it. The OSHA-10 does not expire.

I understand your point, Mr. Hisey. This is not a perfect bill that will encompass all of the safety issues. Your testimony illustrates the problem with trying to do that. If we mandate training for everything your employees do, then we are mandating training that someone else does not need. This is an effort to provide mandatory, basic and fundamental safety training for everyone involved in construction.

MR. HISEY:

We realize that and that is why our training is so intensive. We value our employees. There is no better employee than a well-trained employee, especially in safety.

BART HIATT (President and General Manager, A & K Earth Movers):

Our main objective is not to have legislation that is so broad that we cannot specifically find where we need to go. Safety training needs to be for the specific job.

Contractors need a way to escape litigation and be able to terminate or hold an employee accountable for causing unsafe situations, especially if they have been trained.

MR. JAYNE:

As this bill and Assembly Bill (A.B.) 148 work their way through the Houses, we can bring Jan Rosenberg in and have him give an overview of how the OSHA-10 and OSHA-30 work.

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ASSEMBLY BILL 148 (1st Reprint): Requires certain health and safety training for construction workers and supervisors. (BDR 53-276)

SENATOR HARDY:

We are working under a disadvantage because we do not have A.B. 148 in our hands. I am committed to making sure that we do not leave this Session without the provisions of the 10- and 30-hour training. This is something that reputable companies do as a rule. Will this be a strain on them? Also regarding the 15 days, is this a time frame that can realistically be met? I am not sure it is.

I do not want to delay the other provisions of this bill, but there are legitimate questions and issues on the 10- and 30-hour training. This is a very important piece of legislation, but not having the two bills together, we should just focus on processing one of those. Maybe A.B. 148 is the better one to focus on so that the provisions of S.B. 288 can move forward.

CHAIR CARLTON:

If we find that keeping the OSHA-10 and OSHA-30 training in S.B. 288 is too complicated, we can remove it later and make sure that the accident provision that was proposed stays intact. Hopefully, the two bills will meet somewhere in the middle.

I used the same language in S.B. 288 as in the Assembly bill in order to not have conflict between the two bodies. We both have the same goal in mind which is changing the "culture of safety." One of the first steps is to train employees.

SENATOR HARDY:

We just want to make sure we get it right.

CHAIR CARLTON:

That is difficult to do with the time constraints we work under.

MEGAN JACKSON (Government Affairs Liaison, Associated Builders and Contractors, Inc., Sierra Nevada Chapter):

Our concern is with the 15 days and whether it is possible for employees to be certified within 15 days.

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JOHN MARTIN (Bison Construction Co.):

I support S.B. 228. We are very concerned about safety. We have not had a lost-time accident in 12 years. Employees should be held accountable when they do something wrong, perhaps with a fine.

Getting employees trained and certified within 15 days is virtually impossible. The 15 days could be extended to 30 days.

DALE WALSH (President, American Society of Safety Engineers, Southern Nevada Chapter):

I have a lot of issues with this bill. Does the Senate have the power to form an official task force of stakeholders in this area? They could come back to the Legislature in two years with recommendations that can be made and discussed in the next Legislative Session.

CHAIR CARLTON:

Yes, Mr. Walsh, that is something that can be done. There is a definite possibility that we will continue to work on this issue through the interim and on into the next Session.

MR. WALSH:

I agree totally with that. I would be happy to provide any assistance that I can.

One of the things of concern with this bill is in section 3 where it defines "Construction site." General industry will probably try to oppose this bill because the definition of construction includes maintenance. There is a letter of interpretation from federal OSHA that defines construction work as "construction, alteration and/or repair including painting and decorating." Every hotel and any other industry that has maintenance would have to have their maintenance staff go through the 10- and 30-hour class.

My colleagues and I agree that the 10- and 30-hour training is not appropriate. Safety training should be job-specific.

CHAIR CARLTON:

Were these concerns put on the record in the Assembly? The language in this bill is actually from the Assembly bill.



MR. WALSH:

Some of them were and some were not. One of the issues is with the 15 days. Most of the OSHA training is required to be conducted before people start their jobs.

We are forgetting that this State has a written safety program requirement. That needs to be implemented. When OSHA visits for inspections, they need to ensure that the written safety program is implemented, which does not always happen.

CHAIR CARLTON:

Taking the Assembly language and putting it into this bill has caused more problems than I had foreseen. We may have to take some action on those provisions in this bill.

BUZZ HARRIS (Associated General Contractors of America, Inc., Nevada Chapter):  
We do not disagree with the intent of this bill. Safety is a number-one priority and all workers should have the opportunity to go home safe and be with their family.

One of the challenges in this is on the administrative side which is to have workers certified within 15 days. We had recommended 60 days to the Assembly on A.B. 148.

Another issue is the clarification of what a supervisor is. The way it is described, a supervisor is someone who does clerical work. Would it be appropriate for this person to have OSHA-10 or OSHA-30 training?

Once someone has their certification, do they need to be recertified because they may be going from job to job? We support the idea of safety training and that everyone should be prepared to go on a job site and be able to go home safely.

CHAIR CARLTON:

Bringing up the time frames again, there was a body of thought that they should not be given any days at all. They should be safe before they walk onto a job site.

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DEE STUEVE (Safety Coordinator, Associated General Contractors of America, Inc., Nevada Chapter):

We agree with the 60-day time frame for training and certification. Getting the card to the employee takes a little time.

CHAIR CARLTON:

I understand the difficulties.

JOE ADAMS (Associated Builders and Contractors, Sierra Nevada Chapter):

Where it says that DIR will approve courses, we already have federal courses that are available and approved.

It also talks about getting a list of registered instructors, which federal OSHA already has. There will be some record keeping and bookkeeping at the local level that is already being done at the federal level.

Nevada OSHA could approve its own plans. A worker coming into Nevada might not meet the Nevada OSHA requirements, and a Nevada worker going into another state may not meet that state's requirements.

CHAIR CARLTON:

I have had those concerns also. I have learned that the State plan can be no less than federal, but it can be greater.

MR. WALSH:

We are mandated to do specific training. Fall protection is covered in OSHA-10 training. That employee also has to receive specific fall protection for the company.

There is a lot of training that is being done that would meet part of that federal standard, but the standard also says it must be completed within six months. Someone who has been employed for three or four years and may have completed all the necessary steps but has exceeded the six month federal standard would have to retrain within that six months.

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CHAIR CARLTON:

I understand your concern.

Committee, this bill has to be out of Committee by next Tuesday, April 21, 2009. I would like to process it today.

SENATOR HARDY:

Madam Chair, my association, the Associated Builders and Contractors of Las Vegas, did not testify on this, but my sister organization from the north did. We are chartered by the same group. If the language on the OSHA-10 and OSHA-30 training remains in the bill, I will have to abstain. I know there are still a lot of concerns with that. If the Committee decides to take that portion out of this bill and just deal with the Assembly bill, I will work to try to get those issues resolved. It is critically important that we process the OSHA-10 and OSHA-30 requirement in light of what has happened in Las Vegas. But we do not want to create a burden on employees or employers to do this. Those are valid concerns.

I will do all that I can to get a product that can be processed and that will meet the objectives of what you are attempting to do in the OSHA-10 and OSHA-30 part of it. I would hate to see the rest of your bill, which does not have any opposition, get delayed by this.

CHAIR CARLTON:

I would be happy with that. The OSHA-10 and OSHA-30 is a very important issue. There is another bill in the Assembly dealing with that. If there are still a lot of concerns and difficulties with this language that have not been resolved in the Assembly, then taking that language out of this bill and allowing the other portion to move forward, while the other concerns are addressed and people get comfortable with those provisions, then I would not have a problem with that. I did this merely as a courtesy to the Assembly.

SENATOR AMODEI:

I would move amend and do pass with the amendment being the omission of the language that Senator Hardy identified.

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SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 288.

SENATOR SCHNEIDER SECONDED THE MOTION.

SENATOR HARDY:

I will just indicate that since the only oppositions or concerns that were raised by the Associated Builders and Contractors, Sierra Nevada Chapter related to the portion that was amended out, I will go ahead and participate in the vote on this. I will work with everyone to get that "10/30" language right.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARLTON:

Having no more testimony, this meeting of the Senate Committee on Commerce and Labor is adjourned at 2:47 p.m.

RESPECTFULLY SUBMITTED:

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Suzanne Efford,  
Committee Secretary

APPROVED BY:

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Senator Maggie Carlton, Chair

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