

## **Rep. Dina Titus Testimony**

### **The Legislative Commission's Subcommittee to Review the U. S. Department of Labor's Report on the Nevada Occupational Safety and Health Program**

**April 23, 2010**

Thank you to the Subcommittee for giving me this opportunity to testify. I'm sorry I can't be there in person, but I certainly appreciate the chance to share with you some of what is going on in Washington around the important issue of worker safety, particularly as it relates to state OSHA plans.

As you know, the Occupational Safety and Health Act (OSHA) of 1970 set out a federal-state framework for workplace safety and health. Under existing law, states may either apply to the federal Department of Labor (DOL) to operate their own state health and safety program – run a state plan – or remain under federal OSHA authority. To be approved, states must demonstrate that their program standards and enforcement are ‘at least as effective’ as federal OSHA. Nevada is one of 22 states and territories where all health and safety enforcement is done by state OSHA programs. There are an additional five states that operate state OSHA programs only for state and local government employees where federal OSHA is prohibited by law from having authority.

Once federal OSHA issues final approval for a state plan, OSHA is extremely limited in its authority to hold state plans accountable. If OSHA determines that an approved state plan is not ‘at least as effective as’ federal standards and enforcement, its only recourse to compel changes to an underperforming program is to terminate the state plan, a drastic step that would remove state control, leave state and local government employees unprotected, and add costs to the federal Department of Labor for funding and running a health and safety program in the state.

Nevada currently finds itself in the situation where federal OSHA has identified problems with the state plan – deficiencies that have left workers exposed to serious health and safety hazards – and is working with the state Occupational Safety and Health Program to address these deficiencies. But the fact remains that if Nevada chose not to cooperate, federal OSHA would have only two options, both at the extreme end of the spectrum: do nothing and leave workers unprotected, or end the state plan.

That is why, based on Nevada's experience, I authored and introduced the Ensuring Worker Safety Act, H.R. 4864, which aims to protect workers by assuring that state plans are at least as effective as federal standards and enforcement, while also protecting states' rights by giving OSHA options other than complete plan termination when a state plan is found to be underperforming.

Specifically, the Ensuring Worker Safety Act:

- Establishes a formal mechanism for federal OSHA to identify a problem with a state plan and compel a remedy without beginning the process for withdrawing approval;
- Ensures continued application of health and safety regulations by providing federal OSHA with concurrent enforcement authority for the duration of the time that a state plan is formally remediating deficiencies or being withdrawn, after 30 days notice of official federal action and an opportunity for a public hearing;
- Holds federal OSHA accountable for providing strong oversight and guidance to state plans by establishing a regular Government Accountability Office (GAO) study – one every five years – to look at the effectiveness of state plans and the Secretary of Labor’s oversight of such plans; and
- Specifically instructs GAO to study and report on whether the federal funding formula for state plans is fair and adequate – a formula that currently underfunds Nevada’s program. Nevada is paying about 75 percent of the cost of running the plan although it was set up to be split between the federal government and the state.

In crafting this bill I worked closely with the Education and Labor Committee, of which I am a member. I am pleased that both the Chairman of the full committee, George Miller, and the Chairwoman of the Workforce Protections Subcommittee, Lynn Woolsey, are cosponsors of my bill. With more in-depth state plan reviews underway by the Department of Labor and the strong commitment to worker safety of Chairman Miller and Chairwoman Woolsey, I expect the Education and Labor Committee to take up some workplace safety legislation before the end of the year.

You will hear in a moment an update about the Protecting America’s Workers Act (PAWA). PAWA would increase many worker protections for the federal health and safety programs, but cannot automatically apply those changes to states like Nevada that have an approved state plan; PAWA instead instructs these states to change their plans to conform to changes in federal law. I will continue to work with the Committee to make sure that the provisions of my bill are included in any OSHA-related legislation.

Thank you again for providing me this opportunity to testify about the Ensuring Worker Safety Act. I look forward to work with you as this process moves forward, and I would be happy to answer any questions you may have.