

**Legislative Commission's Subcommittee to Review the  
United States Department of Labor's Report on the  
Nevada Occupational Safety and Health Program**  
*(Nevada Revised Statutes 218E.200)*

# **WORK SESSION DOCUMENT**



**June 7, 2010**

Prepared by the Research Division  
Legislative Counsel Bureau



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Legislative Commission's Subcommittee to Review the United States Department of Labor's Report on the Nevada Occupational Safety and Health Program  
(*Nevada Revised Statutes* 218E.200)

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The following "Work Session Document" has been prepared by the Chair and staff of the Legislative Commission's Subcommittee to Review the United States Department of Labor's Report on the Nevada Occupational Safety and Health Program (*Nevada Revised Statutes* [NRS] 218E.200). It is designed to assist the Subcommittee members in developing statements and determining recommendations to be forwarded to the 2011 Session of the Nevada Legislature. Each item in this document may be the subject of further discussion, refinement, or action. Some recommendations for legislation may be combined into a single bill draft request (BDR).

The recommendations contained herein do not necessarily have the support or opposition of the Subcommittee. Rather, these possible actions are compiled and organized so the members may review them to decide if they should be adopted, changed, rejected, or further considered. The members of the Subcommittee may vote to send as many Subcommittee statements or letters as they choose; however, pursuant to NRS 218D.160, the Subcommittee is limited to five BDRs, including requests for the drafting of legislative resolutions. For purposes of this "Work Session Document," the recommendations have been grouped, in part, by topic and also by possible Subcommittee action. They are not preferentially ordered. Additionally, although possible actions may be identified within each recommendation, the Subcommittee may choose to recommend any of the following actions: (1) draft legislation; (2) draft a legislative resolution; (3) draft a Subcommittee letter; (4) draft a Subcommittee resolution; or (5) include a statement in the final report.

The source of each recommendation is noted in parentheses. Please note that specific sponsors of the recommendations may not be provided if the proposals were raised and discussed by numerous individuals and entities during the course of the Subcommittee's meetings. It should also be noted that some of the recommendations may contain an unknown fiscal impact. Subcommittee members should be advised that Legislative Counsel Bureau (LCB) staff will coordinate with the interested parties to obtain detailed fiscal estimates, where appropriate, for inclusion in the final report.

Finally, please note that specific details of approved requests for legislation or Subcommittee statements may need to be clarified by Subcommittee staff prior to drafting. Supporting documents for some recommendations may be obtained by contacting Wayne J. Thorley, Senior Research Analyst, Research Division, LCB, at 775/684-6825 or [wthorley@lcb.state.nv.us](mailto:wthorley@lcb.state.nv.us).

## RECOMMENDATIONS FOR LEGISLATIVE MEASURES

### Owner-Controlled Insurance Programs (OCIPs)

1. **Request the drafting of a bill** to require project owners or principal contractors on OCIP projects to submit a comprehensive safety plan to the Nevada Occupational Safety and Health Administration (NV OSHA) before a construction project can begin. The bill would allow, with prior NV OSHA approval, the safety plan to be amended and updated as the project progresses. This proposal would amend the language in NRS 616B.725.  
*(Recommended by various presenters throughout the legislative interim)*
2. **Request the drafting of a bill** to set forth the frequency that safety inspections must take place pursuant to NRS 616B.725. Currently, the statute requires "regular inspections." This bill would amend the statutory language to clarify with what frequency the inspections must occur.  
*(Recommended by Robert A. Ostrovsky, Chairman of the Division of Industrial Relations [DIR] Advisory Council)*
3. **Request the drafting of a bill** to require detailed recordkeeping of the results of safety inspections performed pursuant to NRS 616B.725. This bill would also require the safety inspection records to be submitted to NV OSHA for regular review.  
*(Recommended by Senator Maggie Carlton, Chair, and Robert A. Ostrovsky, Chairman of the DIR Advisory Council)*
4. **Request the drafting of a bill** to amend NRS 616B.725 concerning the number of safety coordinators required on an OCIP project. Specifically, the bill would amend the statutory language to require that the number of safety inspectors

required be positively correlated with the average number of workers on the construction site. In other words, jobs with more workers would require more safety inspectors. This bill would also require that a full-time Safety Consultation and Training Section (SCATS) employee be on OCIP jobsites. These SCATS positions would be paid for by the OCIP. (NOTE: During the Work Session, the Subcommittee may choose to discuss the specific ratio of safety inspectors to workers.)

*(Recommended by Robert A. Ostrovsky, Chairman of the DIR Advisory Council)*

5. **Request the drafting of a bill** to amend NRS 616B.710 by lowering the eligibility threshold for an OCIP project to an estimated construction cost of \$100 million. Currently, the eligibility threshold is \$150 million.

*(Recommended by Steve Holloway, Executive Vice President, Associated General Contractors [AGC], Las Vegas Chapter)*

### **Penalties for Willful Violations**

6. **Request the drafting of a bill** to increase the financial penalty for willful violations. Currently, the fines for willful violations not resulting in a workplace death must be between \$5,000 and \$70,000 (see NRS 618.635). The fines for willful violations resulting in the death of a worker are up to \$50,000 for the first offense and up to \$100,000 for each subsequent offense (see NRS 618.685). Under current law, willful violations resulting in a worker death may also result in imprisonment. The increased fines would not only discourage unsafe practices, but also raise money to hire additional NV OSHA staff.

*(Recommended by Assemblyman Marcus L. Conklin)*

### **Nevada OSHA General Operations—Assessments, Fees, and Furloughs**

7. **Request the drafting of a bill** to increase insurance assessments, fines, and other fees levied by NV OSHA. The increased revenue would go towards: (a) hiring additional NV OSHA staff, including inspectors, trainers, and administrative staff; and (b) increasing the salary of safety and mechanical inspectors to a level more comparable with the average salary of private industry inspectors.

*(Recommended by various presenters throughout the legislative interim)*

8. **Request the drafting of a bill** to exempt safety and mechanical inspectors for NV OSHA from the State's furlough laws that require certain State employees to take one day of unpaid furlough leave each month.

*(Recommended by various presenters throughout the legislative interim)*

### **Public Works Projects**

9. **Request the drafting of a bill** requiring that public works projects only be awarded to contractors that have an exemplary safety record. This bill would also include language encouraging principal contractors of public works projects to select subcontractors with good safety records.  
*(Recommended by Steve Holloway, Executive Vice President, AGC, Las Vegas Chapter)*

#### Citations, Fines, and Appeals

10. **Request the drafting of a bill** that allows NV OSHA to cite employers for workplace safety violations even if an inspector did not observe an employee being exposed to the hazard. Current law provides that NV OSHA cannot issue a citation without witnessing an employee exposure to a hazard. However, when State inspectors are on the jobsite, workers often take breaks. As a result, they are generally not in the proximity of a hazard even though a hazard may exist. This bill would allow NV OSHA to use interviews and other judgments to issue citations based on the likelihood that an employee was actually exposed to a hazard.  
*(Recommended by Steve Coffield, Chief Administrative Officer [CAO], NV OSHA)*
11. **Request the drafting of a bill** that would clarify and strengthen the criteria needed for employers to use the affirmative employer defense known as “unpreventable employee misconduct.” Under current law, the courts have ruled that in order to prove unpreventable employee misconduct, an employer must have: (a) a company rule addressing the conduct; (b) effectively communicated the rule to employees; and (c) enforced the rule.  
*(Recommended by Steve Coffield, CAO, NV OSHA)*
12. **Request the drafting of a bill** that would allow NV OSHA to enforce settlement agreements via fines and other measures in advance. Settlement agreements between NV OSHA and cited employers generally contain language that requires the employer to take certain actions, such as staff training and safety program changes. However, short of going to District Court, NV OSHA has no reasonable ability to enforce the conditions of the agreement.  
*(Recommended by Steve Coffield, CAO, NV OSHA)*
13. **Request the drafting of a bill** that would prevent business owners and contractors with outstanding unpaid fines due for safety violations from obtaining or renewing a business or contractor’s license in Nevada.  
*(Recommended by Steve Coffield, CAO, NV OSHA)*
14. **Request the drafting of a bill** requiring that fines due to safety violations be paid prior to bankruptcy of the employer. This would be accomplished by

requiring that NV OSHA be named among the first creditors to be paid during a bankruptcy proceeding.

*(Recommended by Robert A. Ostrovsky, Chairman of the DIR Advisory Council)*

15. **Request the drafting of a bill** amending the appeals process for workplace safety violations. Currently, employers can file multiple appeals with no bond or cash payment for unsafe activity. This bill would require that a bond or cash payment be made upfront to prevent employers from using the appeals process as a means to avoid paying fines. If a settlement agreement is reached during the appeals process that reduces the original fine, a refund will be made.  
*(Recommended by Senator Maggie Carlton, Chair, and Robert A. Ostrovsky, Chairman of the DIR Advisory Council)*
16. **Request the drafting of a bill** prohibiting the use of unclassified citations by NV OSHA. A bill currently being considered in the U.S. Congress, the Protecting America's Workers Act contains a provision that would also prohibit the use of unclassified citations.  
*(Recommended by Debi Koehler-Fergen, private citizen, mother of fatally injured worker Travis Koehler)*
17. **Request the drafting of a bill** granting employees, families of employees, or employee representatives the right to contest the findings of the Occupational Safety and Health Review Board. This bill would allow those injured in workplace accidents, or families of those injured or killed, to contest the adequacy of a citation issued by NV OSHA and to contest the decision of the Occupational Safety and Health Review Board.  
*(Recommended by Debi Koehler-Fergen, private citizen, mother of fatally injured worker Travis Koehler)*

#### **Accident and Fatality Investigations**

18. **Request the drafting of a bill** requiring NV OSHA, during the investigation of any workplace accident resulting in a fatality, to interview surviving family members of the worker and solicit any pertinent information the worker may have shared with his or her family.  
*(Recommended by Debi Koehler-Fergen, private citizen, mother of fatally injured worker Travis Koehler)*
19. **Request the drafting of a bill** requiring all NV OSHA investigations involving a workplace fatality be recommended to the local district attorney (DA) and/or the Office of the Attorney General (AG). The NV OSHA solicitor will still be lead investigator; however, this bill would give the DA or the AG the option of reviewing the case and prosecuting even if the NV OSHA solicitor does not believe the investigation warrants a citation or criminal prosecution.

*(Recommended by Debi Koehler-Fergen, private citizen, mother of fatally injured worker Travis Koehler)*

20. **Request the drafting of a bill** requiring NV OSHA to notify family members or other worker representatives, regardless of whether the injured worker was a member of a union or not, when: (a) an investigation begins; (b) citations are issued; (c) formal settlement agreements are signed; (d) the case is contested; and (e) the case is closed. This bill would also allow family members of workers killed on the jobsite the opportunity to participate in all conferences and meetings pertaining to the investigation. Finally, the bill would require NV OSHA to give family members or other worker representatives a written copy of all their rights pertaining to a workplace accident investigation.  
*(Recommended by Debi Koehler-Fergen, private citizen, mother of fatally injured worker Travis Koehler)*

21. **Request the drafting of a bill** creating a worker advocate position to assist families that have recently lost a family member to a workplace fatality. The advocate would serve as a source of information for the family during the beginning investigative process of the accident. (NOTE: During the Work Session, the Subcommittee members may choose to discuss which State office or department will contain the worker advocate position.)  
*(Recommended by Senator Maggie Carlton, Chair)*

<p style="text-align: center;"><b>POSSIBLE SUBCOMMITTEE LETTERS, RESOLUTIONS, AND STATEMENTS</b></p>
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#### **Salary of NV OSHA Inspectors**

22. **Send a Subcommittee letter** to the Division of Industrial Relations and the NV OSHA, both within Nevada's Department of Business and Industry, requesting a salary survey to determine how the average salary of state safety inspectors compares to that of safety inspectors in the private sector. Preferably, this survey should be conducted by Nevada's Department of Personnel, and not by a private entity.  
*(Recommended by Assemblyman Marcus L. Conklin)*

#### **Construction Unions**

23. **Send a Subcommittee letter** to all construction union organizations in the State encouraging them to actively advertise safety and mechanical inspector job openings with NV OSHA to their union halls, members, and those involved in their apprenticeship programs.

*(Recommended by Senator Maggie Carlton, Chair)*

### **Safety and Mechanical Inspections**

24. **Send a Subcommittee letter** to NV OSHA encouraging them to schedule staffing so that the most qualified and experienced safety and mechanical inspectors perform scheduled inspections while newer inspectors perform complaint inspections.

*(Recommended by Robert A. Ostrovsky, Chairman of the DIR Advisory Council)*

### **Federal Funding for NV OSHA**

25. **Send a Subcommittee letter** to Nevada's Congressional Delegation; the Chair of the U.S. Senate Committee on Health, Education, Labor and Pensions; the U.S. House Committee on Education and Labor; the U.S. Department of Labor; and the U.S. Occupational Safety and Health Administration requesting support for legislation and policies that ensure federal funding to states with OSHA plans is fair and adequate. Specifically, the letter will state that a more equitable funding formula would allow NV OSHA to hire more inspectors and administrative staff. It would also allow NV OSHA to increase the salary of State safety and mechanical inspectors to a level more comparable with private sector inspectors. *(Recommended by Senator Maggie Carlton, Chair)*

#### **NOTE:**

- The Legislative Commission's Subcommittee to Review the U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program may make additional recommendations based on discussions held during its meeting in Las Vegas on June 7, 2010. Please see meeting agenda for discussion topics.
- The Chair of the Subcommittee may choose to raise other issues for discussion or Subcommittee action during the Work Session.
- Subcommittee staff may need to seek additional details or clarification on approved recommendations from Subcommittee members and others prior to drafting BDRs or Subcommittee letters/statements.