



**NEVADA LEGISLATURE
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*)**

SUMMARY MINUTES AND ACTION REPORT

The first meeting of the Nevada Legislature's Legislative Commission's Subcommittee to Review the U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program (*Nevada Revised Statutes 218E.200*) was held on April 23, 2010, at 9:30 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas Nevada. The meeting was videoconferenced to Room 2135 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. A copy of this set of "Summary Minutes and Action Report," including the "Meeting Notice and Agenda" ([Exhibit A](#)) and other substantive exhibits, are available on the Nevada Legislature's website at <http://www.leg.state.nv.us/interim/75th2009/committee/>. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (e-mail: publications@lcb.state.nv.us; telephone: 775/684-6835).

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Maggie Carlton, Chair
Assemblyman Marcus Conklin

SUBCOMMITTEE MEMBER PRESENT IN CARSON CITY:

Senator Maurice E. Washington

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Wayne J. Thorley, Senior Research Analyst, Research Division
Michael J. Stewart, Supervising Principal Research Analyst, Research Division
Daniel Peinado, Deputy Legislative Counsel, Legal Division
Ricka Benum, Senior Research Secretary, Research Division

OPENING REMARKS AND INTRODUCTIONS

- Chair Carlton brought the meeting to order with Subcommittee and staff introductions and provided details of the Subcommittee's allotted three meetings. She outlined the primary goals of the Subcommittee as: (1) determining what problems occurred and how they should be resolved; (2) avoiding assigning blame for past issues; and (3) addressing the findings and serious violations contained in the *Review of the Nevada Occupational Safety and Health Program* report ([Exhibit B](#)); and (4) building a consensus to resolve the workplace safety problems.

REVIEW OF THE SUBCOMMITTEE WORK PLAN

- Wayne J. Thorley, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB), summarized the Subcommittee's Work Plan. Mr. Thorley reported that the Subcommittee originated following the release of the report ([Exhibit B](#)) which listed the findings and made recommendations for improvements in workplace safety. He informed the members that the Subcommittee will hold a total of three meetings during the 2009-2010 Interim and explained the focus of the first meeting is on current problems and deficiencies in workplace safety in Nevada. The second meeting will address recommendations for solutions and methods to correct problem areas. He stated the Subcommittee will solicit recommendations prior to the second meeting and encouraged all interested parties to submit proposals and suggestions. The third and final meeting will be the Subcommittee's work session. Mr. Thorley submitted his testimony, which is referenced as [Exhibit C](#).
- Chair Carlton stated her objective was to complete the Subcommittee's work in a timely manner since the recommendations must be submitted to the Legislative Commission (NRS 218E.150) for review and approval. She also indicated her intent was to have all the recommendations for legislation approved by the Commission and finalized well in advance of the 2011 Session.

REVIEW OF WORKPLACE SAFETY LEGISLATION FROM THE 2009 LEGISLATIVE SESSION

- Wayne J. Thorley, previously identified, outlined the workplace safety legislation addressed during the 2009 Legislative Session. Mr. Thorley pointed out that there were numerous bills passed concerning workers' compensation issues and the treatment of injured workers after accidents occurred. He reviewed the provisions and requirements of the three successful bills that pertained to pre-accident working conditions and workplace safety ([Exhibit D](#)), including: (1) Assembly Bill 148 (Chapter 432, *Statutes of Nevada 2009*); (2) A.B. 208 (Chapter 242, *Statutes of Nevada 2009*); and (3) Senate Bill 288 (Chapter 216, *Statutes of Nevada 2009*).

OVERVIEW OF THE HISTORY OF THE NEVADA OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

(As directed by Chair Carlton, this agenda item was taken out of order.)

- Donald E. Jayne, Administrator, Division of Industrial Relations (DIR), Nevada's Department of Business and Industry (DBI), discussed the history of Nevada's Occupational Safety and Health Administration (OSHA) implemented in 1970. Mr. Jayne explained that Nevada went through the rigorous process to secure final approval of the State OSHA program, which achieved final approval in 2000. He compared the OSHA enforcement inspectors to highway patrol officers who investigate traffic problems; the role of the Nevada OSHA is workplace enforcement. He emphasized that the primary responsibility for occupational safety and health rests with the employers.

Mr. Jayne discussed the extensive efforts of the DIR and the Nevada OSHA to address issues of the *Review of the Nevada Occupational Safety and Health Program* issued by the Federal OSHA and the recommendations contained in the report that resulted ([Exhibit B](#)). He reported that each finding was individually evaluated for applicability, whether the wording in the report was stated as a "suggestion" or a "recommendation." He encouraged the Subcommittee to be mindful of budgetary constraints that may have an adverse impact on the DIR's ability to address the issues that required time and resources. Mr. Jayne explained that the State contributes 75 percent of the operational costs of Nevada OSHA and the amount contributed by the Federal OSHA is 25 percent. He delineated the additional categories of funds which contribute to the Nevada OSHA budget, and spoke to the cumulative total derived from several grants, safety and training fee assessments, and the workplace safety enforcement section. He emphasized that primarily, the agency operates on fee-based funds and assessment costs, and not from State General Fund revenue.

- Continuing, Mr. Jayne explained that the study was conducted in July 2009, and that the study process is considered a valuable oversight tool which resulted in statistical measures of the actions and duties being performed. He was agreeable to the study and stated that it provided an in-depth overview from technical experts of the procedural operation of the Nevada OSHA. Mr. Jayne commented that the Report focuses only on negative items that need correcting, and it does not mention the agency's positive achievements.

Mr. Jayne reported that training was a key component of the special study and is a priority to Nevada OSHA; all Nevada OSHA staff is sent through the OSHA Training Institute (OTI). He explained that Nevada is considered an "over matched" State, since the State contributes 75 percent of the operating budget and federal revenue amounts to 25 percent. Therefore, the agency may request any training fund amounts unused by other states, and those funds may be used for any necessary items, but not to address

staffing levels. Mr. Jayne stated that the Nevada OSHA aggressively applies for all available grant funds for training purposes.

- Chair Carlton commented on the dilemma of the Nevada OSHA being the “training ground” of employees that move to private industry or municipalities and the State’s difficulty to compete with the higher salaries available. She indicated that the State needs the ability to retain employees by offering competitive salaries, since it invests the funds in training, the issue of salaries is an area which requires further discussion.

SUMMARY OF THE *REVIEW OF THE NEVADA OCCUPATIONAL SAFETY AND HEALTH PROGRAM*, ISSUED BY THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR

- Steve Coffield, Chief Administrative Officer, Nevada OSHA, presented a “fast action” video of the building site of the CityCenter Las Vegas. He explained the video depicts the creation of the CityCenter which is approximately 65 to 68 acres and had five major buildings constructed simultaneously.
- Donald E. Jayne, previously identified, narrated the video clip, and stated the CityCenter Las Vegas broke ground April 3, 2006; over one million cubic yards of concrete were poured for the foundation in June 2006; and an excess of 78 tons of steel was used in the project (enough to build 10 Eifel Towers). Mr. Jayne explained that more than 9,000 construction jobs were created, and during peak work hours, there were between 10,000 to 11,000 employees working on the site daily. In addition, there were 24 other major construction projects taking place in the Las Vegas area at the time CityCenter Las Vegas was being built. Mr. Coffield and Mr. Jayne submitted handouts [Exhibit E-1](#), [Exhibit E-2](#), [Exhibit F](#), and [Exhibit G](#).
- Chair Carlton requested Mr. Coffield to review individually each of the 18 findings, discuss any recommendations, and report on changes made by the Nevada OSHA to resolve the deficiencies thus far. She also asked Mr. Coffield to note any legislative action that may be necessary.
- Mr. Coffield reported that the majority of the 18 findings (see page ii, [Exhibit B](#) *Review of the Nevada Occupational Safety and Health Program*) have been addressed and remedies are 80 to 90 percent complete. He stated that most of the items were addressed administratively, and the major problem areas involved salaries and staffing levels. Mr. Coffield explained each finding (numbered and inserted below) and he outlined the associated recommendations as follows:
 1. Only one willful violation was issued during the period reviewed, however, the violation was reclassified during settlement. Willful violations carry significantly higher penalties.

Mr. Coffield stated that the DIR instructed staff that every instance of a willful violation would be prosecuted; since the violation is difficult to prosecute successfully the investigations must be conducted in a comprehensive and documented manner.

2. Willful violations were discouraged because of the lack of management and legal counsel support. (Willful violations are when the employer intentionally and knowingly commits a violation or the employer commits a violation with plain indifference to the law, which carries the highest penalties allowed under the law.) Violations that should have been further evaluated as potential willful violations were identified during the study. In one case, there were multiple repeated instances of trenching violations within a 12-month span of time, however no willful violations were considered.

Mr. Coffield stated additional training will be ongoing and the stiffest penalties possible will be utilized for willful violations. He explained that he and Mr. Jayne are currently involved in the training, and provided instruction on how to document the cases and collect evidence effectively.

- Assemblyman Conklin expressed concern that the practice of willful violations in the workplace is a common practice, and often it is the result of a business decision that the violation is worth the risk. He stated that the penalties must be severe enough to change behavior and emphasized that issuing a willful violation occurs after the fact. He inquired as to what is being done to encourage appropriate behavior to reduce jobsite accidents before the violation occurs.
- Mr. Coffield responded that the willful violation offense is the highest level of citation that the Nevada OSHA issues. The violation citation process and fine structure is established by the Federal OSHA. He further explained that a trend has evolved in situations of workplace accidents whereby employees are blamed for the incident, and it is termed "employee misconduct." Mr. Coffield offered that it might also be termed as inadequate supervision or training. If employers claim to have proper documentation that training has occurred, and that efforts have been made to correct violations, then the cases seldom go forward. He commented that it results in an inadequate culture that exists in the workplace.
- Chair Carlton surmised that up until recently construction workers were in great demand. If they did not follow current safety practices, which has evolved in recent years, being terminated was not a problem since they could easily find a new job. She added that today with jobs being scarce these workers might be more open to supervision, utilizing safe practices, and developing good safety habits.

- Mr. Coffield continued with the outline of the findings:

3. Clearly supportable repeat violations were not cited. In the Orleans Hotel and Casino case (the subject of one of the two Complaints About State Plan Administration State Programs [CASPA]) Nevada OSHA issued serious rather than willful or repeat citations even though the owner/operator of this hotel had been previously cited for substantially similar conditions and hazards at other properties.

Mr. Coffield disagreed with much of this finding and stated that the agency's data base indicated many repeat violation citations were issued. He explained that the case in question was negotiated down to a serious violation if the company agreed to develop and implement a safety program.

In response to an inquiry from Chair Carlton regarding information on repeat violations, Mr. Coffield explained that Nevada OSHA's violation data is entered into the federal data base and is available on the Federal OSHA website. All citations issued against a construction company may be publicly accessed. Chair Carlton commented that would be an incentive for a hiring agency not to employ a company with several repeat violations. Mr. Coffield emphasized the DIR's reasoning to dispute the violation cases since the construction companies now oppose the violations more often. He noted that the focus of Nevada OSHA has turned from worker safety to legal battles, which are very time consuming.

- Mr. Coffield continued with the outline of the findings:

4. In 17 percent of the fatality cases reviewed, hazards that were identified during inspections were not addressed in citations, a notice of violation, or a letter to the employer.

Mr. Coffield explained that the 17 percent represents 25 of the Nevada OSHA case files, and the photographs indicated violations that were not mentioned in the case files. He stated that the Nevada inspectors have been instructed to be more thorough in the file documentation and to review each aspect of the photographs.

5. Union representatives were not notified of inspections and provided an opportunity to participate in opening conferences, closing conferences, and informal conferences.

Mr. Coffield stated the union representatives attend opening conferences, but may decline to be involved in the site walk through; the problem arose from Nevada OSHA inspectors failing to provide adequate documentation of who was contacted and maintain the information in the case files. He added that Nevada OSHA prefers the union representatives be present during the site walk through, since they are more familiar with the jobsites.

6. During inspections, Nevada OSHA investigators issued Notice of Violations (NOV) instead of citations for alleged other-than-serious violations. Had these Notice of Violations been reviewed by a supervisor, they may have been characterized as serious.

Mr. Coffield said that the Nevada OSHA's supervisory staff is relatively young. They have not been in the position of enforcement supervisors very long. The resolution will involve an ongoing training process. He noted it takes time for an inspector to develop the ability to be effective, so the focus must remain on continual training. Also, he added that new procedures have been developed and implemented to better manage and organize case files. Mr. Coffield said that the Federal OSHA inspectors did not like Nevada's procedures for preparing NOV's out in the field without the supervisory oversight. The process has since been eliminated.

7. In the Luxor Hotel Case (the subject of the second CASPA), the Nevada OSHA investigator did not speak with employees to determine exposure to the alleged hazard. Therefore, the inspector was unable to determine that employees were exposed to a hazard. Additionally, worker representatives (unions) were not present and were not interviewed during this inspection. Their statements may have revealed recent worker exposures and thus confirmed the violation.

Mr. Coffield explained that the Nevada OSHA inspectors were unable to determine which of the employees on the worksite were exposed to a hazard, and therefore did not interview them.

8. In almost half of the fatality cases reviewed, the State failed to notify the families of deceased workers that it was investigating the death of their loved one. Thus, these family members were never given an opportunity to talk with investigators about the circumstances of the fatality. Family members may provide information pertinent to the case.

He commented that it is unknown how many case files were reviewed, but that of all the finding above is the most troublesome. He went back to the issue of case file management by investigators and administrative staff and spoke to the poor handling of maintaining proper document order. Mr. Coffield emphasized that the DIR has worked hard to improve the personal contact with family members, and he stated he personally is ashamed of the way cases were handled.

9. Nevada OSHA did not assure that hazards were abated (corrected) by the employer after they were identified. Nevada OSHA lacked procedures to identify cases requiring follow-up inspections, to track abatements, and to ensure that companies were abating hazards that were cited during inspections. Employers are required to submit abatement information for all violations cited unless the violation was

corrected on site (Abatement verification). Abatement is the correction of the safety or health hazard/violation that led to an OSHA citation. Interviews with Agency supervisors and investigators indicated that there was no clear policy conveyed indicating what employers were required to submit for abatement. Additionally, case file reviews indicated that in three cases, inadequate abatement documentation was received by Nevada OSHA and accepted as adequate.

Mr. Coffield reported that the Nevada OSHA is now requiring that files contain receipts, photographs, and backup documentation to prove that violations have been corrected.

10. Nevada OSHA investigators were not properly trained on the hazards in construction work. There was limited hazard recognition demonstrated, with few hazards identified in the construction industry where the majority of fatalities has occurred. In addition, it was determined that some long-time employees have not taken some of the basic courses that investigators should take.

Mr. Coffield said he was not in total agreement with this finding, but addressed the issue by clarifying that the experience of the investigators is increasing and that every effort is being made to maintain the focus on extensive training. He outlined the plan to develop a three-person internal training unit to go out in the field with the staff to provide constant over the shoulder supervision.

11. This report reviewed Integrated Management Information System (IMIS) data for the 2,117 programmed or planned inspections conducted by the State and found the percent of programmed inspections with serious violations to be extremely low. (Planned or programmed inspections of worksites are those that have been scheduled based upon objective or neutral selection criteria. The worksites are selected according to state scheduling plans for safety and health or special emphasis programs.) Overall, Nevada has experienced a high number of in-compliance programmed inspections — that is, inspections that do not result in hazards identified or citations being issued. The high rate of in-compliance inspections and low percentage of “serious” violations clearly show that the Nevada OSHA Inspection Targeting System is not targeting locations where serious hazards are occurring and a need for an improved targeting system and/or additional construction hazard recognition training for investigators. (For safety violations, Nevada’s average of programmed inspections with serious violations was 26 percent compared with 79 percent for Federal OSHA.)

A brief discussion ensued and Chair Carlton commented on the number of experienced construction workers currently out of work, and stated it would make sense to hire them as Nevada OSHA inspectors. Mr. Coffield agreed and indicated he had received approval to fill the vacant positions, and the recruitment process requires either a degree or experience in the construction field. Chair Carlton suggested that the union organizations provide

outreach and job notifications to the apprenticeship programs and the union halls to notify that know these jobs are available.

- Mr. Coffield continued with the outline of the findings:

12. Case files were not organized in a uniform manner to reduce the possibility of important case documentation being lost or misplaced.

He noted the newly implemented procedure for maintaining the case files by administrative staff involves a cover sheet in the file listing every document and its proper sequence.

13. No documentation showed that Nevada OSHA informed workers of their legal protection against discrimination for making a complaint about workplace hazards. Workers were also not informed of their right to talk with the OSHA inspector without fear of retaliation.

Mr. Coffield explained that this finding was a documentation issue, and that the training process was in effect and at most times being followed but was not being documented.

14. In 91 percent of the fatality case files reviewed, information from injury and illness logs was not obtained from employers. Without this information, it is difficult for a supervisor to determine whether the inspection should have been expanded.

He reported the Nevada OSHA was unaware of the procedure until notified by the Federal OSHA representatives, which has been corrected. Currently, Nevada OSHA requests and collects the injury and illness data from employers and enters the information into the federal database.

- Chair Carlton said she recognized a theme of errors with documentation, incomplete administrative efforts, and ineffective office management. She inquired how much of the difficulties are the responsibility of the inspectors, and how much is the responsibility of the administrative staff.
- Mr. Coffield responded that the administrative staff is the backbone of the Nevada OSHA, which generates a tremendous amount of paperwork, which must be properly maintained. Nevada OSHA plans to request additional administrative staff during the next budget cycle to assist with the management of the new licensing requirements while maintaining the OSHA caseload.
- Mr. Coffield continued with the outline of the findings:

15. Nevada OSHA is not maintaining all of its enforcement data in the IMIS and not using it to run reports. The information is therefore not available to assist the State

to track and evaluate the results of its enforcement efforts and better prepare investigators for conducting inspections.

Mr. Coffield explained that the IMIS system is an “F-Key” driven database program developed in the mid-1980s and is used by the State to administer and monitor programs. He said the system has never been updated, and there was no training manual for a senior employee to teach a new employee the system. Consequently, there were programs and reports available that the staff had no idea were available. Training has now been completed for the entire staff in the northern and southern Nevada offices. Mr. Coffield added that the archaic system should be replaced this fall.

16. Nevada OSHA agreed to conduct 2,900 inspections as part of its budgeting process, which translates to 95 to 115 inspections per year per investigator, far too many per investigator to do a thorough job. The Nevada Legislature utilizes this information to determine if the program is meeting its goals.

Mr. Coffield reported that he and Mr. Jayne completed a training session for program planning, and they will be rewriting the goals of the entire DIR. He explained the process and the changes in the investigation process will focus on “outcome” rather than “output,” and that it will be a time-consuming process. The Nevada OSHA will no longer be able to accomplish the same number of inspections to substantiate its budget, and will use the updated method for program planning.

17. Nevada OSHA groups violations based on the location of the standards being cited in the “code of state regulations” within the *Nevada Administrative Code* rather than by the individual hazardous conditions.

He presented an example of grouping violations where a contractor might have five electrical violations, the inspector would issue a violation for each of the five. If they were closely related, they could be grouped together allowing for only one penalty instead of five. The Nevada OSHA no longer permits grouping violations, so each violation stands alone, which has substantially increased the total monetary penalty of an average citation.

18. Employee contact information was not obtained for employees interviewed and exposed to hazards.

Mr. Coffield indicated that inspectors were not documenting the home address and telephone numbers of the employees they interviewed. He determined the problem was careless documentation practices, so the Nevada OSHA is requiring better paperwork.

During a general discussion, Mr. Coffield commented on the problem of frequent staff turnovers and requested that the Legislature approve funding for additional staff. He noted the budget constraints, but asked that the Subcommittee be aware that the concerns of underpaid staff are legitimate and need to be raised to a competitive level. Mr. Jayne responded to comments from Chair Carlton regarding employee salaries by explaining that an employee reclassification study was conducted, but the Nevada OSHA fell short of the needed percentage for reclassification. He commended the dedication of the Nevada OSHA enforcement staff and stated that they are true safety professionals.

SUMMARY OF FEDERAL LEGISLATION H.R. 4864, THE ENSURING WORKER SAFETY ACT, SPONSORED BY U.S. REPRESENTATIVE DINA TITUS

- United States Representative Dina Titus, Representing Nevada's Third Congressional District, participated via teleconference from Washington, D.C., and provided background information on the Occupational Safety and Health Act of 1970. Congresswoman Titus provided a copy of her prepared comments ([Exhibit H](#)), which focused on the Ensuring Worker Safety Act, House Resolution 4864 in the 111th Congress. She explained that H.R. 4864 is designed to protect workers by assuring that state plans are at least as effective as federal standards and enforceable while protecting states' rights by giving OSHA options other than plan termination when a state plan is found to be underperforming. During her testimony, Congresswoman Titus summarized the four primary goals of the Ensuring Worker Safety Act.

She pointed out that the existing formula currently underfunds Nevada's OSHA program, and added that historically the percentage Nevada has paid OSHA has been as high as 83 percent. Congresswoman Titus expressed optimism that H.R. 4864 will be successful in facilitating Nevada with updating salaries of the Nevada OSHA staff.

STATUS REPORT ON FEDERAL LEGISLATION H.R. 2067, PROTECTING AMERICA'S WORKERS ACT (PAWA), SPONSORED BY U.S. REPRESENTATIVE LYNN WOOLSEY

- Debi Koehler-Fergen, Special Projects Coordinator Nevada, United Support and Memorial for Workplace Fatalities, provided a summary of House Resolution 2067 and Senate Bill 1580, which are companion bills designed to enhance provisions of the Occupational Safety and Health Act of 1970. She stated that the Protecting America's Workers Act is more commonly known as PAWA. Ms. Koehler-Fergen provided information ([Exhibit I](#) and [Exhibit J](#)) outlining facts regarding workplace safety and employee protection. She reported that the federal bills remain active and have had no amendments offered since being introduced. Ms. Koehler-Fergen's testimony summarized the main points of PAWA ([Exhibit K](#)).

- Chair Carlton expressed concern that employers with fewer than 25 employees may not be fined the same amounts for a violation as larger employers, and conveyed apprehension on exempting anyone from worker safety.

OVERVIEW OF THE HISTORY OF OWNER-CONTROLLED INSURANCE PROGRAMS IN NEVADA

- Steve Holloway, Executive Vice President, Associated General Contractors (AGC), Las Vegas Chapter, detailed the Owner-Controlled Insurance Programs (OCIPs) as set forth under Chapter 616A of NRS “Industrial Insurance Administration,” and Chapter 616B of NRS “Industrial Insurance Insurers: Liability for Provision of Coverage.” He explained that the programs were promoted by large insurance carriers in 1999 and initially the industry opposed the implementation of OCIPs, claiming they were not profitable unless the project was \$150 million or more. Mr. Holloway offered details that the OCIPs current coverage includes: (1) workers’ compensation programs; (2) general liability; and (3) other insurances for the projects. He explained that the programs are limited to projects of \$150 million or more; have led to clarifying the liability for claims, setting the responsibility for the administration of claims, and setting the safety requirements of the program, which includes stating the qualifications and duties of the safety coordinator, who must be onsite at all times. In addition, the OCIPs outline the duties of the owner or principal contractor.

Mr. Holloway said that often OCIPs are the only means of insuring projects, particularly for construction defect coverage and that the programs have expanded from commercial to residential projects. He indicated that the AGC favors the OCIPs coverage and additionally suggested that:

1. The dollar limit for OCIPs projects be lowered so there may be better insurance coverage; and
2. The owner or principal contractor must have an OSHA approved safety plan in place before construction commences.

There was discussion among Chair Carlton, Assemblyman Conklin, and Mr. Holloway regarding the ownership of the OCIPs, and whether they are owner- or project-driven programs. Mr. Holloway clarified that the OCIP is a project-based or project-directed plan, and responded to Chair Carlton that he has not seen a reduction in the cost of workers’ compensation since the implementation of the OCIPs. During further discussion, Mr. Holloway responded by suggesting the OCIP amount be lowered to \$100 million.

- Gary Milliken, AGC, Las Vegas Chapter, explained the origination of an OCIP is when it is submitted to the Commissioner of Insurance, Division of Insurance, DIR, for approval. Secondly, the plan is sent to Nevada OSHA for their approval. Mr. Milliken reminded the Subcommittee that when the requirements of Chapter 616B of NRS were written, they included stringent guidelines stating that OSHA determines the full-time safety director of a project. In addition, the statutes are clear that if even

one employee is working there must be a full-time safety director on the jobsite. Mr. Milliken recommended a complete review of the jobsite safety and safety plan requirements.

DISCUSSION OF CURRENT PROBLEMS AND DEFICIENCIES REGARDING WORKPLACE SAFETY IN NEVADA

- Danny Thompson, Executive Secretary Treasurer, Nevada American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), outlined instances of accidents, problems, and occurrences in safety violations that brought on the Federal OSHA study. Mr. Thompson commended the work of Mr. Jayne and Mr. Coffield to resolve the past difficulties of the Nevada OSHA. He recommended that proper funding levels be addressed for the Nevada OSHA and that the safety inspectors be exempt from the mandated furlough days. He commented that Nevada is dangerously close to having a Federal-run OSHA, and no one in Nevada favors that scenario. Mr. Thompson added that the OSHA review process needs an additional step to take away the potential appearance of political involvement in decisions. Mr. Thompson disagreed with expansion of the requirements of the OCIP plans.
- Robert A. Ostrovsky, Chairman of the Advisory Council, DIR, DBI, outlined his history with the Council and brought forth issues that warrant further discussion. Mr. Ostrovsky provided his presentation outline ([Exhibit L](#)) and discussed the following recommendations:
 1. Integrate the use of the consulting arm of the Nevada OSHA, the Safety Consultant and Training Service (SCATS) into job safety. The sole purpose of SCATS is to help the employer avoid accidents and violations. Additional SCATS involvement in OSHA programs would decrease the number of safety violations, and consider changes to safety requirements to include requiring a full-time SCATS employee on the jobsite paid for by the OCIPs.
 2. Implement the concept of adhering to safety procedures to protect workers in the workplace, and encourage employers to look at the process as a cost-saving mechanism. A key element of the OCIPs is that a safety coordinator remains on the jobsite during on working hours; these requirements need to be tightened to enforce violations.

A general discussion ensued regarding workplace safety, the cost and effect of workers' compensation on training and safety enforcement on construction sites.

3. Require pre-approved safety plans prior to construction.
4. Review staffing requirements for the two major types of inspections. Scheduled inspections should have the most qualified experienced inspectors. Complaint inspections should be reviewed by a supervisor.

5. Call for statutory changes requiring that fines be collected prior to bankruptcy of the employer.
6. Continue to encourage a culture of safety on the jobsite.

Concluding, Mr. Ostrovsky suggested implementing outreach procedures to create a culture of safety in the workplace, encourage employees to welcome inspection, invite their suggestions, and discuss advice. He mentioned that during the Advisory Council meetings, fines and violations are written off and determined to be uncollectable. He added that Nevada's current system allows employers to file multiple appeals, with no bond or cash payment for unsafe behavior or activity. He suggested review of the statutes and, to the extent possible, require that funds be submitted upfront to prevent employers from using the appeal process as a way to avoid paying fines.

- Chair Carlton requested additional information on the procedures of the appeals process and the collection of fines.
- Mr. Coffield, previously identified, reported that the collection process is time consuming for staff, but that personnel are diligent in their collection attempts. He noted that currently there is approximately \$200,000 to \$300,000 in uncollected penalties and indicated that the DIR has been working internally to set procedures and policies for penalty collection throughout each division of the agency. Mr. Coffield opined that legislation could help to prevent persons with outstanding fines from obtaining business or contractors' licenses. He explained that the DIR does require proof of hazard abatement, and they offer no interest payment plans.
- Assemblyman Conklin commented that Nevada must develop more effective ways to communicate between agencies to successfully collect debts owed to the State. He said a large number of business owners close one business and simply open another leaving debts and fines unpaid.
- Mr. Jayne, previously identified, agreed, and said he plans to submit a bill draft request to the 2011 Session. He testified that the Nevada OSHA has had limited success collecting the debts. He agreed that persons who surface multiple times to open numerous businesses are a common problem.
- Mr. Milliken, previously identified, commented this is the perfect time to review staffing levels, discuss improving salaries, and look at the quality of inspections of the Nevada OSHA. He pointed out that the level of communication has improved under the leadership of Mr. Jayne and Mr. Coffield.
- Mr. Holloway, previously identified, explained that all contractors in Nevada are required by law to have a safety manual and program in place and to provide safety training. He pointed out that the majority of workplace accidents are caused by human

error, and the most effective programs include incentives to employees. He suggested the incentives concept be extended to contractors and employers. Mr. Holloway emphasized the need for workplace safety such as only awarding public works projects to those contractors with an exemplary safety record. In addition, he said that principal contractors should be encouraged to select subcontractors with good safety records.

A discussion ensued between Assemblyman Conklin and Mr. Holloway pertaining to provisions that tie or bind the safety record of a general contractor to each project as a method of tracking their safety records.

PUBLIC COMMENT

- Patrick T. Sanderson, Laborers Local International Union 872, Carson City, commented that a large part of workplace safety involves common sense. Mr. Sanderson stated that many workplace violations are reported by the construction workers on the job. He relayed instances when workers were in fear of losing their jobs for reporting violations, and at times would utilize a wife or family member to report violations. Mr. Sanderson said that construction workers go out of their way to make a jobsite safe, and often discuss the safety record of the job foreman or project supervisor.
- William H. Stanley, International Union of Elevator Constructors, addressed the structure of the DIR and its current mission. Mr. Stanley was of the opinion that Nevada OSHA should have a single focus of workplace safety and training. He pointed out that the Nevada OSHA has oversight of asbestos, boilers, cranes, elevators, and photovoltaic systems, which distracts from workplace safety and training. Mr. Stanley recommended the creation of an additional administrative officer position within the DIR to be funded from existing fees. He added that would allow the Nevada OSHA staff to focus their efforts on improving safety, while the new position could resolve the backlog of 2,000 elevator inspections. Mr. Stanley submitted his written testimony ([Exhibit M](#)).

Mr. Stanley expressed concern that the Mechanical Division within the Nevada OSHA does not employ a single individual with the credentials required to properly assess a contractor's plan to review elevators. He reported that incidents related to elevator and escalator accidents kill or seriously injure approximately 17,000 persons annually nationwide. Mr. Stanley offered that a primary resolution would be to provide adequate maintenance and inspections.

Responding to Chair Carlton's expression of concern with the delinquent inspections of elevator contracts, Mr. Stanley commented that it is counter productive to furlough boiler and elevator inspectors when they raise revenue for the State. Mr. Stanley added that Las Vegas has gone through the largest building boom in history and for the DIR to complete the new and old elevator inspections would be a monumental task.

- Ms. Koehler-Fergen, previously identified, inquired whether there is communication between inspectors who examine different properties owned by the same company. She observed that procedures should be put in place so that one inspector is aware of violations documented by another OSHA inspector on a different jobsite owned by the same company. Ms. Koehler-Fergen cited an example where one major company/employer was cited for a confined space violation with a death occurrence, and the same violation was issued two months prior to and again two months after the citation to the same company/employer.
- Chair Carlton announced the tentative meeting date of May 18, 2010, and noted the Subcommittee's work session is scheduled for June 4, 2010.

ADJOURNMENT

There being no further business to come before the Subcommittee, the meeting was adjourned at 1:21 p.m.

Respectfully submitted,

Ricka Benum
Senior Research Secretary

Wayne J. Thorley
Senior Research Analyst

APPROVED BY:

Senator Maggie Carlton, Chair

Date: _____

LIST OF EXHIBITS

[Exhibit A](#) is the “Meeting Notice and Agenda” provided by Wayne J. Thorley, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB).

[Exhibit B](#) is the report titled *Review of the Nevada Occupational Safety and Health Program* report dated October 20, 2009, prepared by the United States Department of Labor, Occupational Safety and Health Administration (OSHA), Region IX, San Francisco, California, submitted by Donald E. Jayne, Administrator, Division of Industrial Relations (DIR), Nevada’s Department of Business and Industry (DBI), Carson City, and Steve Coffield, Chief Administrative Officer, Nevada’s Occupational Safety and Health Administration (OSHA), DIR, DBI, Las Vegas.

[Exhibit C](#) is a document titled “Subcommittee Work Plan” prepared by Wayne J. Thorley, Senior Research Analyst, Research Division, LCB, dated April 23, 2010.

[Exhibit D](#) is a document titled “Workplace Safety Legislation from the 2009 Session” submitted by Wayne J. Thorley, Senior Research Analyst, Research Division, LCB, dated April 23, 2010.

[Exhibit E-1](#) is a copy of the “2009 Special Report: Impact and Funding of State Occupational Safety and Health Programs” obtained from the United States Department of Labor, Occupational Safety and Health Administration (OSHA) website, submitted by Donald E. Jayne, Administrator, Division of Industrial Relations (DIR), Nevada’s Department of Business and Industry (DBI), Carson City, and Steve Coffield, Chief Administrative Officer, Nevada’s Occupational Safety and Health Administration (OSHA), DIR, DBI, Las Vegas.

[Exhibit E-2](#) consists of a series of documents from the DBI, provided by Donald E. Jayne, Administrator, DIR, DBI, Carson City, and Steve Coffield, Chief Administrative Officer, Nevada’s Occupational Safety and Health Administration (OSHA), DIR, DBI, Las Vegas, which include:

1. An organizational chart of the DBI, DIR, Occupational Safety and Health Administration, dated March 2010/FY 10;
2. An OSHA Fatality Lot Comparison Chart, Fiscal Years 2005, 2006, 2007, 2008, 2009, 2010; and
3. A Safety and Health Staff Tracking Summary, as of April 2010.

[Exhibit F](#) is a listing titled “OSHA Major Construction Projects — 2005 to 2010 Nevada Legislature” dated April 23, 2010, submitted by Donald E. Jayne, Administrator, DIR, DBI, and Steve Coffield, Chief Administrative Officer, Nevada OSHA, DIR, DBI, Las Vegas.

[Exhibit G](#) is a photograph of the CityCenter Las Vegas, submitted by Donald E. Jayne, Administrator, DIR, DBI, and Steve Coffield, Chief Administrative Officer, Nevada OSHA, DIR, DBI, Las Vegas.

[Exhibit H](#) is the prepared comments of United States Representative Dina Titus, Representing Nevada's Third Congressional District, Washington, D.C., dated April 23, 2010.

[Exhibit I](#) is a document titled "Workplace Tragedy Family Bill of Rights" prepared by the United Support and Memorial for Workplace Fatalities, (USMWF.ORG), Members of LaborSafe, COSH and Caring Families, Lexington, Kentucky, submitted by Debi Koehler-Fergen, Special Projects Coordinator Nevada, United Support and Memorial for Workplace Fatalities, Las Vegas.

[Exhibit J](#) is a table titled "Protecting America's Worker Act, H.R. 2067, Side by Side Comparison with Current Law" submitted Debi Koehler-Fergen, Special Projects Coordinator Nevada, United Support and Memorial for Workplace Fatalities, Las Vegas.

[Exhibit K](#) is the written testimony of Debi Koehler-Fergen, Special Projects Coordinator Nevada, United Support and Memorial for Workplace Fatalities, Las Vegas.

[Exhibit L](#) is a document submitted by Robert A. Ostrovsky, Chairman of the Advisory Council, DIR, DBI, Las Vegas.

[Exhibit M](#) is the written testimony of William H. Stanley, International Union of Elevator Constructors, Las Vegas.

This set of "Summary Minutes and Action Report" is supplied as an informational service. Exhibits in electronic format may not be complete. Copies of the complete exhibits, other materials distributed at the meeting, and the audio record are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library online at www.leg.state.nv.us/lcb/research/library/feedbackmail.cfm or telephone: 775/684-6827.