



**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 second 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 May 18, 2010, at 1 p.m. in Room 4412 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
Daniel Peinado, Deputy Legislative Counsel, Legal Division
Ricka Benum, Senior Research Secretary, Research Division

OPENING REMARKS AND INTRODUCTIONS

- Chair Carlton called the meeting to order and invited those in attendance to submit their recommendations or suggestions for discussion prior to the Subcommittee's third and final meeting.

APPROVAL OF MINUTES OF THE APRIL 23, 2010, MEETING IN LAS VEGAS

- The Subcommittee **APPROVED THE FOLLOWING ACTION:**

ASSEMBLYMAN CONKLIN MOVED TO APPROVE THE MINUTES OF THE APRIL 23, 2010, MEETING HELD IN LAS VEGAS, NEVADA. THE MOTION WAS SECONDED BY SENATOR CARLTON AND PASSED UNANIMOUSLY.

DISCUSSION OF RECENT AGENCY IMPROVEMENTS TO THE NEVADA OCCUPATIONAL SAFETY AND HEALTH PROGRAM AND PROPOSAL OF LEGISLATIVE ACTION NEEDED TO IMPROVE WORKPLACE SAFETY

- Donald E. Jayne, Administrator, Division of Industrial Relations (DIR), Nevada's Department of Business and Industry (DBI), introduced Steve Coffield, Chief Administrative Officer, Nevada Occupational Safety and Health Administration (OSHA), DIR, DBI. Mr. Jayne reminded the Subcommittee that during the previous meeting Mr. Coffield reported on each of the findings contained in the *Review of the Nevada Occupational Safety and Health Program* report ([Exhibit B](#)). Mr. Jayne and Mr. Coffield presented an update of the current status of items being corrected and provided a report on the key items which require long-term efforts.
- Mr. Jayne introduced Jan Rosenberg, Deputy Administrator, DIR, DBI, and Joseph H. Nugent, Chief Administrative Officer Safety Consultant and Training Service (SCATS), DIR, DBI, who he described as beneficial staff members. They were available to respond to questions pertaining to safety operations of the Nevada OSHA.
- Steve Coffield, previously identified, addressed the findings and the associated corrective action plans of the Nevada OSHA. Mr. Coffield evaluated the ongoing progress of resolving the deficiencies as very successful, and he expressed optimism for completion of the corrective actions by mid-2010. He added that the exceptions would be items that include fiscal notes, salaries, staffing levels, and advanced training items. Mr. Coffield submitted his prepared remarks ([Exhibit C](#)) and his testimony addressed: ([Exhibit D](#) and [Exhibit E](#))
 1. Creating a training section within the Nevada OSHA comprised of field personnel to oversee jobsite inspections to ensure current procedures are being followed, and that the hazard recognition skills of the investigators are properly developed;

2. Requesting a total of four additional staff including a program coordinator position to the staff of the office of the Chief Administrator Officer; and
3. Reviewing salary adequacy issues for enforcement and mechanical staff.

During a brief discussion which focused on staffing levels, Mr. Coffield reported that the total number of staff of the Nevada OSHA is approximately 55 persons, and currently there are five vacancies, four in enforcement positions, and one administrative position. He clarified for Chair Carlton that even though the Nevada OSHA is a fee-based agency, normal personnel procedures for hiring employees are followed.

- Assemblyman Conklin suggested that the Nevada OSHA obtain a salary survey, preferably from Nevada's Department of Personnel. He added that with the atmosphere of restrictive funding the survey information would be necessary to determine the appropriate salaries for inspectors and safety personnel to ensure that the State has the ability to maintain qualified safety enforcement staff.
- Chair Carlton commented that the time is right to address necessary changes that should be made to the inspection procedures of the Nevada OSHA. She added that the business industry is quieter now than during the prior two decades, so now is an opportune time to implement system changes.
- Continuing his testimony, Mr. Coffield provided information on:
 4. Increasing the funding allotment for training of: (a) Compliance, Safety, and Health Officers; (b) mechanical inspection staff for licensure upgrades; (c) the DIR legal staff for attendance at peer-level conferences; and (d) the Occupational Safety and Health Review Board, (NRS 618.565); and
 5. The elements that must be met prior to an OSHA citation being issued include: (a) a violation of the OSHA standards; (b) in the case of a hazard there must be employee exposure; (c) knowledge of the hazard by the employer; and (d) an applicable OSHA regulation. As an example, during the inspection of a large jobsite an inspector might identify hundreds of violations that could not be addressed if the violations did not meet the four elements of criteria for citation. This was an enforcement area identified as problematic and further discussion is recommended.

A discussion occurred between Chair Carlton and Mr. Coffield regarding safety attitudes, a "culture of non-safety" primarily on construction jobsites, and employer defenses used to combat citations and violations for misconduct. According to Mr. Coffield, the affirmative defense that is violated most often by employers is the "unpreventable employee misconduct" argument. He explained that if the employer documents proof that safety rules are in place, and the rules have been effectively communicated to the employees, the citation is forgiven. Mr. Coffield recommended that identifiable standards be developed to strengthen the criteria

which is upheld by the federal courts and used by OSHA, and to delineate exactly what is required of the employer.

- Mr. Jayne stated that employers who have a safety program in place and support a culture of workplace safety should be afforded an appropriate defense, but identifiable standards are needed.
- Concluding his testimony, Mr. Coffield provided information on:
 6. The Nevada OSHA recommends developing mechanisms to enforce the settlement agreements executed by the Nevada OSHA and the employers who have been issued citations. Employers would agree to resolve the safety deficiencies and then essentially ignore the problem and the signed agreement. The only recourse for Nevada OSHA is to have the issue heard in district court, which might take years and expend valuable resources.
- Chair Carlton confirmed that settlement agreements are included as an element of the fine reduction structure. She suggested changing the arrangement so that employers first pay the fine, and then when there is documented assurance that the employers have complied with the agreement and rectified the violations, the amount is returned. At that point, the fine could be reduced and that essentially the employers would pay the fines up front. Chair Carlton added that it is apparent another procedure needs to be developed, and recommended that the Subcommittee's legal staff review a possible change for a permissible procedure.

SOLICITATION AND SUBCOMMITTEE DISCUSSION OF POSSIBLE RECOMMENDATIONS REGARDING THE NEVADA OCCUPATIONAL SAFETY AND HEALTH PROGRAM IN ADVANCE OF THE JUNE 4, 2010, SUBCOMMITTEE MEETING AND WORK SESSION

Individuals with specific recommendations for action by the Subcommittee should present those recommendations at this time, and provide 10 copies to the Secretary at the meeting. This will allow the Subcommittee to fully consider and evaluate all suggestions prior to voting on June 4, 2010. Please note that submission of a recommendation to the Subcommittee does not guarantee its placement on the final "Work Session Document."

- Gary Milliken, Associated General Contractors, Las Vegas, directed his comments to the Owner-Controlled Insurance Programs (OCIPs) and recommended the establishment of an overall comprehensive safety program approved by OSHA, established prior to the beginning of a construction project. He noted this would give OSHA the opportunity to review the plans and provide input.
- Chair Carlton clarified that a safety program would be developed at the pre-conference level and there would be a sharing of information. Additionally, she envisions that the

safety dialog would be ongoing between the OCIPs and Nevada OSHA throughout the entire length of a project.

- Mr. Milliken agreed and clarified that it would be a pre-construction program and everything is laid out for OSHA to review before ground breaking occurs.
- Robert A. Ostrovsky, Chairman of the Advisory Council, DIR, DBI, suggested changes to Chapter 616B.725 of NRS to include a requirement that the owner or principal contractor submit the safety program to Nevada OSHA for prior approval. In addition, Mr. Ostrovsky suggested that:
 1. A statutory requirement be added to provide appropriate record keeping of all inspections and provide in statute the definition of a “regular inspection”; and
 2. An adequate number of safety coordinators be required for a specific number of construction workers on a jobsite, he cited as an example that one safety inspector on a jobsite the size of CityCenter Las Vegas is not adequate.
- Mr. Milliken commented that there may be many safety inspectors on a jobsite, representing several different companies, but there is no coordination or communication taking place between them.
- Debi Koehler-Fergen, spoke as a private citizen who lost her son in a workplace accident. Ms. Koehler-Fergen submitted her prepared comments ([Exhibit F](#)) and her testimony focused on the following items:
 1. During safety investigations of workplace fatalities, family members need to be interviewed to provide information that their loved ones may have shared;
 2. Cases with workplace fatalities should be recommended to the local district attorneys’ office to be reviewed for prosecution for possible willful violations; and
 3. The Nevada OSHA procedures allow union representatives to be notified of inspections and offered the opportunity to participate in all conferences. The families of the worker should also be included in this process, even if the employee was not affiliated with a union. An individual should not go without representation because they were non-union.

Discussion ensued between Chair Carlton and Ms. Koehler-Fergen regarding who should represent a family member during conferences, inspections, and legal proceedings immediately following a workplace fatality. Ms. Koehler-Fergen suggested implementing a liaison-type position that would be familiar with OSHA regulations to assist the family and educate them of their rights. Chair Carlton suggested implementing a worker-advocate position that the family could rely on for information during the beginning investigative process.

- Continuing her testimony, Ms. Koehler-Fergen commented that:
 4. Employer citations should not be determined as “unclassified.” This classification allows the employer to be unaccountable for repeat violations and leaves workers vulnerable;
 5. Families of workplace fatalities or their representative, should be provided the right to contest the findings of the Occupational Safety and Health Review Board; and
 6. Nevada OSHA management officials should continually consult with the investigators and remain involved in the cases of workplace fatalities, and when necessary seek advice from the Region IX, Federal OSHA administrators.
- David Senecal, private citizen, indicated he studied the *Review of the Nevada Occupational Safety and Health Program* report, and agreed that the Nevada OSHA needs proper upper management staff and the ability to provide appropriate salaries. Mr. Senecal emphasized that only qualified, successful management personnel are considered. He commented that it is not realistic to require the Nevada OSHA inspectors to perform 2,900 inspections a year and that quality should outweigh quantity. Mr. Senecal added the fact that the Federal OSHA is opening a branch office in Las Vegas would be detrimental to the moral of the staff of the Nevada OSHA.

PUBLIC COMMENT

- Chair Carlton noted that she would accept recommendations via electronic mail, and they will be forwarded to the Subcommittee staff. She noted that there was no additional testimony from members of the public.
- Chair Carlton announced that the Subcommittee’s Work Session is tentatively scheduled for June 4, 2010, but due to a possible conflict may be changed to June 7, 2010.

ADJOURNMENT

There being no further business to come before the Subcommittee, the meeting was adjourned at 2:25 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.

[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 the prepared comments of Steve Coffield, Chief Administrative Officer, Nevada OSHA, DIR, DBI, Las Vegas.

[Exhibit D](#) is a table titled *Nevada OSHA Corrective Action Plan as of 4/29/10* submitted by Donald E. Jayne, Administrator, DIR, DBI, Carson City, and Steve Coffield, Chief Administrative Officer, Nevada OSHA, DIR, DBI, Las Vegas.

[Exhibit E](#) is a table titled *Federal OSHA Special Study of Nevada OSHA—July 2009, As of 1/15/10 Nevada OSHA Corrective Action Plan* submitted by Donald E. Jayne, Administrator, DIR, DBI, Carson City, and Steve Coffield, Chief Administrative Officer, Nevada OSHA, DIR, DBI, Las Vegas.

[Exhibit F](#) is the written testimony of Debi Koehler-Fergen, a Clark County resident.

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.