

# Bulletin No. 11-12



## Occupational Safety

*Legislative Counsel Bureau*



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**OCCUPATIONAL SAFETY**

**BULLETIN NO. 11-12**

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## SUMMARY OF RECOMMENDATIONS

### 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*

This summary presents the recommendations approved by the Legislative Commission's Subcommittee to Review the United States Department of Labor's Report on the Nevada Occupational Safety and Health Program at its final meeting on June 7, 2010, in Las Vegas, Nevada. The corresponding bill draft request (BDR) number follows each recommendation for legislation.

#### RECOMMENDATIONS FOR LEGISLATION

1. Enact legislation concerning assessments, fees, fines, and settlements relating to occupational safety and health, as follows:
  - a. To increase the fine for each willful violation not resulting in a workplace death from between \$5,000 and \$70,000 to between \$8,000 and \$120,000;
  - b. To increase the fine for each willful violation resulting in a workplace fatality from between \$50,000 and \$100,000 to between \$50,000 and \$250,000;
  - c. To increase insurance assessments, fines, and all other fees levied by the Nevada Occupational Safety and Health Administration (OSHA) to facilitate: (1) the hiring of additional Nevada OSHA staff, including inspectors, trainers, and administrative staff; and (2) increasing the salary of safety and mechanical inspectors to a level more comparable with the average salary of private industry inspectors;
  - d. To allow Nevada OSHA to fine employers who have failed to fulfill the conditions agreed upon in a settlement agreement within a reasonable time frame;
  - e. To require employers to pay fines due to safety violations prior to entering bankruptcy; and
  - f. To require employers, after a ruling and fines have been issued by Nevada OSHA, to make a bond or cash payment on the fines before pursuing an appeal of the ruling. **(BDR 53-100)**

2. Enact legislation authorizing Nevada OSHA to cite employers for workplace safety violations based on the presence of a hazardous condition, regardless of whether a State safety inspector observed an employee being exposed to the hazard. **(BDR 53-101)**
3. Enact legislation providing for communications with family members of workers injured or killed in occupational accidents, as follows:
  - a. To require Nevada OSHA, during investigations of workplace accidents resulting in a fatality, to interview surviving family members of workers and to solicit any pertinent information the workers may have shared with their family;
  - b. To require Nevada OSHA to notify family members or other worker representatives, regardless of whether the injured worker was a member of a union or not, when: (1) an investigation begins; (2) citations are issued; (3) formal settlement agreements are signed; (4) the case is contested; and (5) the case is closed;
  - c. To allow family members of workers injured or killed on the jobsite the opportunity to participate in all conferences and meetings pertaining to the accident investigation by Nevada OSHA;
  - d. To require Nevada OSHA to give family members or other worker representatives a written copy of all their rights pertaining to a workplace accident investigation; and
  - e. To create a worker advocate position to be a source of information and assist families that have recently lost a family member to a workplace fatality. **(BDR 53-102)**

During its final meeting and work session, the Subcommittee also considered a proposal to enact legislation requiring all Nevada OSHA investigations involving a workplace fatality be recommended to the local district attorney and/or the Office of the Attorney General for possible criminal prosecution. While no formal action was taken on this proposal, the Subcommittee agreed to notify the Legislative Commission of the proposal in this report should the Commission wish to further pursue the issue.

#### **SUBCOMMITTEE ACTIONS—PREPARATION OF LETTERS**

The members of the Legislative Commission's Subcommittee to Review the U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program also voted to:

4. Prepare a letter to be sent on the Subcommittee's behalf to the Division of Industrial Relations and Nevada OSHA, both within the Department of Business and Industry, and the Department of Personnel, requesting a salary survey, preferably conducted by the Department of Personnel, to determine how the average salary of State safety inspectors compares to that of safety inspectors in the private sector.

5. Prepare a letter to be sent on the Subcommittee's behalf 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. Department of Labor'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.



**REPORT TO THE 76TH SESSION OF THE NEVADA LEGISLATURE BY THE  
LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO REVIEW  
THE UNITED STATES DEPARTMENT OF LABOR'S REPORT  
ON THE NEVADA OCCUPATIONAL SAFETY  
AND HEALTH PROGRAM**

**I. INTRODUCTION**

The Subcommittee to Review the United States Department of Labor's Report on the Nevada Occupational Safety and Health Program was created by the Legislative Commission during the 2009-2010 Legislative Interim to assess the findings and recommendations made by the federal Occupational Safety and Health Administration (federal OSHA), U.S. Department of Labor, in the October 2009 report titled *Review of the Nevada Occupational Safety and Health Program*. The report evaluates Nevada's workplace safety and health program and identifies areas needing improvement. The Subcommittee, consisting of three members of the Legislative Commission, was charged with reviewing OSHA's findings in the report and, if appropriate, submitting recommendations for legislation to the 2011 Nevada Legislature.

**Members**

The Legislative Commission appointed, pursuant to subsection 5 of *Nevada Revised Statutes* (NRS) 218E.200 (see Appendix A), the following members to the Subcommittee to Review the U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program:

Senator Maggie Carlton, Chair  
Senator Maurice E. Washington  
Assemblyman Marcus L. Conklin

**Staff**

The following Legislative Counsel Bureau (LCB) staff members provided support for the Subcommittee:

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

**II. BACKGROUND**

The Occupational Safety and Health Act of 1970 gives states the option to develop and operate their own job safety and health programs. States that choose to create their own employment safety programs must develop a state safety plan that is approved by federal OSHA.

To receive approval, plans must adopt safety and health standards and conduct inspections to enforce those standards. Nevada is 1 of 27 states and American territories approved to operate its own safety and health enforcement program. Currently, the State safety program is carried out by the Nevada Occupational Safety and Health Administration (Nevada OSHA), Division of Industrial Relations (DIR), Department of Business and Industry (DBI).

From January 1, 2008, through June 1, 2009, 25 workplace fatalities occurred in the State that were investigated by Nevada OSHA. In addition, federal OSHA received formal complaints regarding two of the fatality investigations. Given the high number of workplace fatalities and complaints, federal OSHA had concerns about Nevada OSHA and adequacy of its program. Consequently, federal OSHA conducted a special study to review critical elements of the Nevada program. The agency then issued a report summarizing the study findings and making recommendations for improvements in the areas of workplace safety, safety inspections, and communication. The full report, titled *Review of the Nevada Occupational Safety and Health Program* is available online at: <http://leg.state.nv.us/Interim/75th2009/Committee/Interim/OccupationalSafety/Other/NevadaOSHASTudy.pdf>. The “Executive Summary” of the report appears in Appendix B of this report.

The *Review of the Nevada Occupational Safety and Health Program* was the genesis of the Subcommittee, and at the recommendation of Senator Maggie Carlton, the Subcommittee to Review the U.S. Department of Labor’s Report on the Nevada Occupational Safety and Health Program was formally created at the January 28, 2010, meeting of the Legislative Commission. The Subcommittee was charged with reviewing the federal OSHA report and making recommendations for improvements in workplace safety in Nevada based on the findings of the report.

### III. SUBCOMMITTEE ACTIVITIES

During the 2009-2010 Interim, the Legislative Commission’s Subcommittee to Review the U.S. Department of Labor’s Report on the Nevada Occupational Safety and Health Program held three meetings, including a work session. All three meetings were open to the public and held at the Grant Sawyer State Office Building in Las Vegas, Nevada, with simultaneous videoconferencing to the Legislative Building in Carson City, Nevada.

The first meeting was aimed at identifying the current problems and deficiencies regarding workplace safety in Nevada. A summary of the *Review of the Nevada Occupational Safety and Health Program* was also provided during the first meeting. After the first meeting, the Subcommittee solicited recommendations from all interested parties concerning how to implement the recommendations of the federal OSHA report and improve workplace safety in the State. These recommendations were reviewed during the second meeting of the Subcommittee (some recommendations were also submitted via electronic mail). Finally, the third meeting was the Subcommittee’s work session where the members voted on the various recommendations, resulting in requests for the drafting of three bills.

The Subcommittee also directed staff to prepare two letters to federal and State officials on issues related to Nevada OSHA and workplace safety.

#### **IV. TOPICS DISCUSSED BY THE SUBCOMMITTEE DURING THE 2009-2010 INTERIM**

During the course of the 2009-2010 Interim, the Legislative Commission's Subcommittee to Review the U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program was provided with formal presentations and expert and public testimony on a broad range of topics relating to workplace safety. Issues included: current problems and deficiencies regarding workplace safety in Nevada; a status report on the implementation of the suggestions contained in the *Review of the Nevada Occupational Safety and Health Program*; the history of Nevada OSHA; proposed federal legislation relating to occupational safety and health; and worker safety on jobsites with Owner-Controlled Insurance Programs (OCIPs).

The following is a brief summary of the Subcommittee meetings and the topics discussed during the 2009-2010 Interim. For additional detail, please see the Subcommittee meeting minutes, available online at: <http://www.leg.state.nv.us/Interim/75th2009/Committee/Interim/OccupationalSafety/?ID=69>.

##### **A. First Meeting**

The first meeting of the Legislative Commission's Subcommittee to Review the U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program was held on April 23, 2010. Following opening remarks from Chair Carlton regarding the goals of the Subcommittee, staff provided an overview of the Subcommittee's work plan and presented a review of the workplace safety legislation from the 2009 Legislative Session.

##### ***Review of Nevada Occupational Safety and Health Administration and Overview of Findings in the Federal Occupational Safety and Health Administration Report***

Next, the Subcommittee heard testimony regarding the history and a review of Nevada OSHA from Donald E. Jayne, Administrator, DIR, and Steve Coffield, Chief Administrative Officer, Nevada OSHA. Later, Mr. Coffield outlined and discussed the 18 findings contained in the "Executive Summary" of the *Review of the Nevada Occupational Safety and Health Program*. Messrs. Jayne and Coffield then summarized the actions taken thus far by Nevada OSHA to address the issues in the report. (Please see Appendix B.)

##### ***Workplace Legislation Considered by the 111th Congress***

After hearing from Nevada OSHA, the Subcommittee took testimony on three pieces of federal workplace safety legislation currently being considered in the United States Congress. First, U.S. Representative Dina Titus spoke via telephone conference on a bill she sponsored, the

Ensuring Worker Safety Act, House Resolution (H.R.) 4864. Next, Debi Koehler-Fergen, Special Projects Coordinator Nevada, United Support and Memorial for Workplace Fatalities, provided a summary of H.R. 2067 and Senate Bill 1580, called the Protecting America's Workers Act, designed to enhance provisions and requirements of the Occupational Safety and Health Act of 1970. (Please see Appendix C for summaries of these three federal bills.)

### ***Owner-Controlled Insurance Programs Construction Projects***

Finally, the Subcommittee heard presentations from representatives from the Associated Builders and Contractors, the Nevada AFL-CIO, and members of the DIR Advisory Council. These presentations covered workplace safety on OCIP construction projects and a discussion of the current problems and deficiencies regarding job safety in Nevada.

### **B. Second Meeting**

The second meeting of the Legislative Commission's Subcommittee to Review the U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program was held on May 18, 2010.

The Subcommittee heard testimony from Donald E. Jayne and Steve Coffield. They provided an update on the corrective actions being implemented to resolve the deficiencies identified in the *Review of the Nevada Occupational Safety and Health Program* report. Messrs. Jayne and Coffield also offered their recommendations for methods to improve workplace safety.

### ***Resolving Items of Concern and Improving Workplace Safety***

The Subcommittee heard various recommendations to improve workplace safety in the State. Testimony and recommendations were given by Gary Milliken, Associated General Contractors, Las Vegas; Robert A. Ostrovsky, Chairman of the Advisory Council, DIR; Debi Koehler-Fergen, testifying as a private citizen who lost her son in a workplace accident; and David Senecal, private citizen.

### **C. Third Meeting**

The third and final meeting of the Legislative Commission's Subcommittee to Review the U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program was held on June 7, 2010.

### ***Work Session and Construction Cost Eligibility Threshold for Owner-Controlled Insurance Programs***

Before beginning the work session, the Subcommittee heard public testimony from Marie D. Holt, Property and Casualty Section Chief, Division of Insurance (DOI), DBI, and

Janice D. Moskowitz, Lead Actuary, DOI. Their testimonies concerned the estimated construction cost eligibility threshold for OCIPs.

During the Work Session portion of the meeting, the Subcommittee approved various recommendations in the Work Session Document to be consolidated into three bill draft requests (BDRs). The first BDR deals with assessments, fees, fines, and settlement agreements. This BDR includes “Work Session Document” Recommendation Nos. 6, 7, 12, 14, and 15. The second BDR, resulting from Recommendation No. 10, makes changes concerning the issuance of workplace safety violations. The third BDR provides for various changes in the communication between Nevada OSHA and family members of workers injured or killed on the job. This BDR includes Recommendation Nos. 18, 20, and 21.

The Subcommittee also considered a proposal resulting from Recommendation No. 19, which would have provided for the referral of investigations of occupational fatalities to local district attorneys and the Office of the Attorney General. While no formal action was taken on this proposal, the Subcommittee agreed to forward it to the Legislative Commission in this report, should the Commission wish to pursue the proposal further. The Subcommittee approved the drafting of two letters to be sent to federal and State agencies.

## V. FINDINGS AND RECOMMENDATIONS

The following is a summary of the recommendations unanimously approved during the 2009-2010 Interim by the Legislative Commission’s Subcommittee to Review the U.S. Department of Labor’s Report on the Nevada Occupational Safety and Health Program. The subsequent BDRs will be submitted to the 76th Session of the Nevada Legislature in 2011.

### **Recommendation No. 1**

**Draft legislation to make the following revisions to assessments, fees, fines, and settlements relating to occupational safety and health: (BDR 53–100)**

- a. Increase the fine for each willful violation not resulting in a workplace fatality to between \$8,000 and \$120,000.** Existing law (NRS 618.635) sets the fines for willful violations not resulting in a fatality between \$5,000 and \$70,000.
- b. Increase the fine for each willful violation resulting in a workplace fatality to between \$50,000 and \$250,000.** Existing law (NRS 618.685) sets the fines for willful violations resulting in a fatality between \$50,000 and \$100,000.
- c. Increase insurance assessments, fines, and all other fees levied by Nevada OSHA.** The increased revenue would help facilitate: (1) the hiring of additional Nevada OSHA staff, including safety and mechanical inspectors, trainers, and administrative staff; and

(2) increasing the salary of safety and mechanical inspectors to a level more comparable with the average salary of private industry inspectors.

- d. Permit Nevada OSHA to fine employers who have failed to fulfill the conditions agreed upon in a settlement agreement within a reasonable time frame.** Settlement agreements between Nevada OSHA and cited employers generally contain provisions that require the employer to take certain actions, such as funding additional employee training or updating safety programs. However, according to testimony from Nevada OSHA, short of filing a complaint with the district court, Nevada OSHA currently has no reasonable ability to enforce the conditions of settlement agreements.
- e. Require employers to pay fines due to safety violations prior to entering bankruptcy.** According to testimony from Nevada OSHA, bankruptcy can be used as a means for some employers to avoid paying workplace safety violation fines.
- f. Require employers, after a ruling and fines have been issued by Nevada OSHA, to make a bond or cash payment on the fines before pursuing an appeal of the ruling.** Under current law, employers cited for workplace safety violations can file multiple appeals before being required to pay their fine. According to testimony, this change would 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 or eliminates the original fine, a refund will be made to the employer by Nevada OSHA.

### **Recommendation No. 2**

**Draft legislation authorizing Nevada OSHA to cite employers for workplace safety violations based on the presence of a hazardous condition, regardless of whether a State safety inspector observed an employee being exposed to the hazard. (BDR 53-101)**

Current law provides that Nevada OSHA cannot issue a workplace safety citation without witnessing an employee being exposed to a hazard. This creates an enforcement problem because, according to testimony from Nevada OSHA, workers often take breaks while State safety inspectors are on the jobsite. The situation can then exist where a punishable hazard is present, but no employees are in the proximity of the hazard. In these circumstances, Nevada OSHA has no authority to issue a citation.

### **Recommendation No. 3**

**Draft legislation providing for increased communications with family members of workers injured or killed in occupational accidents: (BDR 53-102)**

- a. Require Nevada OSHA, during investigations of workplace accidents resulting in a fatality, to interview surviving family members of deceased workers and to solicit any pertinent information the workers may have shared with their family.** According to

testimony, workers often discuss concerns about workplace safety with their family prior to the occurrence of a fatal accident. By interviewing surviving family members, Nevada OSHA may be able gather information relevant to its investigation that may not have been obtained without communicating with the family.

- b. Require Nevada OSHA to notify family members or other worker representatives, regardless of whether the injured worker was a member of a union or not, when: (1) an investigation begins; (2) citations are issued; (3) formal settlement agreements are signed; (4) the case is contested; and (5) the case is closed.** This requirement would ensure that family members and worker representatives of an injured worker are kept informed about the progress of an accident investigation and the issuance of any fines.
- c. Permit family members of workers injured or killed on the jobsite the opportunity to participate in all conferences and meetings pertaining to the accident investigation by Nevada OSHA.**
- d. Require Nevada OSHA to give family members or other worker representatives a written copy of all their rights pertaining to a workplace accident investigation.** According to testimony, family members and worker representatives may not be aware of their rights during a Nevada OSHA investigation that results from a workplace accident. This requirement would help educate family members and worker representatives on the process and the injured workers' rights.
- e. Create a worker advocate position to be a source of information and assist families that have recently lost a family member to a workplace fatality.** During the beginning investigative process of a workplace fatality by Nevada OSHA, the worker advocate would be available to provide information to family members about the investigation process.

## **VI. ADDITIONAL SUBCOMMITTEE ACTION—PREPARATION OF LETTERS**

In addition to the formal Subcommittee recommendations previously outlined, the Subcommittee also directed staff to:

- Forward Recommendation No. 19 to the Legislative Commission for possible consideration. In addition to workplace fatalities being investigated by Nevada OSHA, this recommendation proposes to concurrently refer all such investigations to the Office of the Attorney General and the local district attorney with jurisdiction;
- Prepare a letter to be sent on the Subcommittee's behalf to the Division of Industrial Relations and Nevada OSHA, both within the Department of Business and Industry, requesting a salary survey, preferably conducted by the Department of Personnel, to determine how the average salary of State safety inspectors compares to that of safety inspectors in the private sector; and

- Prepare a letter to be sent on the Subcommittee's behalf 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. Department of Labor'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. (Copies of these letters appear in Appendix D of this report.)

## **VII. CONCLUDING REMARKS**

The Legislative Commission's Subcommittee to Review the U.S. Department of Labor's Report on the Nevada Occupational Safety and Health Program would like to thank all the federal, State, and local agencies; businesses; community groups; nonprofit organizations; professional organizations; and the public for their contributions to the review of the Nevada OSHA program. The Subcommittee members sincerely appreciate the time, expertise, and recommendations of these people who gave of their time to make the review as comprehensive and thorough as possible. This review would not have been possible without their assistance and cooperation.

**VIII. APPENDICES**

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**APPENDIX A**

*Nevada Revised Statutes* 218E.200



*Nevada Revised Statutes*

**NRS 218E.200 Power to conduct studies and investigations; establishment of committees and subcommittees; designation of members for such committees; compensation, allowances and expenses of members.**

1. The Legislative Commission may conduct studies or investigations concerning governmental problems, important issues of public policy or questions of statewide interest.

2. The Legislative Commission may establish subcommittees and interim or special committees as official agencies of the Legislative Counsel Bureau to conduct such studies or investigations or otherwise to deal with such governmental problems, important issues of public policy or questions of statewide interest.

3. The membership of those subcommittees and interim or special committees must be designated by the Legislative Commission and may consist of members of the Legislative Commission and Legislators other than members of the Commission, employees of the State of Nevada or citizens of the State of Nevada.

4. Members of those subcommittees and interim or special committees who are not Legislators shall serve without salary, but they are entitled to receive out of the Legislative Fund the per diem expense allowances and travel expenses provided for state officers and employees generally.

5. Except during a regular or special session of the Legislature, members of those subcommittees and interim or special committees who are Legislators are entitled to receive out of the Legislative Fund the compensation provided for a majority of the members of the Legislature during the first 60 days of the preceding session for each day or portion of a day of attendance, and the per diem expense allowances provided for state officers and employees generally and the travel expenses provided pursuant to [NRS 218A.655](#).

[10:134:1953]—(NRS A 1957, 386; 1961, 253; 1963, 1014; 1965, 1455; 1971, 2206; 1973, 119, 1118; 1975, 296; 1979, 612; 1985, 399; 1989, 1218, 1493; 1993, 2250)—(Substituted in revision for part of NRS 218.682)



## **APPENDIX B**

“Executive Summary” of the *Review of the Nevada  
Occupational Safety and Health Program*



United States Department of Labor  
Occupational Safety and Health Administration

*Review of the Nevada Occupational Safety and Health Program*

EXECUTIVE SUMMARY

From January 1, 2008, through June 1, 2009, Nevada experienced 25 workplace fatalities which were investigated by the Nevada Occupational Safety and Health Administration (Nevada OSHA). In addition, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) received two complaints (formally known as Complaint About State Program Administration [CASPA])<sup>1</sup> regarding a fatality investigation at The Orleans Hotel and Casino, Las Vegas, Nevada, and a complaint inspection at the Luxor Hotel and Casino, Las Vegas, Nevada. To address rising concerns, Federal OSHA conducted this special study to review critical elements of the Nevada OSHA program. This report summarizes the study findings where there are recommendations for improvements.

Section 18 of the Occupational Safety and Health Act of 1970 encourages states to develop and operate their own job safety and health programs. Federal OSHA approves and monitors State plans and provides up to 50 percent of an approved plan's operating costs. Nevada is one of 27 states and American territories approved to operate its own safety and health enforcement program. Among other things, states that develop these plans must adopt standards and conduct inspections to enforce those standards.<sup>2</sup>

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<sup>1</sup> Anyone finding inadequacies or other problems in the administration of a state's program may file a Complaint About State Program Administration (CASPA) with the appropriate OSHA Regional Administrator. OSHA investigates all such complaints, and where complaints are found to be valid, requires appropriate corrective action on the part of the state. The identities of individuals who file CASPAs are kept confidential.

<sup>2</sup> Federal OSHA approves and monitors state plans and provides up to 50 percent of an approved plan's operating costs. To obtain federal approval, states must meet a number of criteria:

- Set job safety and health standards that are "at least as effective as" comparable federal standards.
- Conduct inspections to enforce its standards.
- Cover public (state and local government) employees.
- Operate occupational safety and health training and education programs.
- Provide free on-site consultation to help employers identify and correct workplace hazards.

Such states also have the option to promulgate standards covering hazards not addressed by federal standards.

## **STUDY METHODOLOGY**

This study concentrated on identifying areas needing improvement. A review of the Nevada OSHA workplace safety and health program was conducted from July 22, 2009 to August 6, 2009. Twenty-three (23) fatality inspection case files were evaluated. In addition, eight cases with current penalties in excess of \$15,000 were identified and five of the eight were evaluated. (The initial criterion was to look at additional cases with final penalties in excess of \$45,000, but there were no such cases, so the penalty threshold for the additional cases was reduced to \$15,000.) All cases occurred from January 1, 2008, through June 1, 2009.

In addition to reviewing the above cited case files, the study team focused on reviewing data gathered from all Nevada OSHA inspections conducted from January 1, 2008 – June 1, 2009, including general statistical information, complaint processing, and inspection targeting. Nevada data as contained in the Integrated Management Information System (IMIS), OSHA's database system used by the State to administer its program and by the State and OSHA to monitor the program, was examined. Compliance with legislative requirements regarding contact with families of fatality victims, training, and personnel retention was assessed.

Throughout the entire process, Nevada OSHA was cooperative, shared information and ensured staff was available to discuss cases, policies, and procedures. Also, Nevada OSHA staff members were eager to work with the evaluation team.

## **FINDINGS**

Highlights of the study findings are as follows:

- Only one willful violation was issued during the period reviewed, however, the violation was reclassified during settlement. Willful violations carry significantly higher penalties. (See IV-4, VI-2)
- Willful violations were discouraged because of the lack of management and legal counsel support. (Willful violations are those the employer intentionally and knowingly commits or a violation that the employer commits with plain indifference to the law and carry 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 repeat violations for trenching violations within a 12-month span of time, however no indication willful violations were considered. (See I-5, II-1)
- 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/hazards at other properties. (See II-7)

- 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. (See I-10)
- Union representatives were not notified of inspections and provided an opportunity to participate in opening conferences, closing conferences and informal conferences. (See I-6, I-7)
- During inspections, Nevada OSHA investigators issued Notice of Violations 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. (See I-11)
- 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.
- 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. (See I-3, VIII-1)
- 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. (See IV-5, V-4, VI-6)
- 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. (See IV-6, X-1)
- This report reviewed 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 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% compared with 79% for Federal OSHA) (IV-1, VII-4)

- Case files were not organized in a uniform manner to reduce the possibility of important case documentation being lost or misplaced. (See I-1, VI-1)
- 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. (See II-3)
- In 91% 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. (See I-9)
- 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. (See III-1, III-2, III-3, VI-3)
- Nevada OSHA agreed to conduct 2900 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. (See IV-2, VII-5)
- Nevada OSHA groups violations based on the location of the standards being cited in the code of state regulations rather than by the individual hazardous conditions. (See IV-3, VI-5)
- Employee contact information was not obtained for employees interviewed and exposed to hazards. (See I-8, V-3, VI-4)

## **KEY RECOMMENDATIONS**

This study resulted in a number of recommendations for improvement. Highlights of these recommendations are listed below.

Nevada OSHA should:

- Conduct an internal review of their willful citation policies and practices. Then take corrective action to fully document willful violations, so such citations can be issued and successfully sustained or affirmed. (See IV-4, VI-2)
- Work with legal counsel to develop training to improve the development of legally sufficient cases and increase the pursuit of willful violations. The training should be specific to Nevada OSHA and should address what is required by the State Review Board to sustain a willful violation. With this training, the Nevada OSHA cases

containing willful violations should be legally sufficient and sustainable by the Review Board. (See I-5, II-1)

- Review its procedures and consider evaluating potentially repeat violations with the assistance of legal counsel. (See II-7)
- Ensure that hazards identified during complaint inspections are addressed with the employer through citation, notification of violation or some other method. Case files must be reviewed more thoroughly, including review of photographs for hazards not identified or addressed by the investigators. (See I-10, V-5)
- Review all available IMIS data reports and track the most frequently cited standards to determine what additional training on such things as hazard recognition and case file documentation is necessary to increase the breadth of standards cited and the classification of such violations. Special emphasis should be placed on construction hazards in an effort to improve hazard recognition which will result in employees being removed from hazard. This should be done for the agency as a whole as well as for each individual compliance officer. (See I-10)
- Adhere to current Nevada OSHA procedures and ensure that union representatives are notified of inspections and provided an opportunity to participate in opening conferences, closing conferences and informal conferences. Union representatives should be informed that they must request copies of citations, or no copy will be sent to them. (See I-6, I-7)
- Review the policy and practice of issuing Notice of Violations on-site during inspections, with an emphasis on ensuring complete and accurate documentation, classification of hazards, and confirmation of abatements. (See I-11, V-4)
- Comply with Nevada OSHA's established procedures, and the new Nevada Senate Bill 288, requirement to contact families of victims soon after the initiation of the investigation and provide the families with timely and accurate information at all stages of the investigation. (See I-3, VIII-1)
- Ensure that adequate abatement is obtained for all complaint items found valid, regardless of being handled via an inquiry or an inspection. Review the abatement verification policy with all supervisors and investigators to ensure the supporting information and documentation required for abatement verification are present in the case files. (See IV-5, V-4, VI-6, X-1, X-2)
- Provide additional training to involved staff as well as each investigator with special emphasis on construction hazards. (See IV-6)

- Target high hazard industries for inspections. Perform an evaluation of the effectiveness of active targeting programs. Once the evaluation is complete make any necessary changes to more effectively target high hazard industries and facilities. (See IV-1, VII-4)
- Provide clear guidance to all enforcement personnel on the organization of case files. Correspondence should not be filed throughout the investigative file but in one specific location in the file. This approach will help ensure all necessary correspondence is sent to employers, employees, and family members of victims. The files should also be contained in file folders which will help ensure that all VI-1)
- Follow established complaint procedures to ensure all complainants are provided information about their rights and asked to provide their name, address, and phone number. Discrimination rights must be communicated to the complainants when they call and file a complaint even if they do not allege discrimination at the time of the call. (See II-3)
- Reconcile the differences in procedure between Nevada and OSHA. Particular attention should be paid to obtaining injury and illness log information during inspections. Once those differences have been reconciled, employees must be trained on current policy and be provided copies of current policy documents. (See I-9)
- Ensure that the IMIS system is kept up-to-date, is accurate, and is used by Nevada OSHA to run reports that will assist with management oversight of enforcement efforts and CSHOs in preparing for inspections. (See III-1, III-2, III-3, VI-3)
- Work with the Nevada legislature to utilize more outcome measures to evaluate the effectiveness of the program. Educate the legislature on the importance of quality inspections versus a large quantity of inspections. (See IV-2, VII-5)
- Review its current citation grouping policies and procedures and issue citations in accordance with its Nevada Operations Manual (NOM). (See IV-3, VI-5)
- Obtain employee contact information for all employees interviewed and exposed to hazards. This information will provide accessibility to witnesses for contested cases and it will also ensure information is maintained in the event a discrimination complaint is filed. (See I-8, V-3, VI-4)

## **SUMMARY OF THE STATE'S RESPONSE**

OSHA Region IX provided a draft of this report to the Administrator of the Department of Business and Industry, Division of Industrial Relations, Occupational Safety and Health Administration (Nevada OSHA). The Administrator provided written comments which are reproduced in their entirety in Appendix B.

Nevada OSHA is under new leadership with a new Chief Administrative Officer and an Administrator of the Nevada Division of Industrial Relations/Nevada State Plan Designee. Although the Administrator pointed out differences in the nature of the monitoring completed during the review conducted in July and August and previous years, his response committed the Nevada OSHA management team to resolving “both the real and perceived problems with Nevada’s OSHA program.”

The Nevada OSHA leadership and staff are committed to resolving the deficiencies identified in this report. While this report focuses on areas in need of improvement, it provides an independent review of critical elements of the Nevada OSHA program that will aid management in developing and implementing action plans. Nevada OSHA is developing action plans and making programmatic changes that will allow the state to implement the recommendations outlined in this report. The goal of Nevada OSHA is to revitalize the staff, mend fences with Federal OSHA, restore public confidence in the agency and perform thorough, legally sufficient inspections that will be sustained throughout the review process. Nevada OSHA is committed to enhancing its operations so that it is better prepared to address the worker safety and health concerns in the State of Nevada.



## **APPENDIX C**

Summaries of Select Workplace Legislation Under Consideration by the  
111th Congress (House Resolutions 2067 and 4864 and Senate Bill 1580)



House Resolution 2067

Protecting America's Workers Act

SUMMARY AS OF: 4/23/2009--Introduced.

Protecting America's Workers Act - Amends the Occupational Safety and Health Act of 1970 (OSHA) to expand its coverage to federal, state, and local government employees.

Authorizes the Secretary of Labor, under specified conditions, to cede OSHA jurisdiction to another federal agency with respect to certain occupational standards or regulations for such agency's employees. Declares OSHA inapplicable to working conditions covered by the Federal Mine Safety and Health Act of 1977.

Sets forth increased protections for whistle blowers under OSHA.

Sets forth provisions relating to: (1) the posting of employee rights; (2) a prohibition against the adoption or implementation of policies or practices by employers that discourage the reporting of work-related injuries or illnesses or that discriminate or provide for adverse action against any employee for reporting such injury or illness; (3) a prohibition against the loss of wages or employee benefits as a result of an employee participating in or aiding workplace inspections; (4) investigations of incidents in a place of employment resulting in a death or the hospitalization of two or more employees; (5) a prohibition against designating a citation for an occupational health and safety standard violation as an unclassified citation; (6) the rights of an employee who has sustained a work-related injury or illness that is the subject of an investigation; (7) an employer's right to contest citations and penalties; (8) the Secretary's assertion of an employer's failure to correct a serious hazard during an employer's contest to a citation; and (9) employee objections to modifications of citations.

Increases civil and criminal penalties for certain OSHA violators.

Requires a state that has an approved plan for the development and enforcement of occupational safety and health standards to amend its plan to conform to the requirements of this Act within 12 months after enactment of this Act.

Source: from <http://thomas.loc.gov/>

House Resolution 4864

Ensuring Worker Safety Act

SUMMARY AS OF: 3/16/2010--Introduced.

Ensuring Worker Safety Act - Amends the Occupational Safety and Health Act to revise requirements for the Secretary of Labor's continuing evaluation of approved state occupational safety and health plans.

Requires: (1) the review of state plans to include an assessment of whether a state continues to meet certain conditions for the approval of such plans; and (2) the Secretary to determine whether a state that fails to comply substantially with the provisions of a plan should be given the opportunity to remedy such deficiencies. Prescribes general requirements for the provision to a state of such an opportunity.

Requires the Comptroller General periodically to review and assess: (1) whether state plans to develop and enforce safety and health standards are at least as effective as federal occupational safety and health (OSHA) program standards in preventing occupational injuries, illnesses and deaths, and investigating discrimination complaints; (2) the effectiveness of the Secretary's oversight of such plans; and (3) the adequacy of the Secretary's investigations in response to Complaints About State Plan Administration (CASPA) as well as whether policy issues have been identified and corrective actions fully implemented by each state.

Source: from <http://thomas.loc.gov/>

Senate Bill 1580

Protecting America's Workers Act

SUMMARY AS OF: 8/5/2009--Introduced.

Protecting America's Workers Act - Amends the Occupational Safety and Health Act of 1970 (OSHA) to expand its coverage to federal, state, and local government employees.

Authorizes the Secretary of Labor, under specified conditions, to cede OSHA jurisdiction to another federal agency with respect to certain occupational standards or regulations for such agency's employees. Declares OSHA inapplicable to working conditions covered by the Federal Mine Safety and Health Act of 1977.

Sets forth increased protections for whistle blowers under OSHA.

Sets forth provisions relating to: (1) the posting of employee rights; (2) a prohibition against the adoption or implementation of policies or practices by employers that discourage the reporting of work-related injuries or illnesses or that discriminate or provide for adverse action against any employee for reporting such injury or illness; (3) a prohibition against the loss of wages or employee benefits as a result of an employee participating in or aiding workplace inspections; (4) investigations of incidents in a place of employment resulting in a death or the hospitalization of two or more employees; (5) a prohibition against designating a citation for an occupational health and safety standard violation as an unclassified citation; (6) the rights of an employee who has sustained a work-related injury or illness that is the subject of an investigation; (7) an employer's right to contest citations and penalties; (8) the Secretary's assertion of an employer's failure to correct a serious hazard during an employer's contest to a citation; and (9) employee objections to modifications of citations.

Increases civil and criminal penalties for certain OSHA violators.

Requires a state that has an approved plan for the development and enforcement of occupational safety and health standards to amend its plan to conform to the requirements of this Act within 12 months after enactment of this Act.

Source: from <http://thomas.loc.gov/>



## **APPENDIX D**

### Subcommittee Letters



**MAGGIE CARLTON**

SENATOR

Clark No. 2



COMMITTEES:

*Chair*

Commerce and Labor

*Vice Chair*

Energy, Infrastructure and Transportation

*Member*

Taxation

# Nevada Senate

SEVENTY-FIFTH SESSION

August 25, 2010

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DISTRICT OFFICE:  
5540 E. Cartwright Avenue  
Las Vegas, Nevada 89110-3802  
Office: (702) 452-3619

Donald E. Jayne  
Administrator, Division of Industrial Relations  
Department of Business and Industry  
400 West King Street, Suite 400  
Carson City, Nevada 89703-4256

Dear Mr. Jayne:

The Nevada Legislative Commission's Subcommittee to Review the United States Department of Labor's Report on the Nevada Occupational Safety and Health Program recently completed its work for the 2009-2010 Legislative Interim. The Subcommittee was created to address rising concerns about the status of occupational safety and health in Nevada from both local employees and employers and the federal Occupational Safety and Health Administration (OSHA).

During the course of the review, the Subcommittee heard testimony from the Division of Industrial Relations and the Nevada OSHA, both within Nevada's Department of Business and Industry, and other interested parties on the high turnover rate and the relatively low salary levels of state safety and mechanical inspectors. Because of the significant difference in salary between private safety inspectors and state inspectors, Nevada OSHA has a difficult time retaining their most experienced and qualified inspectors. As a result, Nevada OSHA has to constantly recruit and train new inspectors. This not only costs a considerable amount in time and money, but it reduces the overall experience and expertise of the Nevada OSHA inspector staff.

In view of the problems mentioned above, the Subcommittee believes a salary increase for State safety and mechanical inspectors is necessary. Moreover, the Subcommittee believes a salary survey of safety and mechanical inspectors, both private and State employed, would help determine to what level salaries should be raised. Therefore, the Subcommittee respectfully encourages Nevada's Department of Personnel to conduct a salary survey of safety and mechanical inspectors and present the findings to the Legislature. In order to address the issue of inspector salaries during the 2011 Legislative Session, the Subcommittee believes this survey should be completed as soon as feasible.

Donald E. Jayne  
Page 2  
August 25, 2010

Thank you for your kind consideration of this letter. The Subcommittee believes maintaining a qualified State safety enforcement staff is an important and worthwhile venture. As always, please do not hesitate to contact me if I or the Legislative Commission's Subcommittee to Review the U. S. Department of Labor's Report on the Nevada Occupational Safety and Health Program may be of any assistance to you.

Sincerely,



Senator Maggie Carlton  
Chair, Legislative Commission's Subcommittee  
to Review the U.S. Department of Labor's  
Report on the Nevada Occupational Safety and  
Health Program

MC/rb: W101096-3

cc: Dianne Cornwall, Director, Department of Business and Industry  
Teresa J. Thienhaus, Director, Nevada's Department of Personnel  
Peter S. Long, Administrator, Division of Compensation and Classification,  
Department of Personnel  
Stephen J. Coffield, NV OSHA, DIR, DBI

An identical letter regarding the "Request for a Salary Survey" was sent to the following individuals:

Stephen J. Coffield  
Chief Administrative Officer  
Nevada Occupational Safety and Health Administration  
1301 North Green Valley Parkway, Suite 200  
Henderson, Nevada 89074

Dianne Cornwall, Director  
Department of Business and Industry  
901 South Stewart Street, Suite 1003  
Carson City, Nevada 89701-5200

Teresa J. Thienhaus  
Director  
Nevada Department of Personnel  
209 East Musser Street, Room 101  
Carson City, Nevada 89701-4204

Peter S. Long  
Administrator, Division of Compensation and Classification  
Nevada's Department of Personnel  
209 East Musser Street, Room 101  
Carson City, Nevada 89701-4204



**MAGGIE CARLTON**

SENATOR

*Clark No. 2*



COMMITTEES:

*Chair*

Commerce and Labor

*Vice Chair*

Energy, Infrastructure and Transportation

*Member*

Taxation

# Nevada Senate

SEVENTY-FIFTH SESSION

August 25, 2010

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5540 E. Cartwright Avenue  
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[www.leg.state.nv.us](http://www.leg.state.nv.us)

The Honorable Tom Harkin  
Chairman, United States Senate Committee on Health,  
Education, Labor and Pensions  
731 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Harkin:

The Nevada Legislative Commission's Subcommittee to Review the United States Department of Labor's Report on the Nevada Occupational Safety and Health Program recently completed its work for the 2009-2010 Legislative Interim. The Subcommittee was created to address rising concerns about the status of occupational safety and health in Nevada from both local employees and employers and the federal Occupational Safety and Health Administration (OSHA).

One of the objectives of the Subcommittee was to monitor federal occupational safety legislation impacting Nevada and to strive to maintain open communication with federal agency representatives, local government officials, and employee and employer representation groups. Accordingly, during the course of the review, the Subcommittee heard testimony on the Ensuring Worker Safety Act (H.R. 4864) which would, among other things, instruct the Government Accountability Office to study and report on whether the federal funding formula for states with their own occupational safety and health plans is fair and adequate.

Nevada is one of 22 states and jurisdictions where all occupational health and safety enforcement is done by state OSHA programs. According to the Occupational Safety and Health Act of 1970, these states are eligible for federal funding to cover up to 50 percent of the safety program's operating costs. However, based on the current funding formula, Nevada is paying roughly 75 percent of the cost of running the State's occupational safety plan. The Subcommittee believes the existing formula underfunds Nevada's OSHA program and urges your support for H.R. 4864 and other legislation and policies that ensure federal funding to states with OSHA plans is fair and adequate.

The Honorable Tom Harkin

Page 2

August 25, 2010

Thank you for your kind consideration of this letter and your support for improving occupational safety in Nevada and nationwide. As always, please do not hesitate to contact me if I or the Legislative Commission's Subcommittee to Review the U. S. Department of Labor's Report on the Nevada Occupational Safety and Health Program may be of any assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Maggie Carlton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Senator Maggie Carlton  
Chair, Legislative Commission's Subcommittee  
to Review the U.S. Department of Labor's  
Report on the Nevada Occupational Safety and  
Health Program

MC/rb: W101093-2

cc: Nevada's Congressional Delegation

The Honorable George Miller, Chair, House Committee on Education and Labor

Secretary of Labor Hilda L. Solis, U.S. Department of Labor

Assistant Secretary David Michaels, Assistant Secretary of Labor for Occupational Safety and Health

An identical letter regarding the “Request for Support for Fair and Adequate Federal Funding for State OSHA Plans” was sent to the following individuals:

The Honorable John Ensign  
United States Senator  
119 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Harry Reid  
United States Senator  
528 Hart Senate Office Building  
Washington, D.C. 20510-0001

The Honorable Shelley Berkley  
Congressional District 1  
405 Cannon House Office Building  
Washington, D.C. 20510-0001

The Honorable Dean Heller  
Congressional District 2  
125 Cannon House Office Building  
Washington, D.C. 20515-001

The Honorable Dina Titus  
Congressional District 3  
319 Cannon House Office Building  
Washington, D.C. 20515-0001

The Honorable George Miller  
Chairman, United States House Committee on Education and Labor  
2181 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Hilda L. Solis  
Secretary of Labor  
United States Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

The Honorable David Michaels  
Assistant Secretary of Labor for Occupational Safety and Health  
U.S. Department of Labor  
Occupational Safety and Health Administration  
200 Constitution Avenue  
Washington, D.C. 20210



## APPENDIX E

### Suggested Legislation

The following Bill Draft Requests will be available during the 2011 Legislative Session, or can be accessed after “Introduction” at the following website: <http://www.leg.state.nv.us/Session/76th2011/BDRList/>.

- |            |   |
|------------|---|
| BDR 53-100 | Makes various changes concerning assessments, fees, fines and settlements relating to occupational safety and health. |
| BDR 53-101 | Makes various changes concerning the issuance of citations for certain occupational safety and health violations.     |
| BDR 53-102 | Provides for certain communications with family members of workers injured or killed in occupational accidents.       |

