

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-fifth Session  
March 11, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:39 p.m. on Wednesday, March 11, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Maggie Carlton, Chair  
Senator Michael A. Schneider, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Dean A. Rhoads  
Senator Mark E. Amodei  
Senator Warren B. Hardy II

**STAFF MEMBERS PRESENT:**

Kelly S. Gregory, Committee Policy Analyst  
Suzanne Efford, Committee Secretary

**OTHERS PRESENT:**

Danny Thompson, Nevada State AFL-CIO  
Tracy Carrillo  
Debi Koehler-Fergen  
Jerry Ray, Member, American Society of Safety Engineers  
Jack Jeffrey, Laborers' International Union of North America, Local No. 872;  
International Union of Operating Engineers, Local No. 12  
Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades  
Council of Northern Nevada  
Steve Ross, Secretary-Treasurer, Southern Nevada Building and Construction  
Trades Council  
George Cole

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John Christiansen, Sheet Metal Workers' Union, Local No. 88  
Craig Michie  
Chris Giunchigliani, Clark County Commissioner  
Lou Salazar, Plumbers' and Pipefitters' Union, Local No. 525  
Tom McManus, Vice-President, SCS Engineers  
Jack Mallory, Director of Government Affairs, International Union of Painters  
and Allied Trades, District Council 15  
Terry Picard, Business Representative, International Union of Operating  
Engineers, Local No. 3  
Louis DeSalvio, Laborers' International Union of North America, Local No. 872  
Dale Walsh, President, American Society of Safety Engineers, Southern Nevada  
Chapter  
Donny Grayman, Reinforcing Ironworkers' Union, Local No. 416  
Kevin Hardison, President, International Brotherhood of Teamsters, Local  
No. 631  
Barbara Gruenewald, Nevada Justice Association  
Pilar Weiss, Culinary Workers' Union, Local No. 226  
David Kallas, Las Vegas Police Protective Association Metro, Inc.  
Rusty McAllister, Professional Firefighters of Nevada  
Jack Mallory, International Union of Painters and Allied Trades, District  
Council 15  
Nancyann Leeder, Office of the Nevada Attorney for Injured Workers,  
Department of Business and Industry

CHAIR CARLTON:

I have a bill draft request (BDR) that needs to be introduced.

**BILL DRAFT REQUEST 57-291**: Revises provisions governing certain health  
maintenance organizations and medical and dental plans. (Later  
introduced as [Senate Bill 214](#).)

SENATOR AMODEI MOVED TO INTRODUCE BDR 57-291.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE  
VOTE.)

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CHAIR CARLTON:

We are here today to have a discussion and forum on workplace safety and workers' compensation.

DANNY THOMPSON (Nevada State AFL-CIO):

The AFL-CIO represents all the building trades and all the other local service unions in Nevada. We pride ourselves on training. Training can be from the Culinary Training Academy which trains porters, maids and cooks, or from the electrical workers' or the ironworkers' apprenticeship programs. We train our workers to the highest degree that we can. Safety training is done at the job site and in the classroom. That is not always enough. We do not direct the workforce, our employers direct the workforce. There has to be a Nevada Occupational Safety and Health Administration (OSHA).

In order to inspect adequately, OSHA must have the proper funding to be able to find problems. They must be willing to enforce regulations when they find violations. Once they make a decision, they have to be willing to stand behind that decision.

TRACY CARRILLO:

I have provided written testimony on the death of my son Brian Anthony Sparkman who was an ironworker ([Exhibit C](#)).

CHAIR CARLTON:

Other than life insurance, if there was one thing that you would like to see in the legislation we are formulating now, what would you like for your son?

MRS. CARRILLO:

I would like to see more on-the-job training. I am not placing blame or pointing fingers, but there is no appropriate safety training. The rules are there for a reason, to save lives. These young men think they are invincible. If the safety regulations save just one life, it is worth it.

My son broke almost every bone in his body. He had three brain surgeries, collapsed lungs and eight compound fractures in his legs. It was devastating. My husband was on the same job and saw my son fall. It tore our family apart.

No one was held accountable. No one can tell me why he fell. It was just something that happened. There needs to be better safety rules and more

training. There are many people who are dying because of the lack of safety rules and training.

SENATOR PARKS:

Mrs. Carrillo, I extend my condolences to you. We seldom get persons who testify with your perspective. Can you share with us your thoughts on the investigation and how it went following your son's accident? Were you satisfied with OSHA?

MRS. CARRILLO:

I was very sedated. I had a lot of choices and decisions to make for my son. There are still some things that are blurry. My sister, brother-in-law and my husband dealt with OSHA investigators because I was in Reno with my son.

I was not happy with workers' compensation. A workers' compensation liaison came to me just before my son passed away. He had woken up once and said "mom," but they sedated him again. The liaison asked me if they were treating me well and I said yes and that my son has just woken up and things were looking better. The liaison said that she had heard that he would not make it out of the hospital alive. It devastated me.

There was some difficulty getting workers' compensation to pay the hospital bills. I never received any bills but the hospital had a hard time getting payment.

SENATOR PARKS:

Were you being advised on the status of the medical bills?

MRS. CARRILLO:

The hospital phoned me, asking if I had a contact person with workers' compensation. They advised me that they were having problems getting payment.

SENATOR PARKS:

Had not the workers' compensation people contacted you?

MRS. CARRILLO:

That is correct.

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DEBI KOEHLER-FERGEN:

I have submitted written testimony in memory of and for my son Travis Wayne Koehler, a journeyman engineer, who died in an accident at the Orleans Hotel ([Exhibit D](#)).

SENATOR PARKS:

Were you kept updated on the progress of your case?

MRS. KOEHLER-FERGEN:

I was told nothing. The only information I received was as a result of my call to the lead investigator on the case, John Olaechea. He gave me what little information he had. He was concerned about what was going on. I made a call to Steve Coffield, acting Chief Administrative Officer of OSHA, but no one called me.

SENATOR PARKS:

Were benefit payments made to you or your family?

MRS. KOEHLER-FERGEN:

We did not receive any benefits. My son had no dependents.

CHAIR CARLTON:

If we could give you a wish, what would you like?

MRS. KOEHLER-FERGEN:

I would like to see justice for all of these deaths by a reorganization of OSHA. Nevada has its own State OSHA which is not tied to Region 9 federal OSHA; our State OSHA needs stronger oversight. There should be another unbiased group involved with OSHA.

CHAIR CARLTON:

Would you like OSHA to have more independence so they can make decisions without undue pressure?

MRS. KOEHLER-FERGEN:

No, I want them to have stricter oversight by Region 9 federal OSHA. Federal OSHA should be able to step in when they feel it is necessary and give direction to Nevada OSHA.

SENATOR HARDY:

While the next witness is coming up, Madam Chair, since this is focusing... the discussion is focusing so heavily on the construction industry, I want to make my standard disclosure that I am the president of the Associated Builders and Contractors of Las Vegas. It's not a Rule 23 disclosure. This certainly doesn't impact me more than anybody else, but I'm just making that disclosure for a matter of public information. Thank you.

JERRY RAY (Member, American Society of Safety Engineers):

Safety should be the first thing taught when someone comes onto the work site. It is imperative that the workers take safety upon themselves. It is also imperative that the frontline supervisor and the company make sure their rules and the OSHA standards, whether State or federal, are enforced. Once that occurs, there will be fewer injuries and fatalities on the job.

JACK JEFFREY (Laborers' International Union of North America, Local No. 872; International Union of Operating Engineers, Local No. 12):

Safety has taken a backseat in the 40 years that I have been involved in the construction industry. Workers' compensation premiums have more to do with the employer's concern about safety than their concern about OSHA.

A big part of this is the lack of safety inspectors. We need to train and put more inspectors in the field. Going to federal OSHA is not necessarily the right thing to do. In the past, the only time federal OSHA came to Nevada was when there was a fatality. There was no ongoing presence. The inspectors were with the Nevada Industrial Commission, dealing with workers' compensation issues.

We need more qualified inspectors and more inspections. We need to think about safety first.

CHAIR CARLTON:

Mr. Jeffrey, I remember the lesson you taught me in my first legislative session when we were doing the privatization of workers' compensation. You said you would much rather fire someone for not wearing his hardhat than have to knock on his wife's door and tell her something went wrong that day.

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PAUL MCKENZIE (Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada):

I have some photographs to show you, which are also on a compact disc, which will help you understand why safety training is extremely important ([Exhibit E](#) and [Exhibit F](#), original is on file in the Research Library). We can train our workers on safety, but if the employer is not serious about it, it is not going to make a difference.

You will notice in this first picture that you cannot see anything in this ditch. That means it is too deep to see the worker in the ditch. The foreman is standing there watching his worker in a ditch above his head, [Exhibit E](#), page 1 and page 2. This is a safety violation. Safety is not important to this company.

The next two pictures show two workers trying to put a rope on the top of a flagpole. The extension ladder was too short so they put it in the bed of a pickup truck, [Exhibit E](#), page 3 and page 4. This may be more of a matter of common sense than safety training. When the workers are not trained, they do not realize what could happen when they do something like this. Things are done without thinking of the consequences. You create a culture by training the workers and management to take safety seriously.

These next pictures are of a swing stage on the side of a building, [Exhibit E](#), page 5 through page 9. The white lines in the pictures are the safety lines for the workers that are run from deadbolts on the top of the building. The worker ties his harness onto the safety line. If the swing stage falls, the worker is tied to the safety line, not to the swing stage. The black ropes are the ends of their safety lines and they are wrapped around the swing stage. If the swing stage falls, they will try to hold the swing stage up. This shows lack of training and lack of understanding of what their safety equipment is for.

Until we put the time into training workers and employers to make sure their workers work safely, we will not have a safe workplace. The only way to make employers take safety seriously is through their workers' compensation insurance premiums and by OSHA enforcing the laws when there are violations.

I hope this Legislature will resolve the issues we have had with safety through the past years. We have to make workers take the safety training and make employers believe in safety training. This can be done by instituting safety programs that are enforceable. We also have to bring OSHA into the program

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and ask them to enforce the safety regulations. The stronger the regulations are enforced, the quicker employers will get involved. The employer's attitude toward safety is primary to making this work.

CHAIR CARLTON:

Did you have any experiences with federal OSHA?

MR. MCKENZIE:

No, I did not.

STEVE ROSS (Secretary-Treasurer, Southern Nevada Building and Construction Trades Council):

Early in 2008, we saw a crisis in construction-worker safety. Twelve workers lost their lives in various accidents on Las Vegas Boulevard construction sites between the beginning of 2007 and the middle of 2008. The building boom of 2007 and 2008 contributed to the unique problems we witnessed on Las Vegas Boulevard.

In 2007, workers were building CityCenter, Fontainebleau, Echelon, Encore, the Trump International and the Palazzo. By themselves, each of these projects was a massive endeavor. Taken as a whole, these projects created an overload on the system which broke down safety and project inspection applications at both the State and local levels. Local standards began to deteriorate and lapse.

The safety crisis led to an unprecedented walkout at the world's largest private development and spurred an increase in dialogue between all levels of the industry. Government officials, unions, contractors and trade organizations were all searching for answers.

Eight months after the last death at CityCenter, we can report some progress. In an unprecedented agreement between Perini Building Company and Southern Nevada Building and Construction Trades Council, mandatory "OSHA 10 training" has been instituted for all construction workers at CityCenter.

We have seen such success with this project that the Southern Nevada Building and Construction Trades Council, along with Perini Building Company, have brought to the Nevada Legislature, Assembly Bill (A.B.) 148. This bill mandates OSHA 10 training for all construction workers in Nevada.



There has been increased worker awareness. Workers are paying more attention, and the training they have received is making them better able to troubleshoot potential safety problems on their own.

There has also been increased public awareness. Over the summer, the *Las Vegas Review-Journal* ran a disturbing investigative piece that uncovered workers drinking and returning to construction worksites. Instead of hiding from these facts, the Southern Nevada Building and Construction Trades Council worked closely with the site's general contractor, Perini Building Company, to identify as many people as possible and have them terminated from their jobs. We will not tolerate this kind of behavior. The public's role in pointing out these problems should not be overlooked.

There are also problems off of Las Vegas Boulevard. Some of the more dangerous working conditions are found in lower-dollar value projects, such as single family home construction and light commercial development. A fatal accident at the off Strip Orleans Hotel and Casino is an example of what is wrong with the system.

The role of OSHA in job safety has been much debated over the past few months. The one thing in common in all of these tragedies is the continued relaxation of fines given to those found to have violated safety statutes. Violators must be truly punished. This is the central issue facing the Senate Committee on Commerce and Labor.

A thorough review of funding levels, procedures, penalties and enforcement of OSHA rules and regulations is long overdue. Funding levels should be reviewed, not just for OSHA, but also for local governments and their own building inspection processes. In the past, budget items concerning safety have been underfunded. If OSHA would more vigorously enforce its fines, they would have more money.

Safety initiatives like OSHA 10 training are important steps to create a stronger, better-trained workforce in southern Nevada. The OSHA 10 training is just a start and should not be considered an end to this examination.

Over the past six months, we have worked closely with contractors, contractor groups and elected officials. This collaboration is important to continue the safety record we have achieved in the past eight months.

However, the death last week of a worker at McCarran International Airport reminds us that we cannot become lax when it comes to worker safety.

[ASSEMBLY BILL 148](#): Requires certain health and safety training for construction workers and supervisors. (BDR 53-276)

GEORGE COLE:

I have been an ironworker for 42 years. I have been active in workplace safety and served as a safety manager for several steel companies. But most importantly, I am a relative of a fun-loving, kind and generous man who fell to his death at CityCenter in October 2007.

It is also important to mention that I was once involved in a process that I am now actively criticizing. That process was post-accident negotiations with OSHA to reduce or abate levied penalties.

In June 2008, I had the privilege of going to Washington, D.C., to testify before the U. S. House of Representatives Committee on Education and Labor regarding OSHA's role in workplace safety ([Exhibit G](#) and [Exhibit H](#)).

I am here today to speak about my brother-in-law, Rusty Billingsley. I have many wonderful memories of Rusty, but unfortunately it is the images of his death and the injustice that followed which overshadow what was a gracious life.

Rusty's death was a result of a 60-foot fall. I reviewed OSHA reports that showed unsecured decking on a safety floor as well as no flagging on the safety floor or the floor beneath. I later found out there was a compliance directive issued by federal OSHA that violated the safety regulation contained in federal OSHA's subpart R, "Steel Erections Standards Final Rule." This was done by a process known as "underground rulemaking." This process undermines the overall safety of every person relying on OSHA to safeguard them in the workplace.

I am here to support any increased training and enforcement initiatives that will create a safer work environment for all trades on all worksites. The regulations necessary to ensure workers' safety are in place. The lack of enforcement and penalties are breaking down safety in the workplace.

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CHAIR CARLTON:

If I could give you a wish, what would you like?

MR. COLE:

Workers' compensation needs to be changed for single people with no dependents. The death benefit of \$3,800 is not enough.

JOHN CHRISTIANSEN (Sheet Metal Workers' Union, Local No. 88):

Construction workers are faced with the difficult decision of working in unsafe conditions in order to keep their jobs or stand up for their right to a safe work area and possibly be subject to scrutiny by their employer.

Sheet Metal Workers' Union, Local No. 88, through our apprenticeship program, has been educating members in industry-related safety since the mid-1960s. In 1997, Sheet Metal Workers' Union, Local No. 88, added OSHA 10 to its training curriculum. I am happy to report that job-site injuries for Local No. 88 members have decreased by over 50 percent since we began the OSHA 10 training. Some contractors are reporting a reduction in injuries of nearly 70 percent

Studies show that there are two main reasons for job-site accidents. One is unprofessional work habits and the other is lack of knowledge. Through Local No. 88's OSHA 10 training, we are eliminating lack of knowledge.

Thousands of workers and their families will benefit tremendously when we educate, enforce and implement safety rules in the workplace.

CRAIG MICHIE:

I am a Nevada injured worker. As a private citizen, I come forward today to give personal testimony which provides an important perspective on issues of safety within the workplace. I come forward as a whistleblower for the purpose of exposing and shedding light on conditions of safety that I see and face within the workplace on a regular basis.

I will focus today on conditions currently existing in the workplace that are accidents waiting to happen. These conditions are controllable and manageable aspects of a safe workplace. Employers must be more involved in safety.

Enforcement agencies must be willing to protect the public from employers who violate the laws within the State. These issues require that workplace risk be balanced with fully funded safety programs.

Safety must be measured and evaluated by inspections. Safety is a science based upon facts and measurable data related to issues of risk. There is a "culture of safety" that must be present in the workplace. The "culture of safety" comes from education and accepting professional responsibility on the job.

From my own experience within my union, safety is a constant focus in every training session. Initial training and exposure to safety is not where there is a problem. The problems are in the application of safe practices at work and in creating a safe working environment.

I have submitted a five-page exhibit ([Exhibit I](#)). The first page is titled "Safety Briefing/Rules for Labor." This is a safety briefing sheet used by one of my former employers. This is an employer-driven document that outlines specific rules for all employees to follow during the course of their employment. This document was taken from an employment application but is similar to the form that is used in daily calls at a work site. The intent is that every morning the crew will be provided with a safety briefing prior to the start of the work shift. This brief exchange allows the crew to think safety first. It is a basic element in building a "culture of safety."

The next four pages of the exhibit are another employer's safety-procedures checklist, but it only has value if it is actually used and applied.

Workplace safety is no accident. You must have cooperation from all parties including employers, insurers, employees, unions and State enforcement agencies. They all have a role in promoting and maintaining a "culture of safety" within the workplace. Currently, there is a lack of a sense of urgency to drive change for real improvement. Ineffective enforcement of safety regulations is also a problem. We need to fully fund the enforcement agencies of this State. This is a political matter that has resulted in a diminished capacity of the State to protect its citizens. This must end. Only the responsible action of the Committee on Commerce and Labor can fix this.

Employers must pay for the complete and full cost of the risk of their activity. They reap the profits and then use every means available to avoid the costs that come with the profits.

I have four suggestions. One suggestion is to create and provide funding for a unit within the Department of Business and Industry made up of members who have had to face the failure of the system.

Evaluate the economics of these issues to bring balance to justice. The discounted values of life and limb are no match, for or against, the unlimited resources used by insurers and employers. This is a critical concern. Review the reasons behind the actions in litigation.

On the issue of contested workers' compensation claims and the denial of treatment, the term "subrogation" is used in other forms of insurance, but is not used in workers' compensation. I do not understand why treatment is delayed while the insurance companies argue over who is going to pay the bills. Do not force unnecessary litigation upon the injured worker.

CHRIS GIUNCHIGLIANI (Clark County Commissioner):

I have submitted some documents with recommendations from the two safety roundtables for your review ([Exhibit J](#), [Exhibit K](#) and [Exhibit L](#)). The first safety roundtable was held on June 21, 2008. The second was in late January 2009. Nevada OSHA was invited to all of the roundtables, but chose not to attend.

It was recommended that OSHA require their compliance officers be certified. Currently, they do not have a standard for their officers.

There must be a comprehensive safety plan on any large or complex project. This would be a project that might qualify as an owner-controlled insurance program.

We should review California's voluntary protection program for construction. The foreman on the job, in some instances, can interfere with safety, because they can fire people for not keeping the pace of the job going forward. Unfortunately, they "drive the clock" and the clock seems to be more important than the safety of the workers.

It was suggested that OSHA 10 training must be specific to the trade, and there must be a mechanism for renewal of training, at least every three years.

There should be OSHA 30 training for project managers, union supervisors and other managers that have oversight of the job. There needs to be a higher standard for those conducting the oversight. Renewal hours of training could be provided by apprenticeship programs.

Allowing 24 hours a day, 7 days a week, construction in the hotel corridor has contributed to the deaths. No one is reviewing the "log out" procedure. When there are three shifts going, there must be time to evaluate what was completed that day, put away materials and restart materials for the next phase. That was probably not always happening in the rush to complete a job.

The issue of privatization of workers' compensation contributing to injuries was discussed in both roundtables. The system is "broken" and must be reevaluated. Average health care is picking up workers' compensation costs, instead of workers' compensation picking up workers' compensation costs. This drives up health-care costs and results in the injured worker's care being delayed.

Injured workers should be considered a resource. There should be a Website set up where injured workers could communicate with each other. We should also learn from their injuries, what happened and what caused their injuries.

There was a recommendation that all citations, from both local and federal government, could be consolidated into one document so it would be easy to understand and easy to locate information.

Whistleblower laws need to apply to safety issues. Employees should be able to report safety issues without fear of retribution.

The "log and tag out procedures" are not being monitored. The logs are not reviewed for inspection or enforcement by OSHA, building inspectors or safety inspectors.

In order for a contractor to be included on the prequalified list, he should be required to include safety standards, job-site injuries and "near misses" in their bid for a job.

We need to streamline the reporting process for handling complaints on Monokote and asbestos for a quicker response. The complaints on interior air quality and outside air quality are handled locally by OSHA.

Salaries of OSHA inspectors should be increased, but along with that the inspectors need to have the training in the field and be a "Certified Safety Professional (CSP)."

Any request by an employer to change a fine or a complaint must be through a public process. Fines and penalties should be increased. Studies show that Nevada has the lowest fines of all 50 states.

We must adopt zero tolerance for drugs or alcohol on a job site, and OSHA should have the authority to shut down a job site.

At the state level, each trade should be licensed or certified. This would protect against workers who are not qualified or trained in their job.

As a recommendation from the private sector, "near misses" could be a guide on determining where a safety hazard may be and eliminating it before an accident or fatality occurs.

Both state and local governments should look at safety plans as active plans, not passive. This means they can be reviewed and revised as needed. The private sector should require that contractors provide a five-year record of their on-the-job injuries. Contractors should be required to track the number of claims, even if there is no lost time, the number of lost-time accidents and the number of days lost due to injuries.

Someone recommended that we should look at bonuses for safety personnel on the job site. They questioned whether the bonus should be based on the job or on safety. If the bonus is based on safety, it should be documented that the bonus is tied to the safety plan and safety on the job and not on the timeliness of the completion of the job.

Local governments should require that bidders include safety plans and job-site injuries for the last five years in bids for development projects, housing improvement program projects, project labor agreements and public works projects.

Local governments should modify contracts for projects which would require each contractor and subcontractor to provide a five-year record of job-site injuries as well as their safety plan. This would provide a means of monitoring and enforcing the safety plan. A safety plan or record which is deemed unsatisfactory per policies and procedures will result in disqualification from the project.

Local governments should also formulate a multi-jurisdictional committee to review local government codes and inspection procedures for simplicity, ease of administration, streamlining for similarities and creating interlocal agreements for inspections.

Most state and local governments have safety inspectors or safety and environmental inspectors. It was suggested that these inspectors could augment or assist the OSHA inspectors through an interlocal agreement and/or a state law.

The building department and development services only focus on compliance of the plan, not on plan safety. It could be required when the plan approval and permitting process begins that the written safety plan has to be submitted to the environmental staff for their approval and sign off.

Firefighters would like to see a universal code key for elevators so they have access to the high-rise elevators.

LOU SALAZAR (Plumbers and Pipefitters Union, Local No. 525):

My concern is with the residential worker and undocumented workers who are killed and injured on the job. There have been several deaths in the residential workplace.

A wall collapsed next to a trench killing two workers in that trench. A backhoe was digging the trench next to the wall and there was no support on the wall or a means of escape from the trench.

There is no workers' compensation or insurance which results in the public paying for the injuries. The injured workers are sent to the University Medical Center with a threat of deportation if any reports are made. No one is held accountable in the residential workforce. There were record numbers of homes built in 2006 and 2007, but all the injuries and deaths went unreported.



Residential builders are not held to the same standards as the large casino builders.

TOM McMANUS (Vice-President, SCS Engineers):

I am not representing SCS Engineers today. I have come on behalf of my friend, Mike Taylor, who was a safety professional and was killed on the Cosmopolitan project in January 2008. Mike's wish would be that workers were taken care of. The basic issue, that people get hurt or lose their lives, has been lost in politics. The reason we have workplace safety and health laws is to protect the workers who often do not have a voice.

My concern, as a certified safety professional, has been the enforcement of the regulations. There are thousands of pages of OSHA regulations that document how inspections should be done and how penalties should be enforced. These regulations have not been enforced in Nevada.

In Mike Taylor's case, after his fatality, the responsible company was fined \$2,300. Not only was the fine small, but it was not upheld on the employer's appeal. The fine was dismissed because OSHA could not make its case as to who was responsible for that injury and death.

We have an opportunity now to make changes. There is some proposed federal legislation, the "Protecting America's Workers Act," which includes provisions that could be implemented now at the state level. One provision is to make a serious workplace accident or fatality a felony if there is a willful or a repeat safety violation.

Another provision of the proposed federal regulation is a mandatory fine of \$50,000 for any fatality. However, this would be a minimal fine for large corporations. They are not afraid of OSHA. There is no incentive for them to comply, other than good workplace safety policies make good business sense, and many employers do it for that reason.

Instead of helping employers, OSHA should be concentrating on enforcement. Small businesses offering safety and health consulting are facing competition from OSHA who is providing safety and health consulting to large businesses for free. Resources are being misused. They should be used for enforcement activities.

JACK MALLORY (Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15):

The ultimate responsibility for job-site safety falls to the employer. That is the federal standard, it is codified by the State standards, and recently it has been expanded by a decision from the United States Court of Appeals, Eighth Circuit. The Court determined that Summit Contractors Inc., the general contractor on a construction project, was responsible for the violations of one of its subcontractors, All Phase Construction, even though none of Summit's employees was actually using the scaffold that was found to be in violation of safety regulations by OSHA.

They are responsible for policing workplace safety, and OSHA has been lax in this area. I would never say that employers should not have due process in determining whether or not they actually have a valid violation or if it is just a misunderstanding of the safety requirements and responsibilities. That process should be in place and, where it is appropriate, fines or fees should be reduced. However, overall that process is abused, and it is done in a manner that is inappropriate. The process happens behind closed doors where negotiations occur between an appeal board and contractors. Other interested parties are not included in those discussions.

I have called OSHA on several occasions to report obvious safety hazards. I have never received a return phone call. I was never asked to fill out a deposition, testify or provide any of the evidence that I had. When I spoke with an investigator, I advised him I had pictures, specific dates, times, places and what I saw. As far as I know, there was no follow-up on my reports. Part of the problem is that I was a witness and was not directly related to the incident. There is some question as to whether or not there is an obligation for OSHA to follow up on a report made by an independent third party.

What I would ask of this Committee is to properly fund OSHA in their enforcement and inspection departments. They need to be able to effectively perform their jobs. I also ask that the negotiations on fines and settlements be made public, and to ensure that actual violations are handled appropriately.

TERRY PICARD (Business Representative, International Union of Operating Engineers, Local No. 3):

I have been on 3 jobs in the last 15 years where there have been fatalities, 1 in Nevada, 1 in Utah and 1 in Montana. All of those accidents were preventable. It is training and accountability from the employer that prevents accidents.

LOUIS DESALVIO (Laborers' International Union of North America, Local No. 872):  
I am here to support mandatory safety training, but it does not work by itself. As an OSHA instructor for the Laborers' Local 872 training center for the past five years, while teaching these classes I have heard many fictional, misleading questions. "It is my opinion that the employee ... the employer is only teaching the employee what the employee needs to know, not what they need to know." The men and the women taking these classes have a better understanding of the significance of the training and their surroundings in and on the job site. We have a window of opportunity to make a change and set a precedent that we will not tolerate misleading and fictional training and/or nonpolicing of OSHA.

By passing mandatory training and stricter enforcement, we will save lives together. By passing stricter guidelines on safety and on OSHA, we will have made the first step towards change and will have given employees the opportunity to provide a living for their family and to work in a safe work environment. Because, at the end of the day, loved ones want to see their men and women come home.

It is a known fact that proper training and policing saves workers from injuries and saves lives, not to mention health-care costs and skyrocketing premiums.

Our current leadership, business manager and secretary-treasurer Thomas White of Laborers' Local 872, and his "E-board," have taken the first step to make safety a priority within this organization and to ensure that all members of Laborers' Local 872 receive training so they may be able to perform safely and efficiently for our signatory contractors.

We are doing our part to save lives and OSHA needs to do theirs. We require OSHA 10 training, as a bare minimum, for our members to be able to place their name on the out-of-work list. We also require our members to refresh their OSHA 10 and their OSHA 30 training every four years, where OSHA certifications have no expiration date. We are currently looking to change that refresher to every two years to match the standard that has been set for safety,

for first aid and CPR. But, we cannot do this alone; we need OSHA to follow through with their safety checks and their fines.

DALE WALSH (President, American Society of Safety Engineers, Southern Nevada Chapter):

I want to offer our expertise to assist in any way we can with trying to bring a safer work environment to construction, hospitality and any other type of work being done in this State.

We are the experts in safety. This is the primary organization of safety professionals. We would like to participate by providing safety training. Along with the training, we need to have a way to measure what was learned. There is testing that can be done to evaluate if someone has retained the knowledge learned from the training. Learning in a classroom is one of the poorest ways of absorbing knowledge. The best way is by teaching it.

Our organization can also assist with the CSP. There are other certifications which can be used as benchmarks that do not require a college education. One would be the "Construction Health and Safety Technician" which makes sure someone has the basic knowledge with regard to construction safety issues.

When you do receive a certification, it can be in jeopardy if you violate the ethics that you have promised to comply with. Someone's career could be at stake if they are unethical in the services they provide.

There could also be third-party auditing. Because it is a public entity that requires tax dollars, OSHA is often underfunded. Some of the money that goes into environmental issues, which is more for long-term health impacts, should be put into short-term health impacts for workers. This is where deaths can occur right away.

As the organization of safety professionals in this Country, we would like to offer any services we can provide if you are going to be forming any advisory groups to look into this over the long term. We would like to be involved with that.

DONNY GRAYMAN (Reinforcing Ironworkers' Union, Local No. 416):

There are six different levels of inspection in reference to OSHA. "You have imminent, danger, catastrophe, complaint, programmed and monitored." I would like to focus on catastrophe. The definition of catastrophe is if three or more are hospitalized or a death occurs. This needs to be looked into because a catastrophe could be a catastrophe of one. If one should be hospitalized, this should be a reason to report that injury and for OSHA to investigate.

On two separate occasions, on the Springhill Suites job, the deck collapsed. No one was injured, but OSHA should investigate when something like this occurs. Local unions have assisted OSHA with job inspections. The "culture of safety" should include open communication between workers and OSHA. Workers should not be afraid of OSHA. We would like to open the lines of communication by inviting OSHA inspectors to some of our training.

KEVIN HARDISON (President, International Brotherhood of Teamsters, Local No. 631):

Hi, my name is Kevin Hardison, President of Teamsters Local 631. I'd like to speak to you today in regards to the problems with OSHA or the lack of enforcement. Out there on our job sites and a lot of ours for Teamsters are private sector ... . They don't really practice what they preach. They'll have a safety meeting and when they put out the sign-up sheet for the safety meeting, it's a blank piece of paper, and then everybody will sign it and they fill it in after the meeting.

The Teamsters have industrial hygienists from Washington at our disposal, and we offer them to the employers to come out and look at their job sites to identify the problems and the hazards, but unfortunately they refuse to accept our help or our offer for help. If we could do something to where there was some enforcement, I guarantee you that they would turn to us and ask for our help.

BARBARA GRUENEWALD (Nevada Justice Association):

The Nevada Justice Association (NJA) has a provision in A.B. 178 which addresses one of the issues you have been hearing today, the death of a worker on the job.

In workers' compensation, an injured worker gives up his right to sue his employer in exchange for benefits. Workers' compensation law gives total immunity to employers. An employer cannot be sued for any negligent or willful conduct.

In past legislative sessions, NJA has proposed additional workers' compensation benefits for willful misconduct of an employer which was not passed.

If a worker is killed on the job, his dependents get death benefits. But, if the worker has no dependents, no death benefits are paid. The insurer only pays burial expenses.

In A.B. 178, if a worker has no dependents, we are proposing that the insurer pay a benefit of \$150,000 into a fund. The fund would be used to disperse cost-of-living increases to widows and dependents of workers who had already been injured on the job. There would be some kind of compensation payable even though it would not be payable directly to the family of the worker with no dependents.

**ASSEMBLY BILL 178**: Makes various changes to provisions relating to industrial insurance. (BDR 53-221)

PILAR WEISS (Culinary Workers' Union, Local No. 226):

The Culinary Workers' Union sees a lot of workers who have to file workers' compensation claims. We would encourage the Committee to review the flow within the workers' compensation system. The system is there to help the injured worker. Instead, there are a lot of inefficiencies that slow the system and cost everyone not only emotional and physical pain, but also a great deal of money.

DAVID KALLAS (Las Vegas Police Protective Association Metro, Inc.):

When a police officer is injured in the line of duty, the first reaction is not to report the injury right away, with the hope it will go away. When they return to work a week later, they realize that they have missed the seven-day deadline to file a claim. We would like to have that time frame extended to give people who may not know the deadline, or who may think that the injury will go away, time to file a claim.

We would like to have a denied claim given an expedited hearing so a legitimate workers' compensation claim is handled quickly. When the claim is denied, the injured worker must rely on his health and welfare trust or private insurance to cover the injury. He may get denied by the private insurance or health and welfare trust, which will leave him unable to get treatment.

SENATOR CARLTON:

How many days would you like to see on the timely claim filing?

MR. KALLAS:

As long as we educate people on the notification process, a two-week timeline would be appropriate.

Regarding the appeal process, once a claim is denied, there should be a hearing within a 30- to 60-day time period, based solely on the reason the claim was initially denied.

CHAIR CARLTON:

How would you feel about getting the injured worker the care he needs and then let the insurance companies decide who will pay the bills?

MR. KALLAS:

I would wholeheartedly agree. The idea is to get the injured worker taken care of immediately and then decide who is responsible.

RUSTY McALLISTER (Professional Firefighters of Nevada):

There is a bill in the Assembly regarding police and firefighters presumptive benefits, which provides for an expedited hearing process. We found that claims are all denied anyway. This bill would take out the initial appeal with the Hearing Officer. Denied claims would go directly to the Appeals Officer who would be required to schedule a hearing within 30 days after getting the claim. After hearing the claim, a decision would have to be rendered within 15 days. This would allow the injured worker to get the appropriate treatment in a more timely manner.

JACK MALLORY (International Union of Painters and Allied Trades, District Council 15):

Many private health insurance companies or health insurance trust funds do subrogate claims. The trust funds that I am affiliated with do subrogate. The

problem is not necessarily subrogation, but with the person who does not have health insurance and cannot subrogate.

NANCYANN LEEDER (Office of the Nevada Attorney for Injured Workers, Department of Business and Industry):

On the issue of subrogation, it is often two workers' compensation carriers who are arguing with each other as to who, if anyone, is liable. Each insurer is attempting to point the finger at the other insurer. There is a statute which says that the insurer against whom the claim is made is to pay the benefits and then seek reimbursement from the other insurer. However, if there is an acceptance issue or a basic issue as to whether the injury took place, then neither insurer is willing to make any payments. There is no possibility to exercise the right under the statute.

CHAIR CARLTON:

Ms. Leeder, do you have an opinion on the comments made earlier about the time frames for filing claims and appeals?

MS. LEEDER:

Because of a Nevada Supreme Court decision, the "Notice of Injury or Occupational Disease (Incident Report)" (Form C-1) or the "Employee's Claim for Compensation/Report of Initial Treatment" (Form C-4) had to be filed timely. There is a provision in case law that if the employer can be shown to have personal, independent knowledge of the existence of the injury, the untimely filing of the C-1 is irrelevant. But, of course, that is a litigation item.

Going back to "or" would be very helpful. The C-1 is filed "or" the C-4 is filed timely. The C-4 is the compensation claim to the insurer.

CHAIR CARLTON:

That is a very good suggestion.

MS. LEEDER:

There is a problem with C-1s with the leasing companies. The leasing company is the employer of record. The leasing company does not get the C-1 notice. The injured worker gives the C-1 to his supervisor on-site, which the leasing company argues against because it did not get timely notice under the C-1 requirement. In those instances, the worker really has two employers, the on-site supervisor and the leasing company who is the employer of record. But



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the C-1 exists to allow the employer to investigate and correct a hazardous situation. It is not the leasing company employer who does that; it is the on-site employer who does that. The C-1 has lost its relevancy in that situation.

CHAIR CARLTON:  
Would the "or" language fix this situation?

MS. LEEDER:  
No.

CHAIR CARLTON:  
In the case of a leasing company, we would have to designate the on-site employer as the receiver of the C-1.

MS. LEEDER:  
The leasing company employer or the on-site employer could be the receiver of the C-1. Sometimes the leasing company employer cannot be easily or quickly found. Actually, the "or" probably would take care of it.

MR. THOMPSON:  
There are some serious things going on in workers' compensation since 1995. At that time, the Legislature enacted a provision that gave immunity to third-party administrators, insurers and employers as a result of a perceived bad-faith issue.

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SENATOR CARLTON:

Having no more testimony, this meeting of the Senate Committee on Commerce and Labor is adjourned at 4:17 p.m.

RESPECTFULLY SUBMITTED:

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Suzanne Efford,  
Committee Secretary

APPROVED BY:

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Senator Maggie Carlton, Chair

DATE: \_\_\_\_\_