

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

**Seventy-fifth Session  
March 4, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:41 p.m. on Wednesday, March 4, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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  
Vicki Folster, Committee Secretary

**OTHERS PRESENT:**

Gary Childers, Manufactured Housing Division, Department of Business and Industry  
Patsy Roumanos, PAC-VAN, Inc.  
Tom Murphy, Modular Space Company  
L. Tom Czehowski, Chief Administrative Officer, Occupational Safety and Health Administration, Division of Industrial Relations, Department of Business and Industry  
John Wiles, Division Counsel, Division of Industrial Relations, Department of Business and Industry

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Chair Carlton opened the hearing on Senate Bill (S.B.) 26.

**SENATE BILL 26**: Revises provisions governing chiropractic physicians.  
(BDR 54-349)

Chair Carlton introduced the bill to the Committee members. She informed the Committee that the new language, as provided in the work-session document (Exhibit C), addressed the concerns Senator Amodei had regarding lawful orders. Chair Carlton indicated the new language is added on page 3, lines 3 and 4, "An order of the Board or agreement of the Board must comply with the provisions of this chapter and all applicable law."

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 26.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Carlton opened discussion on S.B. 40.

**SENATE BILL 40**: Revises provisions relating to the licensure of psychologists.  
(BDR 54-320)

Chair Carlton described the concerns of the Committee related to fingerprints taken from licensed psychologists and whether or not it is in compliance with the Federal Bureau of Investigation (FBI). The revised language for section 3, subsection 2, Exhibit C, addressed everyone's concerns.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 40.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Senator Hardy stated that although he voted in the affirmative, he would like to review the bill and possibly change his vote on the Senate Floor, if necessary.

Chair Carlton opened discussion of S.B. 58.

SENATE BILL 58: Revises provisions governing the licensure and regulation of audiologists and speech pathologists. (BDR 54-362)

Chair Carlton brought attention to concerns over using a temporary license, rather than using the term "provisional." She indicated that using the term "provisionally" the license could be pulled quicker than if a temporary license is issued. The language has been addressed, changed and is shown in Exhibit C.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 58.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Carlton opened discussion on S.B. 89.

SENATE BILL 89: Makes various changes to the provisions governing manufactured housing. (BDR 43-427)

Gary Childers, Manufactured Housing Division, Department of Business and Industry, stated support of S.B. 89.

Patsy Roumanos, PAC-VAN, Inc. affirmed her support of S.B. 89. She described overregulation from local jurisdictions, not at the State level, causing her concern for her industry, in regard to her contributions of the sales tax base. Ms. Roumanos described currently paying many fees that are overregulated from local building departments. She stated that more continuity in regulating the industry is appreciated and encouraged the Committee to introduce legislation that would accomplish that. Chair Carlton replied that Ms. Roumanos has achieved her goal.

Tom Murphy, Modular Space Company, echoed Ms. Roumanos's comments in support of S.B. 89.

Chair Carlton mentioned some of the concerns about definitions in the bill. A group of individuals will be meeting to resolve those concerns and will provide the Committee with new language. She recommended the bill be discussed at a future Committee work session. Chair Carlton closed the hearing on S.B. 89.

Chair Carlton introduced the Occupational Safety and Health Administration (OSHA) presenters to discuss the State's safety issues. Chair Carlton instructed the group to present an overview of processes, past problems and occupational-safety performances of the State.

L. Tom Czehowski, Chief Administrative Officer, Occupational Safety and Health Administration; Acting Administrator, Division of Industrial Relations, Department of Business and Industry, introduced his team; Jan Rosenberg, Chief Administrative Officer of Safety Consultation and Training; and John Wiles, Senior Division Counsel, Division of Industrial Relations.

Mr. Czehowski explained that Nevada OSHA started in the early 1970s in a combined effort of labor, management and legislative support to develop *Nevada Revised Statutes* (NRS) chapter 618 to make Nevada a state-plan state under the federal OSHA Act. He stated that we operate under the oversight of federal OSHA and the federal OSHA Act. He described Nevada OSHA as having safety jurisdiction within the State, except for federal employees and certain parts of the federal Whistleblower Act. In 2000, Nevada became a final state-plan state, operating with federal OSHA on a quarterly basis and when issues arise. He stated that for oversight, everything our inspectors are doing from preparing for an inspection, training time, on-site time for general industry or construction is logged into the "federal NCR system," including the reports, citations and penalties of inspections.

Mr. Czehowski described Nevada OSHA as having two parts: Occupational Safety and Health Administration, the enforcement arm; and the Safety Consultation and Training, managed by Mr. Rosenberg. Both operate under the Nevada operations manual, a "spin-off" of the OSHA Field Inspection Reference Manual (FIRM) sometimes called the federal operations manual or field operations manual. According to Mr. Czehowski, the manual tells us how to do inspections, classify citations and penalties, and open and close conferences.

He stated the manual is approved by federal OSHA as part of the oversight, to ensure the state plan operates within the operations manual, to be as effective as federal OSHA. He said this means that as federal regulations and compliance directives are updated, the State has the right to review them and make a determination to accept, reject or modify the regulations, or write our own. Mr. Czehowski gave an example of safety statutes within NRS 618 as written requirements for safety programs, safety committees, asbestos regulations and regulations for photovoltaic; part of the State's plan, but not the federal OSHA plan.

Mr. Czehowski described the investigative priorities in the order of seriousness and importance, starting with accident and fatality investigations at the highest priority. Complaints and referrals are second, discrimination investigation is third, the local-emphasis programs are fourth followed by program inspections. He stated that discrimination investigations fall in the federal Whistleblowers Act, part 11(c). As explained by Mr. Czehowski, the process for discrimination investigations is to investigate and determine whether or not it has merit. He continued that if it is determined a merit case, they will discuss the matter with the employer and remediate and expunge it or, if necessary, file it with district court. Investigations of local-emphasis programs include auto body shops, fielding specific areas of the states for health and safety hazards. Program inspections are the last in line of priority, and are described as comprehensive inspections that fall into a strategic plan with federal OSHA. Mr. Czehowski explained that each state has its own areas within that strategic plan. Nevada concentrates on large industry such as construction, manufacturing, hotels and casinos. Part of the inspection program uses a random list of employers and, if there is time from the previous priorities, the concentration would be on the strategic areas and complete full, comprehensive inspections.

According to Mr. Czehowski, Nevada OSHA receives a grant every year of just under a million dollars. Next year the amount is \$945,710 and it is part of the Public Law 101-552, section 23(g) enforcement grant to the states with federal OSHA. He stated that Nevada is a fee-based industry operating on a budget of \$8 million per year, including the grant amount. The State OSHA program has 93 budgeted positions and includes the mechanical unit consisting of boiler and elevator inspectors. They are part of the OSHA, but not part of the OSHA program. Chair Carlton asked if there were 93 people with "enforcement duties." Mr. Czehowski answered; there are 93 budgeted positions for Nevada OSHA which includes safety inspectors, health inspectors, supervisors,

managers, administrative assistants and the mechanical-unit people. Chair Carlton asked how many mechanical-unit inspectors the Nevada OSHA has. Mr. Czehowski replied there are 5 vacancies for elevator inspectors, but believed there were a total of 20 statewide inspectors.

Mr. Czehowski described the make-up of enforcement inspectors as 30 safety specialists and 11 industrial hygienists. He said that historically, retention is a problem for Nevada OSHA and explained that each inspector is hired with a degree in occupational safety or health, or a combination of experience in a safety field and some college. He described Nevada OSHA's training program as a three-year process. It requires the trainee to travel back and forth to Chicago to take mandatory courses required to become an inspector at the OSHA training institute, over the three years. Additionally, he said, there is State training taught by Safety Consultation and Training or by staff working with a senior inspector learning on the job and hours of reading regulations. He stated that in addition to learning OSHA regulations, they must learn the NRS, Nevada operations manual (NOM), federal regulations for general industry and construction industry. He stated they also have to learn ancillary codes that apply to an OSHA inspector: National Electrical Code (NEC), National Fire Protection Association (NFPA), and the American Society of Mechanical Engineers (ASME).

Because of the long process to train an OSHA inspector, Mr. Czehowski said that after approximately a year and a half, they are able to handle less complex complaints or referrals, but will have oversight supervision until they hit the three-year mark. He described this field as one where hazard recognition is attained through years of experience. Of the 30 safety specialist positions, he stated there is 1 vacancy, 8 have less than 1 year of experience and 3 have more than 5 years of experience. They have been hired out by cities, counties, private industry, construction industry and retention becomes an issue because our marketable product goes out the door to help someone else. According to Mr. Czehowski, the downside is that experienced people are walking away leaving us with inexperienced people to cover projects like the CityCenter Las Vegas project. Chair Carlton suggested the State training process could become the "hiring pool" for the rest of the State. We have those types of problems in other agencies and she inquired if it is because of the pay. Mr. Czehowski affirmed that it is because of the pay and that safety specialists leave to make considerable more as an inspector elsewhere. He indicated there is a problem keeping inspectors after they have honed and built

hazard-recognition skills from walking out. He advised that it is the same with hiring national board commissioned mechanical elevator or boiler inspectors, and the reason there are five positions currently open. Chair Carlton asked whether or not Mr. Czehowski knows if they are hired away by hotels. Mr. Czehowski responded by indicating that they go to various areas, but the individuals we hire are retired from industry and are more agreeable to the lower salaries. He informed the Committee they lost one in Reno just last week to California for an increase of about \$30,000.

Mr. Czehowski informed the Committee that in fiscal 2008, Nevada OSHA completed 2,566 inspections, 55 percent of those were complaint-driven and are considered high priority. Out of the 2,566 inspections, 63 percent were in the construction industry. Mr. Czehowski reiterated that Nevada OSHA operates within the structure, parameters and the restrictions of the Nevada operations manual; a federally approved operations manual. He stated Nevada OSHA operates in the same manner the federal OSHA operates for inspections, citations, penalties, informal conferences and review boards, even though Nevada is a state-plan state.

Mr. Czehowski described that Nevada OSHA's historical percent of citations or violations, penalty retention and citations that are reclassified, falls in line with federal OSHA. Chair Carlton pointed out that there is considerable division on the point of operating at the same level, saying that she has read numerous articles and has received phone calls, with comments that alluded to individuals who claim the State is "not" working at the same level as the federal OSHA. Chair Carlton asked for a response to these comments pointing out the number of accidents that have occurred during the past couple of years. She stated that there appears to be some very valid points about how the office is operating and the use of some of the processes and procedures. Mr. Czehowski responded by explaining that he was aware of the comments and acknowledged his OSHA staff has carried out their mission and inspections in the manner according to their guidelines. He affirmed that processes are followed in line with the Nevada OSHA manual and federal guidelines.

Mr. Czehowski said the penalty process is not a subjective process, but a gravity-based penalty system that is outlined in the Nevada operations manual. He described that penalty classification and amounts discounted according to the size of the employer, history and good faith. His response to the comments

that Nevada OSHA is not operating to standards was, "Quite frankly, yes we are."

Mr. Czehowski discussed the informal processes in relation to some of the more serious accidents or fatalities. He defended the process as part of the "overall OSHA process" – whether federal OSHA or a state-plan state. He said that the cited employer had the right to contest a citation within 15 days; the right to an informal conference to discuss the citation and penalties. He said this process was short of the OSHA review board, the formal administrative process, which is short of the judicial process, until final adjudication, then up to and including the Nevada Supreme Court. Mr. Czehowski described this process as an opportunity for the employer to bring forth the proof in the form of training records, warning notices, etc. He agreed that OSHA inspectors are fallible and issue citations that are incorrect. He attributed it to the fact that newer and inexperienced OSHA inspectors are doing the inspections. He described an incident where an OSHA inspector cited a contractor for violation of the "lock-out, tag-out" procedure. The employer challenged the report at the informal process level, stating that because he was in construction, the procedure did not apply and was not in the Title 29 Code of Federal Regulations (CFR), section 1926. He concluded that the "lock-out, tag-out" procedure applies to general industry which is in 29 CFR, section 1910.

Mr. Czehowski said that the informal process is a way for the employer to agree to make some changes in training or purchase updated safety equipment, to make the job site safer and an indicator of the employer's willingness to improve on safety and health. The informal process allows Nevada OSHA to address the violations of the code, the employer to recognize the violation and admit the need to improve their safety program. He said there would now be a "meeting of minds" by immediately having an agreement with the employer to improve safety and health. He indicated that if employers have citations under contest, the abatement, unless it is in imminent danger, is stayed. He indicated that when an employer does not agree to improve the safety and health issues, Nevada OSHA, by reducing the classification of a penalty, could avoid the delay of improvements up to, and including, the court process. Mr. Czehowski said this does not benefit the employees in the State.

Chair Carlton asked about not being in compliance with the federal OSHA. She said her understanding is that federal OSHA does not have a lot of "stick" if the State is not in compliance with them. She indicated her understanding was that



they did not have a lot of options if they believe the State is doing it differently than they believe it should be doing. She asked if the federal OSHA has any jurisdiction over the State. Mr. Czehowski indicated that they do have some jurisdiction according to the state-plan agreement and to ensure that the State is meeting the guidelines of federal OSHA in our state-plan agreement and our State's strategic plan. He said federal OSHA has oversight to ensure that the State is enforcing the adapted federal regulations.

Chair Carlton asked what would happen if the State disagrees. Mr. Czehowski answered that there are two parts of the process. If the employer or employee believes that OSHA is not doing something right, they can file a complaint about state program administration (CASPA) and file it with federal OSHA which starts an investigation. Once their investigation has been completed, they will indicate to the State what needs to be changed. Mr. Czehowski said an example of the jurisdictional issue is the CityCenter—because of the magnitude and issues of that project—he determined the State needed federal assistance to do comprehensive inspections of every building and everything on that site; there was not enough staff to do it. He said he wanted to create teams with a state person and a federal person, because a state inspector has jurisdiction to write a citation. Federal OSHA sent the necessary qualified inspectors, who were paired up with our inspectors, to complete the comprehensive inspections at the CityCenter site and the Cosmopolitan Resort and Casino. This is how the two entities work together. The State has jurisdiction to issue the citations and do the inspections, but federal OSHA has oversight and indicated that the quarterly meetings determine whether or not the State is operating within the parameters of their guidelines.

Mr. Czehowski reiterated that federal OSHA has jurisdiction in the State for federal employees and everything in the Whistleblowers Protection Act, 29 C.F.R. section 1977, with the exception of part 11(c), the retaliation for safety or health issues. Chair Carlton inquired if federal OSHA has the opportunity to do an investigation on the state OSHA. Mr. Czehowski affirmed that the process is called CASPA. Chair Carlton asked whether the State has received any complaints. Mr. Czehowski replied that the State has not had many, but has had a few over the years. He stated that other than one specific issue two years ago, the State had nothing of disagreement of operations of the state-plan state. Chair Carlton said she must be getting the wrong impression, but due to the Orleans Hotel Casino case, she understood that they had significant concerns. She mentioned Mr. Czehowski's dispute over the case,

stating that they should not have any concerns, and asked if she was misinformed. Mr. Czehowski countered that the information may have tainted the relationship and the responses between the State and feds. He mentioned the Boyd Gaming/Orleans Hotel Casino (Boyd/Orleans) issue, stating that shortly after the tragic incident in February 2007, he was transferred to another agency. The investigation was under the auspices of Senior Counsel, John Wiles.

Mr. Czehowski stated that the federal OSHA (feds) investigation found the State had committed no specific violations in the Boyd/Orleans accident. He informed the Committee that the feds reported some "irregularities." Mr. Czehowski's response to the feds was a denial there were any irregularities and told the feds they should have asked more questions of the State processes. The CASPA issue outcome was a request from the feds to change operations or areas within the Nevada operations manual, and the State refused to do it. He said that it was not how it transpired within federal OSHA. The regional administrator told Nevada OSHA to change areas, one concerning inspection time, in the operations manual. Mr. Czehowski informed the feds that the State planned to make those changes once the revisions to the federal operations manual, which was being revised at the time, was complete.

Mr. Czehowski compared the fatalities in the construction industry over the previous years. He described the following Nevada OSHA investigations: 19 fatalities in 2003, 26 fatalities in 2004, 23 fatalities in 2005, 22 fatalities in 2006, 27 fatalities in 2007, 31 fatalities in 2008 and 6 fatalities, to date, for 2009. Mr. Czehowski stated that of those fatalities in fiscal 2008, 18 were construction; in 2009, all 6 are in the construction industry. Senator Rhoads asked how many were in mining. Mr. Czehowski replied he had no statistics since the Mine Safety Act is separate from Nevada OSHA, but part of the Division of Industrial Relations. Chair Carlton inquired whether or not the incident at the Orleans Hotel Casino had been classified as construction. Mr. Czehowski replied that the Orleans incident was classified as general industry. Chair Carlton commented that those would not have been considered in these numbers. He replied that they would have been considered in the fatality investigation numbers, but not construction.

Senator Hardy conveyed to the audience that although not a Senate Standing Rule No. 23 disclosure, because of the focus on construction, for public information he is President of Associated Builders and Contractors of Las Vegas.

Mr. Czehowski related to the Committee that, although the Nevada OSHA has a retention problem, all the inspectors are a dedicated and professional group. He said under NRS 618 and the Nevada Occupational and Safety Health Act, Nevada OSHA is mandated to improve safety and health in this State.

Mr. Czehowski continued to discuss what Nevadans saw, in the CityCenter project, was an unprecedented project in the size and number of workers. He stated that because of the unfortunate and tragic trend at that site, he went to federal OSHA and asked for assistance.

Mr. Czehowski conveyed that it is his fortieth year in this field. He indicated that it was a tragic situation that caught everybody off guard. It should not have happened, but it did, and as a result, there were fatalities. Investigations on these fatalities are a matter of public record. He said a message has been sent to this State, to the valley, to the contractors, construction workers and all of us—safety awareness has to come above production. Increased safety awareness, he said, is why we are seeing a reduction in fatalities so far this fiscal year. Nevada OSHA continues to complete inspections and enforce regulations the same way they were five years ago; those are the regulations. He indicated that violations are clear to their investigators when investigating and there is no subjectivity there. He said there is a total process that ties in with federal OSHA, our State's regulations and our Legislature that has put forth the statutes we enforce in the State. He informed the Committee, that if there is any question about how serious Nevada OSHA takes this job, they take it very seriously and always have. Chair Carlton conveyed that the Committee takes it seriously also, stating that is why they are meeting today.

Chair Carlton stated that her concern is one of safety, citing the CityCenter project as a large project with lots of activity and individuals coming and going on site. Noting the "hey-day" of the Strip approximately 10-15 years ago, Chair Carlton called attention to the buildings that were being built all over the State. She commented that construction companies knew to put in decking, knew to install netting, knew about safety harnesses, knew about man-lifts and understood all those issues. Nevada was able to complete building projects at all those sites with very few accidents, yet those same issues seem to be an issue at CityCenter on a same-size construction effort. She stated that the "footprint" of the whole project is huge, but each building is the same as any other building that has been built. She shared that when she read about decking not being in place on a building with three to four stories, and no nets, it indicated to her it

was basic things that were missing which would ensure safety. She called attention to previous accidents, indicating that the State should have learned from those mistakes, yet it happened again. She expressed her difficulty understanding how a mistake like that can be made more than once.

Mr. Czehowski replied that he had wanted to address the decking and netting issue to put things into perspective. He explained that the federal steel erection standard, subpart R, has an exemption that states employers that have a 100 percent tie-off, are not required to set up decking and netting. He claimed that subsequently, after the fatality at the CityCenter, the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) and International Brotherhood of Ornamental and Structural Ironworkers asked to meet with him and asked him to review that federal standard and those exemptions. He said he did review them and went to federal OSHA and told them that Nevada OSHA would rescind their exemptions in the State. He indicated that even though the steel erection standards states if the employer has 100 percent tie-off there is no requirement for decking and netting, the State is going to require it in. Nevada OSHA made that change and enforced it, put out a letter to all industry, and met with the stakeholders. He stated that when he was faced with making the decision of whether or not to reject those exemptions, he claimed the decision was easy. He said if he was going to err, he would err on the part of safety, asking himself, "Will these workers have a better chance if we do this?" and the answer was yes. Chair Carlton asked how long the exemption was in effect. Mr. Czehowski answered that he could not tell her, but knows it was for quite some time.

Chair Carlton asked the Committee for questions, and there were none.

John Wiles, Division Counsel, Division of Industrial Relations, Department of Business and Industry, introduced himself as holding this position since July 1, 1995. Mr. Wiles conveyed that there have been a number of instances over the years where he has worked difficult cases, and the last few years have been no different. He said the interest the Committee has shown is welcome and is the first time he has had the opportunity to address the legislative body on OSHA issues.

Mr. Wiles explained that cases OSHA inspectors are confronted with are not always clear-cut. He said that Mr. Czehowski alluded to violations and how they are either present or not. He claimed that lawyers tend to think of things in

shades of gray rather than black and white, and indicated that cases reviewed by he or Mr. Czehowski are not always clear-cut. He also indicated that new information may appear during a review, an interpretation may be applied and considerable discretion is invested in the inspectors, supervisors and district managers.

Mr. Wiles indicated the inspection system, as reported by Mr. Czehowski, is completely accurate. He explained that the system in Nevada works like the federal system and most other state-plan states. Some have deviated, but for the most part, they have a system to follow certain guidelines to channel that discretion. He stated there is an informal resolution process used and compared it with one used in the state of Oregon, they have a body section that reviews citations when the employer requests it. He understands that these have been written up as "secret meetings," taking place with people other than those who investigated and wrote the citations. He indicated that this happens to give the employer a fair chance to present their case to a neutral body, one that is not invested in the outcome or involved with the investigation. Mr. Wiles stated that someone separate from enforcement has the authority to resolve these cases. He discussed a number of ways to address these issues in terms of the resolution process. Our state-plan, as Mr. Czehowski indicated, is set up like the federal system. In terms of the Boyd case, Mr. Wiles indicated he had considerable issues regarding the necessary elements of proof. He informed the Committee, that a willful violation requires a state-of-mind proof, where other violations do not. Mr. Wiles stated he has to prove what somebody, some person or some institution was thinking, or what their motivation might be. He stated it requires showing a conscious disregard or plain indifference to a particular standard.

Mr. Wiles commented about the involvement of the director of the Department of Business and Industry, specifically authorized by NRS chapter 618 in the State, and indicated it was possible the federal counterparts had a hard time understanding this authorization. Mr. Wiles stated, for the record, "Nothing inappropriate went on," and that has been demonstrated although there are still some questions according to the newspapers. He stated that in the Boyd/Orleans case, Nevada OSHA was faced with a difficult set of circumstances: a tragic set of circumstances involving the death of two individuals; an emergency situation where people jumped and rescued their fellow workers.

According to Mr. Wiles, there was conflicting testimony of whether they were ordered into the manhole, or that they were in the manhole as ordered when directions were being given. He stated that under the circumstance, he and the administrator thought it would be better served to enter into an agreement with Boyd to provide a template of what they hoped would spread across the casino industry, specifically referring to the "SHARP" (Safety & Health Achievement Recognition Program). The idea was to launch Boyd into a direction of not just meeting standards, but going beyond the standards, hoping other casino properties would follow. Mr. Wiles said Mr. Rosenberg could explain SHARP.

Mr. Wiles conveyed that the choice they made has been questioned and criticized, on whether to proceed with willful citations that may or may not have been sustained. He stated that once a case is before the review board, they get to decide the case. In order to serve the interest of the people of Nevada, Mr. Wiles said they decided to put the case in a settlement posture, hoping to improve safety by planting the seed for the industry.

Addressing Mr. Wiles, Chair Carlton emphasized that he did have the option to reopen the investigation to complete additional research and did not have to go to the settlement process, asking if that was correct. Mr. Wiles agreed and replied that, in fact, they did get to a point in the investigation that concluded the investigator was firmly set on what the violations were. Mr. Wiles stated that he was not convinced and conducted three depositions in addition to the normal investigatory process. They learned that people were sticking to their stories and no one came forward to change their story. He said they learned that Boyd Gaming began communicating various safety aspects to the new properties; it reinforced the existing evidence in terms of who was responsible for safety and how it was carried out. However, what remained unclear, he said, was the sequence of events. He said inexperienced people do heroic things in emergency situations that are unplanned, unperceived events or emergencies. He said based on his experience there is a lot of activity that goes on, people's recollections are not completely accurate, adrenalin is flowing in those moments and they may react in ways they would not be called upon to do.

Mr. Wiles stated that a critical point was whether or not the individuals were ordered into the manhole or not. He said the supervisor testified that nobody was ordered into the manhole; heroically, they jumped into the manhole and we were saying, "Get them out of there. Get them out of there." One interpretation of that would be that they were ordering them to get out of the manhole. The

other interpretation was that they were standing by telling employees to get everybody out of there; those are matters of interpretation. He said that no one understood the hazards and, in fact, supervisors indicated it smelled bad but they did not understand the dangers. Chair Carlton stated that it was her understanding that the safety investigator who worked on that case is no longer with OSHA, and questioned if that was correct. Mr. Wiles agreed that was correct.

Mr. Czehowski informed the Committee that Jan Rosenberg, Chief Administrative Officer of Safety Consultation and Training, would speak to the Committee to discuss the duties of Safety Consultation and Training. Chair Carlton stated that the Committee would be discussing those issues when they actually get to the bill and asked for his testimony at that time.

Chair Carlton presented written testimony from Rick Johnson, President, Southern Nevada Building and Construction Trades Council, to be entered into the record ([Exhibit D](#)).

The Committee meeting was adjourned at 2:55 p.m.

RESPECTFULLY SUBMITTED:

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Vicki Folster,  
Committee Secretary

APPROVED BY:

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Senator Maggie Carlton, Chair

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