

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

**Seventy-sixth Session
March 28, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 2:21 p.m. on Monday, March 28, 2011, 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 Michael A. Schneider, Chair
Senator Shirley A. Breeden, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator James A. Settelmeyer
Senator Elizabeth Halseth
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Senator Joseph (Joe) Hardy, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Carole Vilardo, Nevada Taxpayers Association
Edward Lepere, Lawry's The Prime Rib Restaurant
Robert Ostrovsky, Nevada Resort Association
Larry Harvey, John Ascuaga's Nugget
Neena Laxalt
George Ross, Las Vegas Chamber of Commerce

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Tray Abney, Reno Sparks Chamber of Commerce; ABC Nevada
Terry Graves, Henderson Chamber of Commerce
Lea Tauchen, Retail Association of Nevada
Michael Tanchek, Labor Commissioner, Office of Labor Commissioner,
Department of Business and Industry
Paul Enos, Nevada Motor Transport Association
Jack Mallory, Painters and Allied Trades, District Council 15, Southern Nevada
Building and Construction Trades Council
Paul McKenzie, Building and Construction Trades Council of Northern Nevada
Greg Esposito, Plumbers and Pipefitters Local 525
Robert Talley, D.D.S., Nevada Dental Association
David White, D.D.S., Nevada Dental Association
John Pappageorge, Health Services Coalition
Jack Kim, Nevada Association of Health Plans
Constance Brooks, Clark County
Danny Thompson, Nevada State AFL-CIO
Cynthia A. Jones, Administrator, Employment Security Division, Department of
Employment, Training and Rehabilitation
Donald E. Jayne, Administrator, Division of Industrial Relations, Department of
Business and Industry
Keith Lee, State Contractors' Board

CHAIR SCHNEIDER:
I will open the hearing on Senate Bill (S.B.) 332.

SENATE BILL 332: Revises provisions governing compensation for overtime.
(BDR 53-708)

SENATOR SETTELMAYER:

This bill deals with the eight-hour workday rule. The current rule requires some employers to pay overtime if an employee works more than eight hours in a day, regardless of how many hours they have worked in a week. I have had constituents tell me they want flexibility in managing their work schedules. For example, they want the opportunity to work three ten-hour days and then take a job somewhere else. The current eight-hour workday rule does not allow that.

Very few states have this eight-hour workday rule. Only California and Alabama have a true 8-hour workday rule where everyone who works more than 8 hours in a 24-hour period gets overtime. Oklahoma has the eight-hour workday rule,

but it only applies to minors and government employees. Wyoming only applies their rule to government employees. Nevada is the fifth state with the eight-hour workday rule, and we have many exemptions, making it very complicated. In Nevada, you can have a mutual agreement with your employer to work more than 8 hours in a day, but you have to work 40 hours in a week, or 4 10-hour shifts. You cannot work three ten-hour shifts and two five-hour shifts in a week. You can only work four ten-hour shifts by mutual agreement.

The *Nevada Revised Statute* (NRS) 608.018 pertaining to overtime has so many exemptions it is cumbersome. Some of the work-area exemptions to the eight-hour workday rule include outside buyers, collective bargaining agreements, drivers, railroad workers, loaders, taxicab drivers, limousine drivers and agricultural employees, and that is only part of the list. If we truly feel no one in Nevada should work beyond an eight-hour day, why are there so many exemptions?

CAROLE VILARDO (Nevada Taxpayers Association):

The Nevada Taxpayers Association (NTA) recently conducted a member survey ([Exhibit C](#)) asking if there were Nevada laws that should be changed to allow employers to hire more workers. One of the common responses was to question why Nevada chooses not to follow the federal overtime rule which pays overtime for anything over 40 hours in a work week. Some NTA members said the inability to allow employees to work more than 8 hours in a 24-hour period was costly enough to prevent them from hiring. Simplifying the eight-hour workday rule will make it easier for Nevada employers to hire more workers. We support this bill.

EDWARD LEPERE (Lawry's The Prime Rib Restaurant):

There are many employment areas exempt from the eight-hour workday rule, but the restaurant industry continues to suffer under the statute. An employee who starts a shift one day may not begin work any earlier on the next day, or that will be considered overtime. The definition of the workday in Nevada is based on the time an employee starts a shift. He or she can only work 8 hours in the 24-hour period that follows. Any more would require overtime pay.

In the restaurant business, this is especially vexing. The concentration of work hours are during the breakfast, lunch and dinner shifts. When we schedule workers for different shifts, we often incur overtime costs. Restaurant employees make the most money working both lunch and dinner shifts. While

benefitting from hourly wages, most restaurant industry employees are more dependent on tip income. They do not want to go home between shifts, so this overtime rule sometimes forces them to choose one shift or the other. Several of our employees have lost substantial tip income by having to choose, and several more have had to quit. Everyone in the industry works hard to make the eight-hour workday rule benefit both employees and employers. Some restaurants with more than one location can have employees go back and forth between them to achieve what the law has deprived them. It is just so complicated. We support this bill to simplify Nevada law. I have submitted my notes from this testimonial ([Exhibit D](#)).

ROBERT OSTROVSKY (Nevada Resort Association):

Why is this bill coming up now? Part of the problem stems from the changes we made constitutionally in the minimum wage law. The Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry, publishes a bulletin that tells what the hourly pay has to be to avoid the eight-hour workday rule. If an employer gives health benefits, the hourly pay is \$10.87, and if there is no health benefit, the pay would be \$12.37. When the minimum wage was \$5 per hour, it was much easier to figure the overtime. As these numbers have increased, more employees have fallen into this eight-hour workday category. It applies to a small number of employees, most of them in jobs where they rely on tip income. We support this bill.

LARRY HARVEY (John Ascuaga's Nugget):

I agree that the State eight-hour workday rule is very cumbersome and complicated. Our payroll staff is increasing, mostly to deal with the exception reports we must do for each employee to calculate if daily overtime occurred. If an employee asks to come in an hour later than the normal shift one day to run an important errand and then come in the next day at their regular time, an hour of overtime is owed them. I have been asked by employees if it was acceptable to sign a waiver to avoid the eight-hour workday rule, and of course, we cannot do that. This affects more than 700 employees in our company; many of them servicing conventions, restaurants and banquets. If they take those intermittent jobs for extra income, they may not be able to work a regular shift as well. The employee loses money in those instances. Most states do not have overtime laws, but this does not mean employers in those states do not pay daily overtime. You pay overtime because you have to be competitive. We would still plan to pay it, but the complicated definition in Nevada is just onerous. Our law is more restrictive than any other state in the nation.

If we are talking about bringing businesses to Nevada, especially high-tech companies, we need to be more flexible. Those businesses are into flextime where they schedule employees based on their availability. This law limits that option. When we discussed this issue with the labor commissioner, he said his complaints on this law come more from employees than from employers. We support this bill.

SENATOR HALSETH:

Does anyone ever work without pay because of this? Do they opt to stay on without the hourly wage so they can just work for tips?

MR. OSTROVSKY:

The law is very clear; an employee cannot work without being paid.

NEENA LAXALT:

I was one of the people who contacted Carole Vilardo at NTA after seeing her survey. The labor laws are all intended to protect the employee, but I do not think anyone counted on this economy. My niece is working in a restaurant where she was unable to work a dinner shift and then a breakfast shift the next day because of the eight-hour workday rule. She was not allowed to take that shift and the next shift was not until much later in the week, so she lost out on earning more income. I support this bill.

GEORGE ROSS (Las Vegas Chamber of Commerce):

We support this bill because it would significantly aid both employers and employees in achieving efficient and flexible scheduling.

TRAY ABNEY (Reno Sparks Chamber of Commerce; ABC Nevada):

In a recent U.S. Chamber of Commerce study, Nevada rated very poorly in employment and labor law. One of the specific issues spotlighted was the daily overtime problem. Because of our complicated workday law, an employee like Mr. Harvey could have 700 different workdays to have to decipher. We support this bill.

TERRY GRAVES (Henderson Chamber of Commerce):

We support this bill.

LEA TAUCHEN (Retail Association of Nevada):

We support this bill.

MICHAEL TANCHEK (Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry):

I am neutral on this bill. Very few states have an eight-hour rule. It is very complicated to work with. It drives my staff crazy. If I am trying to analyze a daily overtime issue, I literally have to draw circles on a piece of paper. We are the only state that uses a 24-hour clock rather than a midnight-to-midnight clock, so working with it is very complicated. Daily overtime in Nevada is connected with minimum wage, and we have two minimum wages, so it can be even more complicated to calculate. Prior to the change in the Tenth Amendment to the U.S. Constitution regarding minimum wage, daily overtime affected approximately 8 percent of Nevada workers. Now it affects 37.5 percent of our workers.

CHAIR SCHNEIDER:

Can you explain the midnight-to-midnight versus 24-hour work schedule?

MR. TANCHEK:

The common schedule is where you define your workday as a calendar day, so it runs midnight-to-midnight. Nevada's 24-hour workday was implemented before my time, but the issue that drove the change was stacking shifts in our casino-based work environment.

PAUL ENOS (Nevada Motor Transport Association):

Federal law states that truck drivers can only drive for 11 hours and be on duty for 14 hours within a shift.

CHAIR SCHNEIDER:

How would this bill affect the trucking industry?

MR. ENOS:

It would not necessarily affect our drivers, but it would affect our other employees and office staffs. For interstate truck drivers, federal laws would supersede the State's statutes.

JACK MALLORY (Painters and Allied Trades, District Council 15; Southern Nevada Building and Construction Trades Council):

This bill would affect the lowest wage earners in the State. The exception would be the small percentage of high tip earners in the metropolitan resort areas. The bigger impact would be felt in the smaller communities. A food

server in Caliente is not making \$50,000 a year in tips. That worker would be lucky to be making \$50 a day in tips. Many of these provisions such as the overtime law were enacted when the minimum wage was \$5.15 per hour. There were minimum wage earners working 16 consecutive hours, which is how they were breaking up the shifts. The eight-hour workday rule was intended to discourage that practice.

There is a provision in S.B. 332 that would remove the eight-hour workday rule from the construction industry. In construction, any shift more than ten hours in one day decreases productivity significantly. I do not think this bill will create new jobs because it is cheaper to pay intermittent overtime than hire new employees. Instead, the removal of the eight-hour workday rule will provide an incentive for employers to overwork their employees. My organization is involved in more than 30 collective bargaining agreements that are all more restrictive than State statutes. We do not support this bill.

SENATOR ROBERSON:

We have heard testimony from restaurant owners and how difficult this eight-hour workday rule is for them to manage and how it also impacts their employees. Do you have any proposed alternative ideas to help these people?

MR. MALLORY:

It would depend on the industry. You are hearing from the industries and from groups that represent employees. We have a difference of opinion on the affect overtime actually has on business.

SENATOR ROBERSON:

I can respect that, but to move this State forward, we have to come together with real solutions. Just saying no to everything does not work. We get accused of saying no to everything, but it sounds like you are saying no without bringing anything else to the table. We need to figure out something together to move this State forward.

MR. MALLORY:

I would like to sit down and try to come up with solutions that do not balance everyone's bottom lines on the backs of employees.

PAUL MCKENZIE (Building and Construction Trades Council of Northern Nevada):
We are opposed to this bill. These provisions were put into statute to protect employees. The provisions on page 3 of S.B. 332, lines 8-11, relate to a calendar day, not a 24-hour period. The issue we had about calendar days in statute was to prevent back-to-back eight-hour shifts from being scheduled on opposite sides of midnight. I think these overtime issues should be addressed in regulation, not statute.

GREG ESPOSITO (Plumbers and Pipefitters Local 525):
The examples brought forward in testimony were from restaurants. When I started out in the plumbing industry, the pay period started on Tuesday and ended on Monday. The contractor would work us over our regularly scheduled hours and on weekends without regard to our plans with our families. Then, the contractor would have us not come in to work the next day or week so they could avoid paying us overtime. We had given up time with our families to work the extra time and weekends and were depending on the overtime, but we were not being compensated. This bill will affect construction workers.

CHAIR SCHNEIDER:
I will close the hearing on S.B. 332 and open the hearing on S.B. 350.

SENATE BILL 350: Revises provisions concerning policies of health insurance and health care plans that provide coverage for dental care.
(BDR 57-1057)

SENATOR JOSEPH (JOE) HARDY (Clark County Senatorial District No. 12):
This bill will have some conceptual amendments ([Exhibit E](#)). I have some experts here to testify.

ROBERT TALLEY, D.D.S. (Nevada Dental Association):
I support this bill and the amendments. I have submitted my written testimony ([Exhibit F](#)). I also submitted a letter of support ([Exhibit G](#)) from Delta Dental, one of the largest dental insurance carriers in the United States and insurer to 65,000 Nevadans.

DAVID WHITE, D.D.S. (Nevada Dental Association):
I have been a practicing dentist in Reno and Elko for the past seven years. I support this bill and the amendments because it creates better transparency about what are covered services and non-covered services. I was recently

speaking with a colleague in Las Vegas who uses a special material to fix failed root canals. This procedure is a non-covered service with a fee set so low from the insurance company that it does not even cover the price of materials. How is a dentist to provide this service? This practice limits the use of advanced dental procedures, which is bad for Nevadans.

JOHN PAPPAGEORGE (Health Services Coalition):
We support S.B. 350 and the conceptual amendments.

CHAIR SCHNEIDER:
Would you tell the Committee about the Health Services Coalition?

MR. PAPPAGEORGE:
Yes, we are comprised of many labor and management groups. The employers include Boyd Gaming Corporation; NV Energy, Inc.; MGM Grand Hotel and Casino and several labor unions. Our mission is to improve the quality of health care and keep the costs down for our members. We have approximately 250,000 members in southern Nevada.

JACK KIM (Nevada Association of Health Plans):
We have some concerns with this bill. On page 2, lines 8-10, there is a reference to "de minimus coverage." I still do not know what that means. On lines 11-13, the discussion of bill pricing implies that a dentist can determine the price for a procedure, and that price would set the standard.

In the conceptual amendment, we agree with everything but section 3. By putting "punitive action" into statute, you set that as a legal standard. That could lead to lawsuits or litigation. The goal of this bill, as I understand it, is to get at discounted or non-covered services. Usually, we try to work with the dentists to provide those non-covered services at a discount for plan members. The way this section is written, we are worried that the liability aspect may push dentists to refuse to perform these non-covered services at a discount for fear of legal vulnerability. We think this bill as written might keep people without dental insurance from getting the services they need at discounted rates. I will work with Dr. Hardy on this bill.

CONSTANCE BROOKS (Clark County):
We are opposed to S.B. 350 because of the increased financial burden to our self-funded insurance plan. The amendment does not satisfy our concerns.

CHAIR SCHNEIDER:

I am closing the hearing on S.B. 350 and suggest everyone work with Dr. Hardy on this bill. I am going to reopen S.B. 332 so Danny Thompson can add his testimony to that bill.

DANNY THOMPSON (Nevada State AFL-CIO):

We are opposed to this bill. The eight-hour workday rule in Nevada is deeply rooted in our history. The battle against the 12-hour day started at the Comstock in Virginia City. Those Nevadans fought long and hard to craft the eight-hour workday. No laws are perfect, but this would be a huge step backward for something that people literally died for. I saw testimony from employers regarding S.B. 332 but did not see employees rushing to the table to change that statute.

SENATOR ROBERSON:

Are you opposed to tinkering with this law? Could you work with Senator Settlemeyer and others to come up with a compromise?

MR. THOMPSON:

The majority of Nevada employees are working under this law as it stands. I did not hear the major operators and employers come here and testify that it is a big problem for them. When I represented steelworkers, we had a 24-hour operation where we had three shifts. Complying with the eight-hour law was not a problem. To change the law to accommodate a couple banquets or parties is not a reason to change the law for the majority of people. I would be happy to talk to the Senators about the issue, but I did not hear anything today that was an overwhelming reason to change the law.

CHAIR SCHNEIDER:

I will close the hearing on S.B. 332 and open the hearing on S.B. 351.

SENATE BILL 351: Revises provisions governing disciplinary action against contractors. (BDR 54-225)

SENATOR HARDY:

In the construction industry, an out-of-state contractor can obtain a Nevada contractor's license and then underbid local contractors because they do not have to pay State unemployment and sales and use taxes. If a lien or judgment is filed against these contractors, it cannot be enforced because the financial

institutions associated with the contractor are usually located outside Nevada. This bill proposes to address that situation. We do have some changes to add to the bill, especially regarding the five-day notice stipulation on page 5, lines 18-20.

CYNTHIA A. JONES (Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation):

I agree with Senator Hardy on the need for this bill. We want employers who owe unemployment insurance taxes to pay their obligations. We suggest the five-day limit on notification be amended to within five days of receipt of notification of the lien.

DONALD E. JAYNE (Administrator, Division of Industrial Relations, Department of Business and Industry):

We may have some interest in S.B. 351 to help us improve our collection of debts owed the State, once we have a judgment against the party who owes us. We would like to amend the bill to include the Division of Industrial Relations, Department of Business and Industry, and have the contractors' license put in jeopardy if they do owe money.

KEITH LEE (State Contractors' Board):

We have some concerns about this bill. We do not want to be a collection agency. If we suspend a contractor's license, how are they going to pay? The other concern is that this bill requires us to have a hearing, which costs approximately \$500 for an uncontested hearing. We wonder how many of these hearings there would be. Would it be common or rare? On page 2, lines 12-15, it is unclear who the beneficiary of the bond or cash deposit would be. Regarding lines 16-20, is this an additional bond or a performance payment bond required by every contractor, even when re-licensing? We will work with Senator Hardy on this bill.

CHAIR SCHNEIDER:

I will not be putting this in subcommittee but recommend you work with Senator Hardy.

MR. MALLORY:

I have heard the frustrations by commissioners on the State Contractors' Board saying they have few tools to use against these out-of-state contractors. To obtain a State contractor's license, one has to post a bond with the Board. That

offers some protection against liens. We believe this is a good bill, and we support it and the amendment.

CHAIR SCHNEIDER:

I will close the hearing on S.B. 351 and open the hearing on S.B. 369.

SENATE BILL 369: Requires the establishment of a program of shared work unemployment compensation. (BDR 53-296)

SENATOR HARDY:

This bill is an effort to get jobs into Nevada and people back in business. This takes some of the tools other states have done to combat their unemployment issues. It is admittedly a complex bill, but it is a tool in the State's toolbox.

MS. JONES:

The national recession has impacted Nevada more than other states. For us, programs that support economic recovery are important. The work-share program, also known as the short-time compensation (STC) program, is a layoff-aversion tool. The concept is to avoid laying off a smaller number of workers by reducing the hours of a larger number of workers. Some participants may then be eligible for partial unemployment benefits tied to the percentage of work hours reduced. Workers retain employment; employers retain a skilled work force and avoid retraining costs.

As this STC program grows, staffing will be needed. We are proposing that coordination and the audit function be absorbed into existing departments as needed. The fiscal note will show a need for eight staff members to process the business plans and benefit claims and to address eligibility issues. Marketing and outreach funds will also be required to inform the business community of STC and its advantages. System programming will also be needed, requiring additional funds. We are currently in the process of updating our old system and could incorporate STC into the update. We would need to adjust our software to incorporate the calculation of unemployment benefits based on hours worked instead of wages earned, which is how we now calculate a worker's benefit amount. We have not calculated the actual fiscal note on S.B. 369 yet, but estimate it could be as high as \$2 million if we include the system change. We could implement the STC program within our current system for approximately \$150,000.

It is unclear how this program would impact participating employers' taxes and the trust fund. If benefits to STC workers are less than they would have been had the worker been laid off, the fiscal impact would be positive. It could also go the other way, but until we try this, we will not know. We have researched other states' results with their STC programs, but Nevada's economic base is so different from most other states it makes comparisons difficult. The President's 2012 budget supports the implementation of these programs. There are 17 states with a STC program, but if adopted by Congress, federal funds could be available to all the states for at least two years. We recommend that Nevada provisions mirror the federal proposal to allow a smooth transition if the federal program is approved. We would want to put in place requirements from participating businesses including their firm commitment to Nevada and fiscal responsibility on all their tax obligations. We support this bill and will work with all interested parties on it.

SENATOR SETTELMAYER:

Have other states done this, and why the selection of 10 percent for the cutoff on line 1 of page 5, if the employee's salary or income drops by 10 percent?

MS. JONES:

That cutoff is commonly used in other states and is also in the upcoming federal plan, which we want to mirror.

MR. THOMPSON:

I support the concept and acknowledge our unemployment fund is in a bad state right now. We appreciate that this bill could help keep people in their jobs, but we would not want it to be used to deny existing workers their benefits. We would urge an amendment to ensure those benefits would not be impacted. There are 19 states now doing work-share programs since New Hampshire and Colorado just adopted theirs. Some say this system could create an unfair advantage to an employer that did not need to utilize this program. We do support the spirit of the bill to keep people working.

MR. MALLORY:

It is not clear how this bill would impact construction workers and other intermittent workers such as banquet or convention workers. We do see a potential for employers to shirk some of their economic responsibilities. Since not all employers provide health insurance and retirement benefits to full-time employees, part-time employees may not be eligible for the STC program. We

are also concerned about the 26-week cap of employee eligibility for this benefit, which I call an underemployment subsidy. At the same time, the employer is limited to 52 weeks to use the program. I do appreciate the bill but would want clarification in these areas.

MS. JONES:

The program is targeted only for layoff aversion, not for industries with cyclical or intermittent work. We have a separate benefit program for a worker earning less than his or her weekly unemployment benefit while also working less than full time. Many of those recipients are banquet or hospitality industry workers. This STC program is designed for businesses with temporary economic challenges that were thinking of laying off workers to stay in business, which is why we call it a layoff-aversion tool.

CHAIR SCHNEIDER:

I will close the hearing on S.B. 369 and turn these bills back to Senator Hardy who will work on them. The meeting of the Senate Committee on Commerce, Labor and Energy is adjourned at 4:41 p.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		
	B		
S.B.332	C	Carole Vilardo	Newsletter
S.B.332	D	Edward Lepere	Testimony notes
S.B.350	E	Senator Hardy	Conceptual amendment
S.B.350	F	Robert Talley, M.D.	Testimony
S.B.350	G	Jeff Album, Delta Dental	Letter of support