

**EXECUTIVE AGENCY
FISCAL NOTE**

AGENCY'S ESTIMATES

Date Prepared: March 22, 2017

Agency Submitting: Business and Industry, Division of Industrial Relations

Items of Revenue or Expense, or Both	Fiscal Year 2016-17	Fiscal Year 2017-18	Fiscal Year 2018-19	Effect on Future Biennia
Grant Revenue (Revenue)		(\$325,220)	(\$325,220)	(\$650,440)
Total	0	(\$325,220)	(\$325,220)	(\$650,440)

Explanation

(Use Additional Sheets of Attachments, if required)

Per 29 CFR 1902.4(a), the Federal Occupational Safety and Health Administration (OSHA) requires state OSHA efforts such as Nevada's to inspect to a standard that is the same as, or "at least as effective" as the Federal standard prescribed in 29 CFR 1926.501. Federal OSHA grant contacts have confirmed that passage of BDR 53-706 would cause a Federal review for restructure of current grant award levels to Nevada for its OSHA activities, including those related to construction. The exact impact cannot be calculated prior to such a review, but it is anticipated that a reduction in grant funds would correlate closely to the reduction in number of inspections being performed.

Name Joseph Decker

Title Division Administrator

GOVERNOR'S OFFICE OF FINANCE COMMENTS

Date Tuesday, March 21, 2017

The agency's response appears reasonable.

Name Laura Freed

Title Exec. Branch Budget Officer

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of March 14, 2017

[Title 29](#) → [Subtitle B](#) → [Chapter XVII](#) → [Part 1902](#) → [Subpart B](#) → §1902.4

Title 29: Labor

[PART 1902—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS](#)

[Subpart B—Criteria for State Plans](#)

§1902.4 Indices of effectiveness.

(a) *General.* In order to satisfy the requirements of effectiveness under §1902.3 (c)(1) and (d)(1), the State plan shall:

(1) Establish the same standards, procedures, criteria and rules as have been established by the Assistant Secretary under the Act, or;

(2) Establish alternative standards, procedures, criteria, and rules which will be measured against each of the indices of effectiveness in paragraphs (b) and (c) of this section to determine whether the alternatives are at least as effective as the Federal program with respect to the subject of each index. For each index the State must demonstrate by the presentation of factual or other appropriate information that its plan is or will be at least as effective as the Federal program.

(b) *Standards.* (1) The indices for measurement of a State plan with regard to standards follow in paragraph (b)(2) of this section. The Assistant Secretary will determine whether the State plan satisfies the requirements of effectiveness with regard to each index as provided in paragraph (a) of this section.

(2) The Assistant Secretary will determine whether the State plan:

(i) Provides for State standards with respect to specific issues which are or will be at least as effective as the standards promulgated under section 6 of the Act relating to the same issues. In the case of any State standards dealing with toxic materials or harmful physical agents, they should adequately assure, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life, by such means as, in the development and promulgation of standards, obtaining the best available evidence through research, demonstrations, experiments, and experience under this and other safety and health laws.

(ii) Provides an adequate method to assure that its standards will continue to be at least as effective as Federal standards, including Federal standards relating to issues covered by the plan, which become effective subsequent to any approval of the plan.

(iii) Provides a procedure for the development and promulgation of standards which allows for the consideration of pertinent factual information and affords interested persons, including employees, employers and the public, an opportunity to participate in such processes, by such means as establishing procedures for consideration of expert technical knowledge, and providing interested persons, including employers, employees, recognized standards-producing organizations, and the public an opportunity to submit information requesting the development or promulgation of new standards or the modification or revocation of existing standards and to participate in any hearings. This index may also be satisfied by such means as the adoption of Federal standards, in which case the procedures at the Federal level before adoption of a standard under section 6 may be considered to meet the conditions of this index.

(iv) Provides authority for the granting of variances from State standards, upon application of an employer or employers which correspond to variances authorized under the Act, and for consideration of the views of interested parties, by such means as giving affected employees notice of each application and an opportunity to request and participate in hearings or other appropriate proceedings relating to applications for variances.

(v) Provides for prompt and effective standards setting actions for the protection of employees against new and unforeseen hazards, by such means as the authority to promulgate emergency temporary standards.

(vi) Provides that State standards contain appropriate provision for the furnishing to employees of information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms, and emergency treatment in case of exposure, by such means as labeling, posting, and, where appropriate, medical examination at no cost to employees, with the results of such examinations being furnished only to appropriate State officials and, if the employee so requests, to his physician.

(vii) Provides that State standards, where appropriate, contain specific provision for the protection of employees from exposure to hazards, by such means as containing appropriate provision for use of suitable protective equipment and for control or technological procedures with respect to such hazards, including monitoring or measuring such exposure.

(c) *Enforcement.* (1) The indices for measurement of a State plan with regard to enforcement follow in paragraph (c) (2) of this section. The Assistant Secretary will determine whether the State plan satisfies the requirements of effectiveness with regard to each index as provided in paragraph (a) of this section.

(2) The Assistant Secretary will determine whether the State plan:

(i) Provides for inspection of covered workplaces in the State, including inspections in response to complaints, where there are reasonable grounds to believe a hazard exists, in order to assure, so far as possible, safe and healthful working conditions for covered employees, by such means as providing for inspections under conditions such as those provided in section 8 of the Act.

(ii) Provides an opportunity for employees and their representatives, before, during, and after inspections, to bring possible violations to the attention of the State agency with enforcement responsibility in order to aid inspections, by such means as affording a representative of the employer and a representative authorized by employees an opportunity to accompany the State representative during the physical inspection of the workplace, or where there is no authorized representative, by providing for consultation by the State representative with a reasonable number of employees.

(iii) Provides for the notification of employees, or their representatives, when the State decides not to take compliance action as a result of violations alleged by such employees or their representatives and further provides for informal review of such decisions, by such means as written notification of decisions not to take compliance action and the reasons therefor, and procedures for informal review of such decisions and written statements of the disposition of such review.

(iv) Provides that employees be informed of their protections and obligations under the Act, including the provisions of applicable standards, by such means as the posting of notices or other appropriate sources of information.

(v) Provides necessary and appropriate protection to an employee against discharge or discrimination in terms and conditions of employment because he has filed a complaint, testified, or otherwise acted to exercise rights under the Act for himself or others, by such means as providing for appropriate sanctions against the employer for such actions and by providing for the withholding, upon request, of the names of complainants from the employer.

(vi) Provides that employees have access to information on their exposure to toxic materials or harmful physical agents and receive prompt information when they have been or are being exposed to such materials or agents in concentrations or at levels in excess of those prescribed by the applicable safety and health standards, by such means as the observation by employees of the monitoring or measuring of such materials or agents, employee access to the records of such monitoring or measuring, prompt notification by an employer to any employee who has been or is being exposed to such agents or materials in excess of the applicable standards, and information to such employee of corrective action being taken.

(vii) Provides procedures for the prompt restraint or elimination of any conditions or practices in covered places of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for in the plan, by such means as immediately informing employees and employers of such hazards, taking steps to obtain immediate abatement of the hazard by the employer, and where appropriate, authority to initiate necessary legal proceedings to require such abatement.

(viii) Provides adequate safeguards to protect trade secrets, by such means as limiting access to such trade secrets to authorized State officers or employees concerned with carrying out the plan and by providing for the issuance of appropriate orders to protect the confidentiality of trade secrets.

(ix) Provides that the State agency (or agencies) will have the necessary legal authority for the enforcement of standards, by such means as provisions for appropriate compulsory process to obtain necessary evidence or testimony in connection with inspection and enforcement proceedings.

(x) Provides for prompt notice to employers and employees when an alleged violation of standards has occurred, including the proposed abatement requirements, by such means as the issuance of a written citation to the employer and posting of the citation at or near the site of the violation; further provides for advising the employer of any proposed sanctions, by such means as a notice to the employer by certified mail within a reasonable time of any proposed sanctions.

(xi) Provides effective sanctions against employers who violate State standards and orders, such as those set forth in the Act, and in 29 CFR 1903.15(d).

(xii) Provides for an employer to have the right of review of violations alleged by the State, abatement periods, and proposed penalties and for employees or their representatives to have an opportunity to participate in review proceedings, by such means as providing for administrative or judicial review, with an opportunity for a full hearing on the issues.

(xiii) Provides that the State will undertake programs to encourage voluntary compliance by employers and employees by such means as conducting training and consultation with employers and employees.

(d) *State and local government employee programs.* (1) Each approved State plan must contain satisfactory assurances that the State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions which program is as effective as the standards contained in an approved plan.

(2) This criterion for approved State plans is interpreted to require the following elements with regard to coverage, standards, and enforcement:

(i) *Coverage.* The program must cover all public employees over which the State has legislative authority under its constitution. The language in section 18(c)(6) which only requires such coverage to the extent permitted by the State's law specifically recognizes the situation where local governments exclusively control their own employees, such as under certain home rule charters.

(ii) *Standards.* The program must be as effective as the standards contained in the approved plan applicable to private employers. Thus, the same criteria and indices of standards effectiveness contained in §§1902.3(c) and 1902.4(a) and (b) would apply to the public employee program. Where hazards are unique to public employment, all appropriate indices of effectiveness, such as those dealing with temporary emergency standards, development of standards, employee information, variances, and protective equipment, would be applicable to standards for such hazards.

(iii) *Enforcement.* Although section 18(c)(6) of the Act requires State public employee programs to be as effective as standards contained in the State plan, minimum enforcement elements are required to ensure an effective and comprehensive public employee program as follows:

(A) Regular inspections of workplaces, including inspections in response to valid employee complaints;

(B) A means for employees to bring possible violations to the attention of inspectors;

(C) Notification to employees, or their representatives, of decisions that no violations are found as a result of complaints by such employees or their representatives, and informal review of such decisions;

(D) A means of informing employees of their protections and obligations under the Act;

(E) Protection for employees against discharge of discrimination because of the exercise of rights under the Act;

(F) Employee access to information on their exposure to toxic materials or harmful physical agents and prompt notification to employees when they have been or are being exposed to such materials or agents at concentrations or levels above those specified by the applicable standards;

(G) Procedures for the prompt restraint or elimination of imminent danger situations;

(H) A means of promptly notifying employers and employees when an alleged violation has occurred, including the proposed abatement requirements;

(I) A means of establishing timetables for the correction of violations;

(J) A program for encouraging voluntary compliance; and

(K) Such other additional enforcement provisions under State law as may have been included in the State plan.

(3) In accordance with §1902.3(b)(3), the State agency or agencies designated to administer the plan throughout the State must retain overall responsibility for the entire plan. Political subdivisions may have the responsibility and authority for the development and enforcement of standards: *Provided*, that the designated State agency or agencies have adequate authority by statute, regulation, or agreement to insure that the commitments of the State under the plan will be fulfilled.

(e) *Additional indices.* Upon his own motion or after consideration of data, views and arguments received in any proceeding held under subpart C of this part, the Assistant Secretary may prescribe additional indices for any State plan which shall be in furtherance of the purpose of this part, as expressed in §1902.1.

[36 FR 20751, Oct. 29, 1971, as amended at 80 FR 49901, Aug. 18, 2015; 81 FR 43452, July 1, 2016]

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ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of March 14, 2017[Title 29](#) → [Subtitle B](#) → [Chapter XVII](#) → [Part 1926](#) → [Subpart M](#) → §1926.501

Title 29: Labor

[PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION](#)[Subpart M—Fall Protection](#)**§1926.501 Duty to have fall protection.**

(a) *General.* (1) This section sets forth requirements for employers to provide fall protection systems. All fall protection required by this section shall conform to the criteria set forth in §1926.502 of this subpart.

(2) The employer shall determine if the walking/working surfaces on which its employees are to work have the strength and structural integrity to support employees safely. Employees shall be allowed to work on those surfaces only when the surfaces have the requisite strength and structural integrity.

(b)(1) *Unprotected sides and edges.* Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.

(2) *Leading edges.* (i) Each employee who is constructing a leading edge 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, or personal fall arrest systems. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of §1926.502.

NOTE: There is a presumption that it is feasible and will not create a greater hazard to implement at least one of the above-listed fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with §1926.502(k) for a particular workplace situation, in lieu of implementing any of those systems.

(ii) Each employee on a walking/working surface 6 feet (1.8 m) or more above a lower level where leading edges are under construction, but who is not engaged in the leading edge work, shall be protected from falling by a guardrail system, safety net system, or personal fall arrest system. If a guardrail system is chosen to provide the fall protection, and a controlled access zone has already been established for leading edge work, the control line may be used in lieu of a guardrail along the edge that parallels the leading edge.

(3) *Hoist areas.* Each employee in a hoist area shall be protected from falling 6 feet (1.8 m) or more to lower levels by guardrail systems or personal fall arrest systems. If guardrail systems, [or chain, gate, or guardrail] or portions thereof, are removed to facilitate the hoisting operation (e.g., during landing of materials), and an employee must lean through the access opening or out over the edge of the access opening (to receive or guide equipment and materials, for example), that employee shall be protected from fall hazards by a personal fall arrest system.

(4) *Holes.* (i) Each employee on walking/working surfaces shall be protected from falling through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by personal fall arrest systems, covers, or guardrail systems erected around such holes.

(ii) Each employee on a walking/working surface shall be protected from tripping in or stepping into or through holes (including skylights) by covers.

(iii) Each employee on a walking/working surface shall be protected from objects falling through holes (including skylights) by covers.

(5) *Formwork and reinforcing steel.* Each employee on the face of formwork or reinforcing steel shall be protected from falling 6 feet (1.8 m) or more to lower levels by personal fall arrest systems, safety net systems, or positioning device systems.

(6) *Ramps, runways, and other walkways.* Each employee on ramps, runways, and other walkways shall be protected from falling 6 feet (1.8 m) or more to lower levels by guardrail systems.

(7) *Excavations.* (i) Each employee at the edge of an excavation 6 feet (1.8 m) or more in depth shall be protected from falling by guardrail systems, fences, or barricades when the excavations are not readily seen because of plant growth or other visual barrier;

(ii) Each employee at the edge of a well, pit, shaft, and similar excavation 6 feet (1.8 m) or more in depth shall be protected from falling by guardrail systems, fences, barricades, or covers.

(8) *Dangerous equipment.* (i) Each employee less than 6 feet (1.8 m) above dangerous equipment shall be protected from falling into or onto the dangerous equipment by guardrail systems or by equipment guards.

(ii) Each employee 6 feet (1.8 m) or more above dangerous equipment shall be protected from fall hazards by guardrail systems, personal fall arrest systems, or safety net systems.

(9) *Overhand bricklaying and related work.* (i) Except as otherwise provided in paragraph (b) of this section, each employee performing overhand bricklaying and related work 6 feet (1.8 m) or more above lower levels, shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or shall work in a controlled access zone.

(ii) Each employee reaching more than 10 inches (25 cm) below the level of the walking/working surface on which they are working, shall be protected from falling by a guardrail system, safety net system, or personal fall arrest system.

NOTE: Bricklaying operations performed on scaffolds are regulated by subpart L—Scaffolds of this part.

(10) *Roofing work on Low-slope roofs.* Except as otherwise provided in paragraph (b) of this section, each employee engaged in roofing activities on low-slope roofs, with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system. Or, on roofs 50-feet (15.25 m) or less in width (see appendix A to subpart M of this part), the use of a safety monitoring system alone [i.e. without the warning line system] is permitted.

(11) *Steep roofs.* Each employee on a steep roof with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems with toeboards, safety net systems, or personal fall arrest systems.

(12) *Precast concrete erection.* Each employee engaged in the erection of precast concrete members (including, but not limited to the erection of wall panels, columns, beams, and floor and roof “tees”) and related operations such as grouting of precast concrete members, who is 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, or personal fall arrest systems, unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of §1926.502.

NOTE: There is a presumption that it is feasible and will not create a greater hazard to implement at least one of the above-listed fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with §1926.502(k) for a particular workplace situation, in lieu of implementing any of those systems.

(13) *Residential construction.* Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of §1926.502.

NOTE: There is a presumption that it is feasible and will not create a greater hazard to implement at least one of the above-listed fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with §1926.502(k) for a particular workplace situation, in lieu of implementing any of those systems.

(14) *Wall openings.* Each employee working on, at, above, or near wall openings (including those with chutes attached) where the outside bottom edge of the wall opening is 6 feet (1.8 m) or more above lower levels and the inside bottom edge of the wall opening is less than 39 inches (1.0 m) above the walking/working surface, shall be protected from falling by the use of a guardrail system, a safety net system, or a personal fall arrest system.

(15) *Walking/working surfaces not otherwise addressed.* Except as provided in §1926.500(a)(2) or in §1926.501 (b)(1) through (b)(14), each employee on a walking/working surface 6 feet (1.8 m) or more above lower levels shall be protected from falling by a guardrail system, safety net system, or personal fall arrest system.

(c) *Protection from falling objects.* When an employee is exposed to falling objects, the employer shall have each employee wear a hard hat and shall implement one of the following measures:

(1) Erect toeboards, screens, or guardrail systems to prevent objects from falling from higher levels; or,

(2) Erect a canopy structure and keep potential fall objects far enough from the edge of the higher level so that those objects would not go over the edge if they were accidentally displaced; or,

(3) Barricade the area to which objects could fall, prohibit employees from entering the barricaded area, and keep objects that may fall far enough away from the edge of a higher level so that those objects would not go over the edge if they were accidentally displaced.

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DESCRIPTION OF FISCAL EFFECT

BDR/Bill/Amendment Number: BDR 53-706

Name of Agency: Business and Industry

Division/Department: Industrial Relations

Date: 3/16/2017

A loss of \$325,220 in Federal grant dollars is anticipated as a result of passage of BDR 53-706.

DIR Grant Funding SFY2017

Budget Account	BLS SOII/CFOI Grant	OSHA 23G Grant	OSHA 21D Grant	MSHA Grant	TOTAL
BA-4680	\$ -	\$ -	\$ -	\$ -	\$ -
BA-4682	\$ 69,800	\$ 1,244,750	\$ -	\$ -	\$ 1,314,550
BA-4685	\$ -	\$ 217,695	\$ 693,137	\$ -	\$ 910,832
BA-4686	\$ -	\$ -	\$ -	\$ 235,157	\$ 235,157
Total	\$ 69,800	\$ 1,462,445	\$ 693,137	\$ 235,157	\$ 2,460,539

SFY2015 OSHA Construction Inspections

Office Performing Inspections	Construction Inspections	Total Inspections	CONSTRUCTION INSPECTIONS (%)
Henderson	170	680	25.00%
Reno	82	335	24.48%
Total/Avg	252	1,015	24.74%

Impact on Grant Funding to Budget Account 4682 Assumes a Proportional (24.74%) Reduction

BA-4682 Grant Funding	SFY2017 Level of Funding	25% Reduction (Construction Eliminated)	Remaining (Construction Eliminated)
BLS SOII/CFOI	\$ 69,800	\$ (17,269)	\$ 52,531
OSHA 23G	\$ 1,244,750	\$ (307,951)	\$ 936,799
Total	\$ 1,314,550	\$ (325,220)	\$ 494,665