

STATE OF NEVADA



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INDUSTRIAL RELATIONS

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DIVISION OF INDUSTRIAL RELATIONS ADVISORY COUNCIL  
Minutes of the Meeting, Tuesday, January 12, 2016

**1. Call to Order and Roll Call**

At 9:04 a.m., January 12, 2016, the meeting of the Advisory Council for the Division of Industrial Relations (DIR) via videoconference between the Henderson DIR office and the Carson City DIR office was called to order by Chairman Gary Milliken. Council members present at the Henderson Office were Chairman Gary Milliken and Warren Hardy. Council members present at the Carson City office were Joseph Riney, Ian Langtry, and Paul McKenzie. Debra Berko had previously notified council secretary she would not be attending due to a conflict in her schedule. Council Member Thomas White also had a last minute conflict. It was determined a quorum was present.

DIR staff present in the Henderson Office were Deputy Administrator Jan Rosenberg, Senior Counsel Donald Smith, SCATS CAO Todd Schultz, OSHA CAO Jess Lankford, and WCS CAO Charles Verre, as well as Jennifer Gaynor representing National Elevator Industry Inc. DIR staff present in the Carson City office were Administrator Steve George, Executive Assistant Donna Greenhut, MSATS CAO Jeff Bixler, and MCS CAO Randy Jewett, as well as Lea Cartwright (JK Belz Associates), and Don Jayne (Jayne & Associates for the Nevada Self Insurers Assn.).

**2. Public Comment on items to which action may be taken**

There was no public comment at this time.

**3. Approval of Minutes of Previous Meeting – June 30, 2015.** Warren Hardy motioned to approve the minutes of the previous meeting, seconded by Paul McKenzie. Motion was approved unanimously.

**4. Administrator's Report and Related Matters**

DIR Administrator George asked Deputy Administrator Jan Rosenberg to discuss the new formalized cooperative agreement between the Institute for Safety and Health Management (ISHM) and SCATS. ISHM conducts certification training for safety and health professionals comprised of 3 programs: Safety and Health Manager, Associate Safety and Health Manager, and CSMP. Certification is obtained by incorporating the 12-14 class program from SCATS as lever toward certification with ISHM to complete the practitioner's certification program. Nevada is the only state OSHA program in the US that has this program.

Mr. Rosenberg discussed the recruitment of DIR's new IT Professional, Dave Tackitt. The skillset that was desired was not network-related, but rather geared toward programming. The new software program for Workers Comp will require customization. Dave's background closely matches our needs. Dave has over 31 years of programming experience, including 16 with NDOT. He is Microsoft certified and Sequel Systems certified.

Mr. Rosenberg was recognized by Administrator George for his resourcefulness and assistance to himself and the entire division.

Mr. George suggested that that new Council members introduce themselves. Joseph Riney is the Director of Workforce Engagement for the Nevada Mining Association. He works in HR, safety, and education. Also new to the Council is Ian Langtry, Health and Safety Manager for Tesla Motors, who recently moved back to Nevada after spending 13 years in Alaska.

Administrator George acknowledged former DIR Administrator Don Jayne's presence at the meeting.

Administrator George reported to the Council that membership in the DIR Advisory Council and OSHA Board are full, with only one seat open on the Subsequent Injury Board to be filled.

Administrator George discussed the DIR Organizations Chart, noting that most Sections are fully employed. He noted that the Mechanical Compliance Section has a more difficult time filling positions due to the specialized fields: escalators and boilers.

**Year in Review:** Administrator George highlighted a few of the accomplished listed on the 2015 Year in Review document provided in the meeting binders, including that desk manuals for each classified position have now been created so that new employees have a how-to guide to assist them in their transition. Past LCB Audit reports were reviewed by management to ensure we remain in compliance with past requirements.

**Management Retreat:** A two-day retreat was held in September, which included not only CAOs, but top leadership positions within DIR, as well as guest appearances by HR representatives. Administrator George plans to have retreats as an annual activity.

**DIR Website:** Our website is in the final stages of being redesigned to the current state format. Should be accomplished within the next several months.

**DIR Top Priorities:** This document is reviewed and updated at biweekly CAO/Management meetings to ensure we are on track to meet deadlines, goals, and priorities.

**Outreach Education:** DIR is making a commitment in 2016 to improve outreach communication to better educate the regulated community about our services and ability to assist them in creating a safe workplace.

**Henderson office relocation:** B&I's 13 divisions will be consolidated into a new building in Southern Nevada over the next few years. However, DIR's Henderson office will not be moving at this point. An RFP to construct or redesign a building to suit B&I will soon be released.

Administrator George asked if there were any questions. Chairman Milliken asked if Council members could be informed prior to the upcoming 2017 Legislative Session about possible BDRs, funding requests, etc.

- 5. Legal Section Report – Senior Attorney Don Smith reviewed the adoption process on the new regulations for the Mechanical Compliance Section, as well as two recent (January 8, 2016) hearings to adopt the updated workers' compensation Medical Fee Schedule, which must be adopted by February 1, and SB 232, which changes the potential lump sum permanent disability payments from 25% to 30%**

The hearing on OSHA regulation R71-15 will be held on January 20, 2016. This is to align OSHA with legislation passed during the 2015 Session to remove OSHA 10- & 30-hour course renewal requirements.

Workers Comp Series R-130 entails a small cleanup of regulations, R-132 subsequent injury for private carriers, and R-136 to bring regulations in compliance with Supreme Court decision in Pact vs. Blake. The final hearing on these regs is scheduled for February 18, 2016.

Administrator George praised Mr. Smith for working diligently to ensure our OSHA Whistleblower cases were brought up to speed and for his work on the Elevator regs.

Chairman Milliken asked for any questions. No questions were asked.

- 6. Mechanical Compliance Section Report – CAO Randy Jewett reported on R077-14 (elevators), which was adopted January 16, 2015, and went into effect July 1, 2015.**

Ongoing meetings with Authorized Inspection Agencies (AIA's) and the elevator companies to coordinate implementing new regulations and requirements for conducting inspections in Nevada are being conducted. Administrator George stated that direction from the Governor's office was to transfer some of the duties originally performed by MCS inspectors to private sector third party inspectors, with oversight from MCS. Randy Jewett reported that MCS will continue to perform inspections for new construction and upgrades, while the AIA's will perform CAT 1, CAT 5, and periodic inspections. Mr. Jewett reported there are only six AIA's currently certified to perform inspection in Nevada with more being recruited. Member McKenzie asked if the AIA companies are existing elevator contractors and/or new companies, and if they are local. Mr. McKenzie stated he'd also like to see a list of AIA's, which Randy Jewett provided. Administrator George responded that some of the companies are national or international companies.

Mr. Jewett reported on the number of objects (elevators, escalators, and boilers) being inspected statewide. Chairman Milliken asked how outstanding Notices of Violations are handled; what is our process? Mr. Jewett responded that a list was compiled of units that are delinquent up to December 31, 2014, and that list was shared with AIA's with the instruction that inspections to be conducted on the listed units will be performed by the state, unless the AIA's notify the state that the AIA has been hired to do so. Any units to be inspected listed after January 1, 2015, should be picked up and conducted by the AIA's. Owners have been notified

that the state inspectors will perform inspections for delinquent businesses to bring them up to date. After that time, the owners need to sign on with an AIA to conduct inspections.

Mr. Jewett continued to the topic of adjusting boiler fees, which were adopted in 2008 and have not had a fee adjustment since that time. A survey of surrounding states will be conducted to establish a fee schedule to raise boiler fees. Stakeholder meetings will be held along with presentations and coordination with our Legal Section.

Member Hardy noted that Boyd Gaming and NV Energy and Brian Pageant appeared on the write-off schedule for Mechanical and asked what the circumstances were that would lead us to write that off? Mr. Jewett responded that only the \$50 collection fee was not paid, but original amount had been paid.

Member Riney asked about the changes in the collection procedures. Administrator George responded that the new regulations would be discussed on Item #11. Mr. Jewett added that at our last meeting, a recommendation from the Council that the collection letter include verbiage that includes "non-renewal of business license could occur" be added has been completed. Administrator George commended CAO Jewett for greatly enhancing communication with the regulated community and for working to improve the Section's overall ability to work more closely with the private sector.

Chairman Milliken asked if there were any questions for Mechanical. No additional questions were asked.

7. **Mine Safety and Training Section** – CAO Jeff Bixler reported that MSAT's emphasis is on ensuring the safety and health of Nevada's miners. Mining is currently 100% staffed, with one retirement pending.

Mr. Bixler stated that MSATS is currently conducting training for a number of new inspectors. He said they often have problems hiring new inspectors due to wage competition with the private sector. Administrator George explained that all new employees begin at a Step 1 on the salary scale, which does not take into account a candidate's experience and expertise. He said hopefully this will change in the future so we will be able to attract more candidates.

Mr. Bixler discussed the increased number of inspections in 2015 and into 2016. Focus is on identifying mining hazards and assisting companies to correct violations and hazards to improve working conditions. Mr. Bixler discussed activity in technical assistance and training. On average, the MSATS trains approximately 1,800 miners annually. Thirteen training classes have already been scheduled for January, so training will most likely exceed last years' numbers.

Mr. Bixler informed the Council that MSATS is continuing to train U.S. Marines on a program that prepares Marines for caves in Afghanistan and the Middle East. The program reviews safety for explosives, sealing caves, etc. Recently a written curriculum was approved by the Pentagon as an official program, and the Army and Navy Seals and Air Force are also looking at program. Mr. Hardy asked if we are compensated for this training, or are we performing this as "good Americans?" Mr. Bixler responded that we provide this training as "good Americans." Mr. Hardy continued that it is something worthwhile to let the public know, and is certainly notable, and members of the Legislature should be aware of. Mr. Bixler thanked member Hardy.

Mr. Bixler discussed federal grant money from MSHA for training, and the ongoing fight each year by that agency to have the grant money removed. This year, the take-away was vetoed by Congress, but is expected to again be a topic next year.

Mr. Bixler reported on fatalities – August 2015, a vehicle accident resulted in a fatal injury. Additionally, a vehicle accident fatality that occurred in Winnemucca claimed one life. Member Hardy stated there were four fatalities in 2015, and wanted to know if that is a high number. Mr. Bixler stated it is a high number, the average is 2 or 3.

Member Riney added that federal inspectors have a mandatory standard to fine companies for violations or hazards, they must cite them, as compared to the State of Nevada inspectors. Mr. Riney added that the state is more helpful in assisting companies to rectify hazards or find resolutions, and that MSATS industrial hygienists are very helpful in this area.

Member Riney gave a brief industry-wide overview, adding that the mining industry is experiencing dropping prices and shifting owners. Gold prices are up thanks to China, and lithium is doing well.

Administrator George complimented CAO Bixler for his Section's outstanding work with the regulated community.

Member Milliken asked if there were any questions for Mining. No further questions were asked.

8. **Nevada OSHA Section** – CAO Jess Lankford reported the meeting binder contains two quarters for OSHA, including federal updates. The first tab is for the last quarter of the previous year. As of January 1, 2015, the federal reporting requirements process has changed. Nevada is drafting legislation to bring reporting requirements for the state to the equivalency of federal levels, as required. These were not introduced in the past legislative session, but will be presented next session.

We have a new Federal Regional Administrator replacing Ken Aþa; the new Administrator is Barbara Goto.

Mr. Lankford informed the Council that although the fed OSHA program is advertising through a media publication and other avenues that criminal prosecution for willful violations will begin at the fed level, there has been no talk of such criminal prosecution for willful violations within the State of Nevada.

Mr. Lankford reported on fatalities between 7.1.2015 - 9.30.2015 – Three that fell under OSHA's jurisdiction. So far, in Calendar Year 2016- eight accidents have occurred, three that required an inspection. Numbers are lower than average.

Statistical data for OSHA reported by Mr. Lankford is supported by documentation in meeting binder.

Administrator George added that CAO Lankford has done a terrific job increasing communication with the private sector, and has worked to create a more uniform performance

approach in the north and the south. Mr. George stated OSHA has made great strides under Mr. Lankford's leadership.

Chairman Milliken asked if there were any questions for Mr. Lankford. No questions were asked.

- 9. Safety Consultation and Training Section** - CAO Todd Schultz opened his report with a summary of how SCATS helps small businesses (less than 250 employees) that cannot afford to hire safety professionals. Objective is to prevent serious injuries to Nevada employees. Technical assistance consultations are available and confidential. SCATS uses OSHA standards to provide guidelines on how to keep employees safe.

The SCATS Library has been converting its lending library from VHS tapes to DVD's, and they are approximately 45% complete. These training videos are cost prohibitive for small employers to purchase, so employers that do not have funds for these items may borrow them from SCATS.

Mr. Schultz reported on the SHARP program, which allows the state to partner with small businesses to create and implement safety and health programs that are effective and successful. There are currently 45 SHARP facilities statewide, and the program continues to grow. Safe Partner Awards are awarded annually to 4 selected companies.

Multimedia e-blasts, tip-of-the-month, and website analytic tracking is completed to see how we are reaching the public. Website visits are up 22% this year.

SCATS received funds from a one-time federal funding program to update and reproduce the safety and health booklet for employers.

Administrator George recognized CAO Schultz for the outreach and education programs that have been developed and are ongoing to assist businesses throughout the state. Mr. George stated that the SHARP program is one of the best programs in the state.

Chairman Milliken asked if there were any questions for SCATS. No questions were asked.

- 10. Workers Compensation Section** - CAO Chuck Verre discussed the new computer system that is scheduled for installation as a result of \$2.5 million funding from the Legislature. WCS is currently using VERSA in conjunction with Mechanical Section and OSHA. VERSA was not designed as a tool for workers' compensation programs and is not very functional. The new system is being built by *CapTech*, which specializes in workers' comp systems. The new system is being designed to be better able to serve the regulatory community by providing reports. Chairman Milliken asked if the transfer of info from the old to the new system is anticipated to be problematic, how big problems may be, and how problems will be handled. CAO Verre responded that *CapTech* hasn't examined the data at this point, but they anticipate the usual level of difficulty, as with any migration. *CapTech* plans to clean all the data before migration begins.

CAO Verre also discussed the highly successful annual WCS Educational Conference, which continues to grow and gain support from the regulated community.

- 11. Write-off Recommendations** - CAO Chuck Verre introduced the write-offs for WCS and introduced the type of write-offs presented by WCS. Mr. Verre added that in 2015, \$914,575.48 was collected. Chairman Milliken asked if there were any questions. No questions were asked.

Member Hardy commented that he appreciates the efforts and adjustments that have been made to make the process more transparent, and that DIR Sections do what we can at our level to collect the debts. He stated he appreciates the efforts of everyone to be responsive to the concerns of the Advisory Board. Member McKenzie thanked member Hardy for "flying his flag" of the uncollected debts, and stated he appreciates staff's work in addressing the uncollected debts, hopes that the Controller's office will use what is in their power to move forward and make sure that repeat offenders that are still in business pay their debt to the state. Mr. McKenzie said some of the businesses listed are still in business, and that he hopes these businesses are now providing workers' comp insurance for their workers. Mr. McKenzie added when he joined the board the amount of debt being excused was nearly \$5 million, so there has been quite an improvement. Chairman Milliken thanked Mr. McKenzie for his comments and asked for further questions. No further questions were asked.

Senior Attorney Smith gave a brief overview of AB14. Section 1 states, "The Administrator of DIR must present uncollected debts to the Board of Examiners on or before January 15<sup>th</sup> of each year." Section 2 requires DIR Advisory Council to request the State BOE to designate the referred delinquent debts as bad debts. State BOE then makes the designation as to whether or not they are bad debts. Section 3 requires the State BOE to then notify the State Controller to remove the debts from the books of the State of Nevada. This does not affect the validity of the debt or the obligation itself, it just removes it from the books as an accounting matter. Section 4 requires the State Controller to keep a master file of all debts designated as bad debts owed to the State of Nevada. NRS. 353C.1965, effective January 1, 2014, requires State Controller to maintain a list of persons who owe a debt to the state matching up language with AB 14. State agencies (licensing agencies) are now required to forward lists of licenses to the State Controller. The State Controller determines whether or not the licensee owes a debt to the state. If so, the Controller sends a letter to the licensee to notify them to pay the debts. If business owner does not respond and/or pay, the Controller's office sends notification to the state agency to inform them to not renew that particular business's license. Member McKenzie asked Mr. Smith if the debt is still a debt once it goes to the Controller's office. Mr. Smith responded that the write-off is an accounting function; therefore, the debt is still valid and owed to the state. Member Hardy asked if once turned over to state, if the debt is collected, does the money go to the state general fund or to the originating agency. Mr. Smith responded he will research this and provide an answer. Administrator George added a response will be forthcoming. Chairman Milliken asked for further questions. No further questions were asked.

Chairman Milliken called for a motion to approve the recommended write-offs. Mr. Hardy motioned to approve Item #11, which was seconded by Mr. McKenzie. The motion was approved unanimously.

- 12. Agenda items for next meeting** - Chairman Milliken asked for agenda items for next meeting. Administrator George asked if the members would prefer one or two meetings each fiscal year. Chairman Milliken stated he'd like two meetings per year. Member Hardy suggested a meeting in the fall. Administrator George reminded the Council that BDR's and budget submittals are due in April, and are finalized in September. Mr. Hardy recommended August as the next

meeting. Administrator George added that the next meetings will be in August and another in January 2017. Meeting notices will follow.

**13. Public Comment** - Chairman Milliken called for public comment. No public comment.

**14. Adjournment**

The Chairman called for a motion to adjourn. Mr. McKenzie motioned to adjourn and Mr. Hardy seconded the motion. Approved unanimously.

**15. The meeting was adjourned at 10:45 a.m.**