

**DIVISION OF INDUSTRIAL RELATIONS ADVISORY COUNCIL**  
**Minutes of the Meeting, Wednesday, April 07, 2021**

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

At 10:00 a.m. April 07, 2021, the meeting of the Advisory Council for the Division of Industrial Relations (DIR) via WebEx was called to order by Paul McKenzie.

Council members present at the WebEx meeting were Ian Langtry, Raymond McAllister, Paul McKenzie, William Spiegel, and William Stanley. It was determined a quorum was present. DIR staff present at the WebEx meeting were Victoria Carreon, Perry Faigin, Jess Lankford, Jeff Bixler, Chuck Verre, Brennan Paterson, Todd Schultz, Donald C. Smith, David Tackitt, Tristan Dressler and Amanda Guimont.

Other's present were Natasha Gebrael (Deputy Attorney General), Emily Cervi, Haydee Meeker, Alan Vance, Jennifer Atlas, Kerrie Dalton, Lisa Figueroa, Lori Hoover, Jeanette Belz, Matthew Quintero and Michelle Briggs.

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

No items for public comment were raised.

**3. Approval of Minutes of Previous Meeting** – January 06 ,2021. Bill Stanley made a motion to approve the minutes of the January 06, 2021 meeting as presented. Raymond McAllister seconded the motion. The motion was approved unanimously.

**4. Review current outstanding debit.**

Victoria Carreon provided information from a handout that was provided of businesses with debt owed to the Uninsured Employers Claim Account (UECA) and how old the debt is. Fiscal staff has been working on a spreadsheet which shows that \$20.5 million is outstanding, and of that \$7.3 million is over five years old. Victoria stated that the State Controller's office has not seen the list. In a future meeting DIR will present recommendations for write offs. Victoria explained that there is other debt from Workers' Compensation Penalties, Administrative fines, OSHA, and Mechanical Compliance Section. These will be far less than the UECA debt. Some companies will have debt from several years because these are workers' compensation claims where there are ongoing medical benefits, maybe ongoing survival benefits, ongoing disability benefits, and interest that accrue over time.

Bill Spiegel expressed his concerns on how a company or entity like the Gladiators that have not been in Las Vegas for more than a decade has debt from the last two years. Emily Cervi from Fiscal stated that when doing audit of the amount owed by these companies, interest was not being applied to the accounts. In performing the interest clean up, the system did not allow them to enter past debt further back than 07/01/2019. It is dated 2019, but the actual interest is from many years back.

Bill Stanley stated that Carriage House Time share is still an existing property in Southern Nevada. Is there not the ability to put a lien on a property in these cases? Don Smith stated that

he is not specifically aware of the facts on Carriage House, but he suspects the time for bringing any action and obtaining a judgement is long gone under the statute of limitations, in which case you have nothing you can enforce and a lien is not feasible. Victoria Carreon offered that now that there is a new debt collection process in place, we are going to be reviewing the ones that are current where we do have that opportunity to put a judgement in place now that we have an agreement with the controller's office.

#### **5. Discussion of possible changes to NRS 353C.1965**

Don Smith reviewed NRS 353C.1965 and a proposed fix that he drafted based on the previous DIR Advisory Council Meeting. Lori Hoover stated that the Controller's Office agrees that the potential changes would work. She has also spoken with the Secretary of State's office, and they support it as well. Paul McKenzie agreed that Don's proposal addresses the hole in the statute allowing businesses to continue to operate even though they have significant debt with the state. The Council discussed that it is too late to ask for a Bill Draft Request to make this change unless it is introduced as a fiscal bill. A review of pending legislation indicated that there are no bills pending that amend this specific chapter so it would be difficult to insert this provision into an existing bill.

#### **6. Legislation Update (Don Smith)**

b) SB55 will shift PEO licensing to the Labor Commissioner.

a) SB5 deals with Telehealth. It was amended and passed through a work session yesterday. DHHS added a fiscal note that it would cost \$35 million for the first biennium.

f) SB266 proposed by the Nevada Self Insured Association was put on hold because of amendments that were made to SB289.

g) SB289 was a bill from the Nevada Justice Association. Section 7 forces PPD installment payments if the claimant does not make an election. Changes occur in 616C.495 which deals with PPD lump sum acceptance. Section 9 has been revised and amended so that rehab counselors that are proposed from insurers must all come from different companies. Section 10 allows for facsimile or electronic transmission of determinations. A new section is added out of 266 which was the Nevada self-insured bill. It would allow Physicians Assistants and Advance Practice Registered Nurses to sign C-4s and allows for electronic signatures. 616C.095 and 616C.098 will make sure physician's assistants and advance practice register nurses are aware of their duty and responsibility to advise claimants of what their rights and duties are.

h) SB295 proposes that an insurer may not terminate, suspend, withhold, offset, reduce or otherwise, halt, restrict, or limit permanent total disability benefits for lung disease, heart conditions, and hepatitis for policemen, firemen and arson investigators.

c) SB122 proposes that the Cannabis Industry will be subject to the OSHA 10/30 training requirement for general industry. The amendment revised the penalty provision to typical OSHA penalties. Required training is to occur in the first year with no renewal requirements.

e) AB246 as amended on March 31, 2021 requires employers and contractors to notify employees if they have been exposed to COVID-19. There must be a written notification, email, or text.

d) SB205 is sponsored by Senator Denis. The bill deals with the regulation of boilers but exempts a broader range of boilers than MCS is comfortable with. The bill exempts any water heater under 200,000 BTUs. The MCS already exempts traditional tanked water heaters. This bill adds all water heaters to this exemption. The concern is that properties are replacing a traditional

large boiler with a rack system that has 5-10 tankless water heaters working together. These systems can be very efficient; however, they can have the same safety concerns as a larger water heater. If these are not regulated, they will not be inspected on a regular basis, and will not require the emergency gas shut-off valve required on larger devices.

MSATS regulation RO33-20 was adopted January 19, 2021.

OSHA regulation RO48-20 was adopted January 19, 2021.

OSHA regulation RO-5320 adoption hearing May 6, 2021.

RO44-20 had a workshop on March 4, 2021.

RO69-20 has a workshop scheduled for April 20, 2021.

R134-20 submitted July 2020, but awaiting language back from LCB.

**7. Discussion of employee misclassification issues that could affect the Division of Industrial Relations identified in Payroll Fraud in Nevada's Construction Industry: Extent and fiscal Impact:**

Mr. Stanley discussed the study from the Unified Construction Industry Council. The study estimates the number of misclassified workers by comparing the number of construction workers reported through surveys by the Bureau of Labor Statics to the number of construction employees reported by their employers on W2s. Illegal labor practices likely reduce the labor cost of contractors by over \$90 million dollars annually starting in 2018. This creates a \$31.1 million shortfall in the state workers' compensation fund and an \$11.8 million loss in Nevada's Unemployment Insurance Program. AB227 introduced through Assemblywoman Maggie Carlton says that to be employed on a construction site, you must be an employee of the contractor or of another contractor.

**8. Review and comments on OSHA quarterly complaints report October – December 2020 (Jess Lankford)**

Jess Lankford discussed the quarterly written and oral complaints. He explained the procedure once a written or oral complaint is received and how follow up is conducted.

**9. OSHA and Mining standards for underground tunneling (Jess Lankford and Jeff Bixler)**

Jess Lankford discussed Federal Code of Regulations Chapter 29, Part 1926, Subpart S, which includes the construction standards for underground construction. It includes requirements for rescue teams on work sites. Jess Bixler from mining offered his help for the underground tunneling project. William Stanley voiced his concern for the workers' safety on the underground tunneling project and recommended OSHA and SCATS be involved during the process.

**10. Agenda items for next scheduled meeting.**

- a) Bill Stanley would like to agendize the underground tunneling project for the Encore, Convention Center, Resorts World and 28-mile loop on Las Vegas Blvd.
- b) Workers' Compensation Debt and the process to collect
- c) Changes to NRS 353C
- b) Certification and requirements of Elevator Constructors, Mechanics, Apprentices, and helpers.

**11. General Public Comment on any item not included on the January 6, 2021 agenda.**

No comment.

**12. Adjournment**

The DIR Advisory Council adjourned at 12:01 PM.