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HOUSE DEMOCRATIC POLICY COMMITTEE

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

HOUSE DEMOCRATIC POLICY COMMITTEE ROUNDTABLE

Topic: House Bill 1082

**Teamsters Local #397 Hall – Erie, PA
March 20, 2018**

AGENDA

3:00 p.m. Welcome and Opening Remarks

3:10 p.m. Discussion with Panelists:

- Chad Trainer
Legislative Director
Pennsylvania AFL-CIO
- Dave Henderson
Director
AFSCME District Council 85
- John Renwick
President
Amalgamated Transit Union-Local 568
- Diane Stein
Labor Advocate
- Tiffany Schwab
Widow of Jake Schwab
- Jack Lee, Jr.,
Treasurer/Director of Land Development/Assistant Roadmaster
Summit Township Board of Supervisors

4:50 p.m. Closing Remarks

DEATH OF A MECHANIC IN ERIE

does anyone care?



By all accounts Jake Schwab was a great guy. A 27-year veteran mechanic working for the Erie Metropolitan Transit Authority (EMTA), many co-workers counted him among their friends.

Local President John Renwick, 568-Erie, PA, describes the former shop steward as a very active man who enjoyed life, and loved his motorcycle. He and his wife had just bought a new home, Renwick says, adding softly, "He was my friend. I went hunting with him."

"Number one – he was a friend, a friend to everybody, we love Jake," echoes Dispatcher Nathan Faback.

His co-workers thought so much of Jake that they memorialized him with red mechanics' towels tied around EMTA bus side mirrors after his death.

Before we go any further, with the details of this tragic accident, there is something important to note. Three weeks before, PennDot had released a report critical of the EMTA. It read in part:

"...no staff member is currently assigned the Safety & Security role as their primary function. This is a critical gap in EMTA's organizational structure."¹

PennDOT conducts performance reviews of all systems. These typically focus on ridership and revenue metrics, but they went out of their way to point out this safety problem.

Lack of safety culture

The lack of a safety culture – particularly in maintenance shops – is a dangerous, hidden problem plaguing many transit agencies.

Schwab was working on the suspension of a bus EMTA had contracted to maintain from another property. He was killed when the bus shifted, and the suspension's air bag blew up sending pieces of metal flying into the mechanic's face. He died later at a local hospital.

The tragedy was covered by the city's news media, which reported that EMTA was "tight lipped" about the incident. Renwick says management acted like it was just an unfortunate accident.

Amazingly the agency's insurance organization, the Pennsylvania Association for Transportation Insurance, a division of the state Department of Labor and Industry, is conducting the investigation. It's not yet known what the finding of their report will be. Not much else has been said, but it doesn't seem like an insurance organization has the workers' safety as its top priority.

State public workers not covered by OSHA



Incredibly, it's possible that no changes will take place as a result of this good man dying on the job. And that's because unlike the employees of any private enterprise, Pennsylvania's public workers are not subject to federal OSHA regulations.

There's no agency looking out for the safety of these transit workers; nowhere to turn when something goes wrong.

¹ PennDot "Final Erie Metropolitan Transit Authority (EMTA) Transit Performance Report" October 2014

And things do go wrong. Renwick has seen cuts, and broken arms that wouldn't have happened if some safety procedures had been followed.

However, the agency gets a break on their insurance because EMTA has a "safety committee" he says. But nothing much happens as a result of the committee's work.

EMTA is currently building a new facility, so, Renwick says, they're not putting any more money into their current workplace.

The air in the garage is fouled with exhaust because fans haven't worked there for a long time; doors that are supposed to remain shut are wired open, he says, adding, that oxygen tanks that are supposed to be in cages are bungee-corded to the wall.

No safety training

But, worst of all, Renwick says, is that there is no safety training. And this is a problem encountered by other ATU locals as well.

Renwick wants all this to change. "We have to form a group and talk to our politicians," he says. If nothing else, he believes they should have OSHA's regulations put in their contracts.

On February 8, ATU called an emergency meeting of all Pennsylvania Locals to take decisive action to address the safety concerns and fight to protect state public workers. ♦

Jake Schwab won't be home with his family for the holidays.

Find out why at missingjake.com



In 2014 Erie Metropolitan Transit Authority bus mechanic Jake Schwab died when a suspension air bag in a bus he was working on exploded in his face. There was no investigation into his death.

Jake was a Pennsylvania public employee and his transit authority is currently exempt from Occupational Safety and Health Administration (OSHA) safety standards. In fact, all Pennsylvania public employers, including the commonwealth, all legal political subdivisions, public schools, transit systems and any nonprofit organizations are currently exempt from the OSHA standards.

Our state should fulfill the promise OSHA made more than 40 years ago to provide all workers safe and healthful workplaces. Tell state legislators to pass the Jake Schwab Worker Safety Bill (HB 1082), which would give Pennsylvania public employees the same safe workplace as provided to private employees.

DON'T LET JAKE'S DEATH GO UNANSWERED

Find out more at www.missingjake.com

TESTIMONY

OF

RICK BLOOMINGDALE, PRESIDENT

THE PENNSYLVANIA AFL-CIO

ON

THE PUBLIC EMPLOYEES OCCUPATIONAL SAFETY AND

HEALTH ACT

BEFORE THE

HOUSE DEMOCRATIC POLICY COMMITTEE

MARCH 20, 2018

Richard W. Bloomingdale, President

Frank Snyder, Secretary-Treasurer

Pennsylvania AFL-CIO

600 North Second Street

Harrisburg, PA 17101

Good morning Chairman Sturla, and members of the House Democratic Policy Committee. My name is Rick Bloomingdale. I am the President of the Pennsylvania AFL-CIO, and I am here today on behalf of the affiliated labor organizations representing over 800,000 working women and men.

Thank you for the opportunity to present testimony regarding House Bill 1082, the Jake Schwab Worker's Safety Bill. It is a fundamental right of all employees to work in an environment that is safe.

In 1970, Congress enacted the Occupational Safety and Health Act to assure safe working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. Since the Occupational Safety and Health Administration's inception, dramatic improvement in workplace safety has transpired. Accurate statistics were not kept at the time of

the legislation's enactment, but the estimate is that, in 1970, approximately, 14,000 workers lost their lives on the job. In the meantime, even though U.S. employment has virtually doubled and now includes over 130 million workers at more than 7.2 million worksites, the results were encouraging. By 2009, the number of workers who were killed on the job that year *fell* to approximately 4,340. Over the same period of time, the rate of reported serious workplace injuries and illnesses has declined from 11 per 100 workers in 1972 to 3.6 per 100 workers in 2009.¹ Suffice it to say that OSHA safety and health standards have prevented countless work-related injuries, illnesses and deaths. It has been a success story.

The need to expand these protections is imperative. The Commonwealth and its political subdivisions employ over 500,000 workers. Many of these public employees perform jobs comparable to those performed by their private sector counterparts. The latter are protected by the Occupational Safety and Health Act of 1970 (Public Law 91-2596, 29 U.S.C. § 651 et seq.). But, under current federal law, OSHA provides protection for just these private sector employees, not those of the public sector. The upshot is that there are two standards for employee safety: one applicable to those who are employed in the private sector and one for those who are work for a public employer. This needs to change, and Representative Hawkins' bill does just that. It provides for safe workplace protections for the

state's public sector employees similar to those OSHA provides for private sector employees.

Under this legislation, the benefits accruing to the state employees may be obvious. That state employers stand to gain may not be as clear. It is constructive to understand the advantages of this bill to employers as well. Injuries, illnesses, and deaths in the workplace are costly in financial as well as in human terms. Employers lose countless hours of productivity to illness and injuries that a safe workplace could easily reduce. While this is the case in the private sector, it can easily be translated as applying to the public sector. The latest figures from the Bureau of Labor Statistics indicate that lost-time injuries are about twice as frequent for public employees as for private sector workers. That alone is a tremendous cost to the public employers and totally preventable.

Some years ago, the American Society of Safety Engineers' *Journal of Safety, Health and Environmental Research* published an extensive study, "A Data-Based Evaluation of the Relationship Between Occupational Safety and Operating Performance." The study's conclusions were that "good safety is good business. Safety and operating performance measures should be viewed as in concert with each rather than as competing entities."²

House Bill 1082 requires the state and its political subdivisions to provide the same type of protection for the employees of its public sector as the federal

government requires for Pennsylvania's private sector employees. The Commonwealth ought to promote this plan for the development and enforcement of occupational safety and health standards with respect to public employers and employees, in accordance with section 18(b) of the Occupational Safety and Health Act of 1970, and the Secretary of Labor and Industry ought to be empowered to promulgate regulations in order to administer and enforce this act. The Pennsylvania AFL-CIO strongly supports Representative Harkins' House Bill 1082.

I thank you for this opportunity to appear before you.

¹ <https://www.osha.gov/osha40/timeline.html>

² "A Data-Based Evaluation of the Relationship Between Occupational Safety and Operating Performance" by Anthony Veltri, Mark Pagell, Michael Behm, and Ajay Das. Journal of SH&E Research Vol.4, No. 1 (Spring 2007). Results of study of 19 manufacturing firms supports theory that good safety performance is related to good operating performance.

David Henderson – March 20, 2018 – Erie, PA

Good afternoon and thank you for providing me the opportunity to speak about this very important and long overdue topic. I am David Henderson, the Director of AFSCME District Council 85 located here in Northwest PA. We represent 9,000 women and men spreading over 16 counties, including nearly 2,000 in the Erie area.

I bring greetings from David Fillman, Executive Director of AFSCME Council 13 and the 65,000 members we represent across the Commonwealth.

The folks we represent do a variety of jobs in the state, county, municipalities, boroughs and schools. Every day, these workers go to work to provide the services we have come to count on. And they do so in some of the most dangerous jobs within the Commonwealth. It is their expectation, and that of their families, that they will return home from work, alive and healthy.

Today, I am here to speak about HB 1082 and the need for our elected officials to act and vote for passage of HB 1082. These workers that I have spoken of are not afforded the same safety standards as their peers in the private sector. There is no public sector OSHA in Pennsylvania, and that's wrong.

We know the statistics:

- From the Bureau of Labor Statistics, lost time injuries are about twice as frequent for public sector employees as that of private sector employees**
- Lost time alone is a tremendous cost to public employers**
- It is preventable**
- OSHA was adopted in 1970**
- 26 states have adopted OSHA for public sector employers**

- **The US Department of Labor reports that these safety standards caused a reduction in workplace accidents, injuries and deaths**

The potential savings of millions of dollars in workers compensation costs, lost time on the job, sick leave and overtime costs are all worthy of consideration when discussing the merits of HB 1082. But more than that, it is the right thing to do! Safe workplaces for all workers should be a fundamental expectation of all employers, including public sector employers.

Public sector employees deserve the same kind of protections as their private sector counterparts or that of any worker. These folks make sure you are able to get to work safely during inclement weather (nearly 200 inches of snow this year in Erie!), they make sure your children arrive to and from school each day! They take care of your loved ones, take care of our most needy citizens, and provide safety and security within our communities! These are your neighbors, your friends, your relatives.....

Is there a cost associated, yes. However, if the Commonwealth and the other public sector entities are working to provide safe work environments, then that cost will be minimal. If one injury or one death can be avoided by implementing safer working conditions, would that not be worth the cost?

HB 1082 only increases workplace safety. Yes, those not following safety standards will now be forced to comply with OSHA regulations. As I stated, there will be a cost, more for some than others, but how do you put a cost on a person's life? On a person's ability to continue to work?

It is time to do the right thing! The time for talk is over! Public employees deserve to be treated with dignity and respect. They deserve the same type of protections in the workplace as granted to others. Every effort should be made to ensure a safe work environment for all employees!

AFSCME Council 13 and AFSCME District Council 85 support HB 1082. I thank Representative Harkins for introducing this bill and all those that have supported it.

I ask the committee and all of the House of Representatives to do the same – pass HB 1082 – provide regulations and standards for public employers that will work towards providing safe working conditions for public employees, allowing them to come home safe and healthy.

Thank you.

House Democratic Policy Committee
Erie Pennsylvania

March 20 2018

Remarks Regarding Pennsylvania HB1082

An Act providing for workplace health and safety standards for public employees

House Democratic Policy Committee

Submitted by: Diane Stein

Good afternoon. Thank you for the opportunity to speak today. My name is Diane Stein and I am listed on the agenda as “labor advocate”. Let me explain a little bit more about my background. I moved to Pennsylvania in late 2016. My job is with the United Steelworkers Tony Mazzocchi Center. I develop safety and health training for members of the United Steelworkers, the Communications Workers of America and several Worker Centers across the country.

The reason I am testifying here is that prior to moving to Pennsylvania I lived in New York State which has long had OSHA protections for its public sector workers. From 2008 until I moved here, I ran the safety and health program for a 20,000 member Teamsters local union that represented only public sector workers. It is the largest Teamsters local in the country. This gave me significant experience dealing with public sector safety and health issues in a state with OSHA coverage.

I’m here because workers who serve the public do not even have the protection President Richard Nixon guaranteed workers in the private sector. When OSHA was signed into law in 1970, providing protection to workers in public service was optional. It should not have been. Because of the decision to opt out of protecting public sector workers, thousands of people have been injured or killed in the past several decades from workplace incidents that were completely preventable.

Here in Pennsylvania, Jake Schwab is one of those people. And when he died, no one investigated the incident to learn from it and prevent it from happening in the future.

Because they were not required to do so, Jake's family, friends and co-workers have had to live with the knowledge that because Jake served the public, his death was dealt with differently than if he had worked in private industry. That cannot go unanswered. Jake's life mattered. I urge you to enact this legislation to honor his memory and correct a wrong that has been perpetrated since OSHA's enactment.

As I'm sure you know by now, the majority of public sector workers in the United States have OSHA protections provided by their states. Currently 26 states and Puerto Rico and the Virgin Islands have this coverage. And that number is increasing in the coming year since Massachusetts just passed legislation creating a public sector OSHA.

I would like to think that now that this gap in the law has been brought to light, passing a law to correct this would be easy. Sadly, that is not the case. Having read the transcript from the December 4th hearing of the House Labor and Industry Committee, I think the two burning questions regarding this bill are: 1) Can it work? And 2) Will it be too expensive?

The short answer to the question of whether it can work is yes. We know that by looking at two different types of data. First, there is clear data that shows that public sector workers suffer higher injury rates than private sector workers. In 2015 according to the Bureau of Labor Statistics the injury rate for private sector workers was 3.0 cases per 100 full time workers. In the same year state and local government workers experienced a rate of 5.0 cases per 100 full time workers.

Second, there is ample data that workplace injury rates in the US have decreased since OSHA was enacted in 1970.

According to Department of Labor data, worker deaths in America are down-on average, from about 38 worker deaths a day in 1970 to 14 a day in 2016.

Worker Injuries and illnesses are down-from 10.9 incidents per 100 workers in 1972 to 2.9 per 100 in 2016.

Third, and this is not based on published data but is based on my experience representing public sector workers in New York, I can tell you that having an agency that is charged with protecting the health and safety of public sector workers changes the mindset and culture within the workforce, both for labor and management. Not every issue we faced had a corresponding standard that provided specific guidance. Not every concern became an official complaint...not by a long shot. But knowing that there is general recognition that employers must provide a safe and healthful workplace is a game changer. Because the agencies recognized that providing a safe and healthy workplace is a legal as well as moral obligation, it changed how they conducted

their programs. Simply telling folks to “be safe out there” or giving out personal protective equipment does not decrease their risk of getting hurt. Most agencies in New York have labor-management programs that work to identify hazards, assess them and then work to correct them. Using the Public OSHA standards as a minimum gives a framework within which to work. And on those occasions when things are not resolved through internal processes, workers have a place to go to get help resolving their issues.

Pennsylvania workers deserve no less than their brothers and sisters in New York and 26 other states.

The second question is, will it be too expensive? Again, the short answer is no. But I find the question itself to be troublesome. In reading the transcripts from the December hearing I was left wondering whether the fear of the expense is from a lack of understanding how the law will work, in which case it is up to all of us to educate the agencies. Or, and this is a view so cynical that I do not want to believe it, do those that fear it is too expensive truly believe that the conditions are so poor that improving them to meet minimal standards to protect workers will bankrupt them? To answer the question of whether it is too expensive begs the obvious question: what is the cost of a human life.

There is a lot of data that shows that the indirect costs to an employer when someone gets hurt go far beyond the direct costs. A widely regarded study published by the University of Michigan found the following to data on a national level:

- “Direct costs included medical expenses for hospitals, physicians, and drugs, as well as health insurance administration costs, and were estimated to be \$51.8 billion.
- The indirect costs included loss of wages, costs of fringe benefits, and loss of home production (e.g., child care provided by parent and home repairs), as well as employer retraining and workplace disruption costs, and were estimated to be \$103.7 billion.”

In their study they acknowledge that it is difficult to get firm data on the public sector because they lack the same reporting requirements as the private sector:

- “The Annual Survey of the Bureau of Labor Statistics (BLS) provides the most reliable and comprehensive data on nonfatal injuries. However, it misses roughly 53 percent of job-related injuries. This omission, in part, is due to the exclusion of government employees and the self-employed and also, in part, due to illegal underreporting by private firms”

However, if you look at the identified job titles that are most costly, they found:

- “Occupations contributing the most to costs included truck drivers, laborers, janitors, nursing orderlies, assemblers, and carpenters. On a per capita basis, lumberjacks, laborers, millwrights, prison guards, and meat cutters contributed the most to costs.”

Many of these titles are obviously routinely found in the public sector.

Source: https://www.press.umich.edu/16885/costs_of_occupational_injuries_and_illnesses

Other organizations including the National Safety Council and Liberty Mutual's Research Institute for Safety have published similar data.

And in practical terms concerning cost, I can tell you that in the 26 states that have protection for public sector workers, none have been bankrupted by it.

But, again, as we all know, money is not the only cost – and I would argue it is not even the main cost. Every day workers are unnecessarily hurt and their lives often irrevocably harmed by preventable injuries. And, as Ms. Schwab can attest to, workers are killed. Their families are left without their husband, father, wife or mother. And it is preventable.

One final comment on this specific bill that I have is that there are a few puzzling provisions that specify certain actions would be deemed misdemeanors when they would be felonies outside the workplace. For example, an employer who willfully violates a standard and causes a death would be subject only to misdemeanor charges. Similarly, if an employer causes physical harm to a state OSHA inspector in the course of conducting an inspection, that employer would be subject only to misdemeanor charges regardless of the severity of the harm. This makes no sense. The trend has been to ensure that those who attack public servants are subject to felony charges. This is a backwards step that must be rectified.

I appreciate your efforts to protect public sector workers in Pennsylvania and I thank you for your time.

3/20/18 House Democratic Policy Committee Roundtable on HB 1082

Good Afternoon.

I am Tiffany Schwab, widow of Jake Schwab.

I'm speaking to you today to let you know that House Bill 1082 desperately needs passed. It began due to a very tragic accident resulting in my husband's death in November of 2014. The House Bill I am referring to is the Jake Schwab Workers Safety Bill. I have been working with Pat Harkins on this Bill along with the union since shortly after his death.

My late husband was only 48 yrs. old. He was a 27 year Class A transit authority bus mechanic at EMTA. I kissed him goodbye when he left for work the morning of November 4th never to see him that way again. He was working on repairing a bus when twenty minutes before the accident he made a request to his supervisor that he needed some equipment. That equipment wasn't available at their location at the time, but should have been. He then improvised and used some different equipment that wasn't working properly, which should have been quarantined to not be used. EMTA also didn't require Personal Protective Equipment to be worn on the job like head protection. Due to the lack of safety oversight at this government run transit authority, the bus shifted and the air ride suspension imploded shooting part of it into Jake's head.

I received a phone call at work around 11 o'clock that morning from the management personnel at EMTA telling me that there was an accident and I needed to go to the hospital right away. When I arrived, he was already in emergency surgery. The doctors spoke to me in such a way that I was having a hard time grasping what was actually happening. It was a living nightmare. They told me the whole left side of his brain was gone and that it didn't look good. Jake held on for 5 days never regaining consciousness. I had to make the decision to end his life on November 9th. I understand accidents happen, but THIS should have never happened. It could have been prevented.

When I had a chance to understand some of the details that led up to the accident, I knew this was not right. People like Jake should not have to leave their families to go to work in an unsafe environment and risk losing their life or limb or damage their overall health to make a living. Every government employee deserves the same safety oversight as an employee in the private sector. **EVERY WORKING CLASS LIFE MATTERS.** This is a common sense House Bill that needs to pass in order to protect all employees and prevent accidents from happening. If it were your family member would it **then** be important enough to you?

I urge you to finally make the lives of every working class citizen **EQUALLY** valuable. So many people are counting on this and waiting for you to step forward and make a difference. Thank you.



**Written Testimony of Robert O'Brien
Executive Deputy Secretary**

Department of Labor & Industry

Before the House Democratic Policy Committee

**Erie, Pennsylvania
March 20, 2018**

I appreciate the opportunity to submit testimony to the House Democratic Policy Committee in support of House Bill 1082, which would create the Public Employees Occupational Safety and Health Act.

The Department of Labor and Industry believes strongly that **ALL** Pennsylvanian workers should be ensured safe workplaces and working conditions, regardless of their employer. Presently, when it comes to safety, public sector workers in Pennsylvania are not afforded the same protections in the workplace as their private sector counterparts. Private sector workers are protected by OSHA, which is overseen by the United States Department of Labor (USDOL) and only covers those employed by the private sector.

In Pennsylvania, the Department of Labor and Industry's Bureau of Occupational and Industrial Safety (BOIS), currently enforces the General Safety Law, 43 P.S. § 25-1 (Act No. 174, May 18, 1937, P.L. 654, *as amended* June 28, 1951, and July 13, 1953). The law was enacted to prescribe certain regulations and restrictions concerning where persons are employed, and the equipment, apparatus, materials, devices and machinery used therein, and bestow certain powers and duties upon the Department of Labor & Industry relative to the enforcement of the Act, including fixing penalties.

The General Safety Law has been pre-empted by the U.S. Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq* (OSHA) with regard to all private sector employees. As a result, **the General Safety Law only covers public employees** of the commonwealth, and municipalities.

HB 1082 would create the "Public Employees Occupational Safety and Health Act" to establish procedures for public employers and employees to address workplace safety issues and complaints. It directs the Secretary of the Department of Labor & Industry to adopt the standards set forth by the federal government in OSHA. The legislation is intended to extend the same protections to public sector workers as those already being provided to the commonwealth's private sector employees. Under HB 1082, the L&I secretary is directed to promulgate regulations to establish reporting procedures; guidelines about disseminating information; programs to stimulate voluntary compliance; and methods

or programs to reduce safety and health hazards, and promote safe working conditions. The bill establishes detailed standards for inspections, including when, how, and what may be inspected or investigated. It provides for notice to the employer and employees of any violations that are found. This legislation also specifically prohibits any retaliation against any employee for cooperating with the department in its enforcement of the Act.

As part of the new legislation, a "Pennsylvania Occupational Safety and Health Review Board" would be established to hold hearings regarding compliance orders, violations, and penalties. The review board would be staffed by five, well-qualified individuals chosen by the governor to serve four-year terms, and be paid at a *per diem* amount determined by the L&I Secretary.

So, how does HB 1082 compare to the General Safety Law? The General Safety Law, which was last amended in 1953, provides a list of specific items that the legislature deemed necessary at that time to protect employees and the public. Importantly, nearly seven decades later, HB 1082 does not list any such specific requirements for the protection of employees, but rather gives a comprehensive plan for procedures and time limits for ensuring that all public employers in this commonwealth are in compliance with the standards set forth by OSHA, as well as an appeals procedure for those who are not in compliance.

For example, Section 2(a), the catch-all provision of the General Safety Law, mandates that "All establishments shall be so constructed, equipped, arranged, operated, and conducted as to provide reasonable and adequate protection for the life, limb, health, safety, and morals of all persons employed therein." Sections 2(b) through 2(i) mention very specific mechanisms and scenarios for protection of the health and welfare of employees.

Section 3 of the General Safety law deals specifically with "Lighting, Heating, Ventilation and Sanitary Facilities," while Section 4 addresses "Fireworks and Explosives Plants." Section 5 of the General Safety Law concerns "Floor Space," while Section 6 focuses on "Removal of Guards," and Section 7 deals with "Prohibited Used of Machinery." Section 8 requires "Air Space for Workroom," and Section 9 deals with "Canneries and Labor Camps."

HB 1082, places heavy emphasis on procedures and programs for ensuring compliance with health and safety standards promulgated by the federal government, and provides a complicated mechanism for employers to seek variances from those standards, and to challenge violations and penalties issued under those standards.

The proposed Act gives the secretary of the department very significant duties, including:

- Providing for the preparation, adoption, amendment, *or repeal* of regulations governing the conditions of employment of general and special application in all workplaces;
- Providing methods for instituting programs to encourage safe and healthful working conditions;
- Requiring employers to report certain information to the department;
- Providing for the frequency, method, and manner of making workplace inspections;
- Providing for the dissemination of information and training materials to aid employers and employees in maintaining a safe workplace, and for the posting of such information, where appropriate; and
- Providing for occupational safety and health education programs for employers and employees.

Under HB 1082, the secretary is also tasked with reviewing and ruling on applications for variances, granting temporary variance orders after notice and a hearing, and granting interim variance orders in some cases until a hearing can be held. Further, the secretary's representative is in charge of inspections at all workplaces, and may apply for subpoenas and warrants if denied access by an employer. If violations are noted during an inspection, the secretary is to compile a report on the matter and issue a compliance order, which shall be posted, fixing a time for abatement of the violation, and a penalty, with the employer being given 15 days to contest the violation/penalty. If left uncontested, it will not be subject to review.

If, however, an employer contests a compliance order, notification, or penalty, issued by the secretary, a member of the Pennsylvania Occupational Safety and Health Review Board will hear the appeal within 30 days from filing. Staffing will be put in place as necessary to conduct the hearings. The board must issue a decision within 120 days, which may sustain, modify, or dismiss a compliance order or penalty. A person, including the secretary, aggrieved by the board's decision is entitled to judicial review.

Another important aspect of HB 1082 is the requirement for employers to maintain accurate records regarding causes and prevention of occupational accidents or illness leading to death and injury, and potential exposures to toxic or other harmful materials.

Section 6(1) of the proposed legislation provides that “[t]he Secretary may promulgate regulations to administer and enforce this Act and shall provide for the preparation, adoption, amendment, *or repeal* of regulations governing conditions of employment of general and special application in all workplaces.” This provision seems to indicate that the drafters intend for this new legislation to be all encompassing. It is the department’s opinion that the best option would be to combine the two documents into one comprehensive law for maximum coverage and clarity. Repealing the General Safety Law and amending HB 1082 to include the viable aspects of it seems to make the most sense. Certain portions of the General Safety Law are still viable as they speak to specific aspects of the modern era workplace and should be inserted into HB 1082 under Section 7 “Standards,” as subsection (b), moving “Interstate Commerce” to subsection (c), and “Challenge to Standard or Regulation” to subsection (d). This would achieve the goal of the new legislation to provide specificity as to the general safety and health requirements already mandated in Pennsylvania, while still utilizing the procedural mechanism of HB 1082, which provides for greater enforcement powers and specific procedures to effectively address requests for variances, violations, penalties, and appeals thereof.

Regrettably, despite the availability of federal matching dollars, L&I would be unable to afford this Act without **additional** funding. Also, all other state agencies would have additional costs to implement the Act. In order for HB 1082 to move forward, it is essential to work with the legislature to secure the necessary funds to make the implementation of HB 1082 a success.

The USDOL offers a grant that would match up to half of what the commonwealth would pay to administer the Act. We understand that we are in a time of fiscal austerity and government is trying to do more with less, but what is the price to ensure the safety and lives of 705,000 Pennsylvania workers? The workers of Pennsylvania are an invaluable asset to this commonwealth and its local municipalities, and deserve the same rights and protections in the workplace.

In conclusion, I would again like to thank this committee for the opportunity to testify in support of House Bill 1082 and ensure the safety of public sector workers.

The Department of Labor & Industry is committed to providing ALL workers, both in the private and public sectors with a safe working environment.

I would be glad to answer any questions that you may have.

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House Co-Sponsorship Memoranda

House of Representatives Session of 2017 - 2018 Regular Session

MEMORANDUM

Posted: February 3, 2017 09:50 AM
From: [Representative Patrick J. Harkins](#)
To: All House members
Subject: Re-introduction of HB-1082 Improve workplace safety in the Commonwealth

In the near future I plan to reintroduce legislation, that will help improve workplace safety in the Commonwealth.

Many public employees perform jobs that are comparable to those performed by workers in the private sector who are protected by the United States Occupational Safety and Health Act (OSHA). It is not beneficial to the public employee or the employer to continue to have two standards for employee safety. This legislation mirrors OSHA and applies to the Commonwealth, its political subdivisions, mass transit systems, school districts and any nonprofit organization or institution currently not presently subjected to coverage under OSHA.

I hope that you will join with me to help protect our workers.



Introduced as [HB1082](#)

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1082 Session of
2017

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APRIL 27, 2017

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 27, 2017

AN ACT

1 Providing for workplace health and safety standards for public
2 employees; providing for powers and duties of the Secretary
3 of Labor and Industry; establishing the Pennsylvania
4 Occupational Safety and Health Review Board; providing for
5 workplace inspections; and imposing penalties.

6 This act may be referred to as "Jake's Law."

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15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Short title.

18 This act shall be known and may be cited as the Public
19 Employees Occupational Safety and Health Act.

20 Section 2. Legislative declaration.

21 The General Assembly hereby declares as follows:

22 (1) It is a basic right of all employees to work in an
23 environment that is free from hazards and risks to their
24 safety. It is the intent of the General Assembly to ensure
25 that this right is also afforded to employees of the
26 Commonwealth, its counties, cities, towns, boroughs and other
27 public employers who serve the people of this Commonwealth.

28 (2) A significant percentage of all of those employed in
29 this Commonwealth are employed by the Commonwealth or by one
30 of its political subdivisions. Many of these public employees

1 perform job functions comparable to those performed by
2 workers in the private sector who are protected by the
3 Occupational Safety and Health Act of 1970. The General
4 Assembly, therefore, finds it inappropriate to continue two
5 standards for employee safety, one applicable to those who
6 work in the private sector and one for those who are employed
7 by a public employer.

8 (3) The General Assembly has further determined that a
9 safe place in which to work is economically advantageous to
10 employers. Work-related accidents and injuries and the
11 absences caused thereby decrease employee productivity and
12 increase workers' compensation costs. In addition, unsafe
13 premises increase the risk of financial liability for
14 injuries to members of the public who frequent public
15 buildings.

16 (4) The General Assembly, in an exercise of the
17 Commonwealth's police power, charges the secretary with the
18 responsibility to ensure that all public employees are
19 afforded the same safeguards in their workplace as are
20 granted to employees in the private sector.

21 Section 3. Definitions.

22 The following words and phrases when used in this act shall
23 have the meanings given to them in this section unless the
24 context clearly indicates otherwise:

25 "Authorized employee representative." An employee authorized
26 by employees or the designated representative of an employee
27 organization recognized or certified to represent the employees.

28 "Employee organization." An organization of any kind, or any
29 agency or employee representation committee or plan in which
30 membership includes public employees, and which exists for the

1 purpose, in whole or in part, of dealing with employers
2 concerning grievances, employee-employer disputes, wages, rates
3 of pay, hours of employment or conditions of work. The term does
4 not include an organization that practices discrimination in
5 membership because of race, color, creed, national origin or
6 political affiliation.

7 "Occupational Safety and Health Act of 1970" or "OSHA." The
8 Occupational Safety and Health Act of 1970 (Public Law 91-596,
9 29 U.S.C. § 651 et seq.).

10 "Occupational safety and health standard." A standard that
11 requires conditions, or the adoption or use of one or more
12 practices, means, methods, operations or processes, reasonably
13 necessary or appropriate to provide safe or healthful employment
14 in places of employment.

15 "Person." An individual, partnership, association,
16 corporation, business trust, legal representative or an
17 organized group of any of them.

18 "Public employee" or "employee." An individual employed by a
19 public employer.

20 "Public employer" or "employer." The Commonwealth, any of
21 its political subdivisions, including a school district and any
22 office, board, commission, agency, authority, local
23 transportation organization or other instrumentality thereof and
24 any nonprofit organization or institution and any charitable,
25 religious, scientific, literary, recreational, health,
26 educational or welfare institution receiving grants or
27 appropriations from Federal, State or local government. The term
28 does not include an employer covered or presently subject to
29 coverage under the Occupational Safety and Health Act of 1970.

30 "Review board." The Pennsylvania Occupational Safety and

1 Health Review Board established under this act.

2 "Secretary." The Secretary of Labor and Industry of the
3 Commonwealth or a designated agent.

4 Section 4. Application.

5 (a) General rule.--Any occupational safety or health
6 standards promulgated under the provisions of this act shall
7 apply to all public employers and public employees, and the
8 secretary shall have authority to enforce the standards in
9 accordance with the provisions of this act.

10 (b) Statutory and common law rights preserved.--Nothing in
11 this act may be construed to supersede or in any manner affect
12 any workers' compensation law or to enlarge, diminish or affect
13 in any manner common law or statutory rights, duties or
14 liabilities of employers or employees under any law with respect
15 to injuries, diseases or death of employees arising out of and
16 in the course of employment.

17 (c) Employees not covered by Federal standard.--
18 Notwithstanding any other provision in this act, an occupational
19 safety or health standard promulgated under this act shall apply
20 only to employees not covered by a Federal occupational safety
21 or health standard promulgated under section 6 of the
22 Occupational Safety and Health Act of 1970 or amendments
23 thereto.

24 Section 5. Employer duties.

25 (a) General rule.--An employer shall furnish to each of its
26 employees employment and a place of employment free from
27 recognized hazards that are causing or are likely to cause death
28 or serious physical harm and which will provide reasonable and
29 adequate protection to the lives, safety or health of its
30 employees.

1 (b) Compliance with act.--An employer shall comply with the
2 occupational safety and health standards promulgated under this
3 act.

4 (c) Written statement of substances.--An employer shall,
5 upon the written request of an employee, furnish the employee
6 with a written statement listing the substances that the
7 employee uses or with which the employee comes into contact that
8 have been identified as toxic or hazardous by occupational
9 safety and health standards under 29 CFR Pt. 1910 Subpt. H
10 (relating to hazardous materials) or pursuant to the act of
11 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law,
12 or both.

13 (d) Law compliance with regulations and orders.--An employee
14 and employer shall comply with occupational safety and health
15 standards and all rules, regulations and orders issued pursuant
16 to this act that are applicable to their own actions and
17 conduct.

18 (e) State plan for standards.--The Commonwealth shall
19 promulgate a plan for the development and enforcement of
20 occupational safety and health standards with respect only to
21 public employers and employees, in accordance with section 18(b)
22 of the Occupational Safety and Health Act of 1970.

23 Section 6. Regulations.

24 The secretary may promulgate regulations to administer and
25 enforce this act and shall:

26 (1) Provide for the preparation, adoption, amendment or
27 repeal of regulations governing the conditions of employment
28 of general and special application in all workplaces.

29 (2) Provide a method of encouraging employers and
30 employees in their efforts to reduce the number of safety and

1 health hazards arising from undesirable or inappropriate
2 working conditions at the workplace, and of stimulating
3 employers and employees to institute new programs and to
4 perfect existing programs for providing safe and healthful
5 working conditions.

6 (3) Provide for appropriate reporting procedures by
7 employers with respect to information relating to conditions
8 of employment that will assist in achieving the objectives of
9 this act.

10 (4) Provide for the frequency, method and manner of
11 making inspections of workplaces without advance notice,
12 provided that in the event of an emergency or unusual
13 situation, the secretary may give advance notice.

14 (5) Provide for the publication and dissemination to
15 employers, employees and labor organizations and the posting,
16 where appropriate, by employers of informational, educational
17 or training materials designed to aid and assist in achieving
18 the objectives of this act.

19 (6) Provide for the establishment of new programs and
20 the perfection and expansion of existing programs for
21 occupational safety and health education for employers and
22 employees and institute methods and procedures for the
23 establishment of a program for voluntary compliance by
24 employers and employees with the requirements of this act and
25 all applicable occupational safety and health standards and
26 regulations promulgated under this act.

27 Section 7. Standards.

28 (a) General rule.--The secretary shall, by regulation, adopt
29 all occupational safety and health standards, amendments or
30 changes adopted or recognized by the United States Secretary of

1 Labor under the authority of the Occupational Safety and Health
2 Act of 1970 in order to provide reasonable and adequate
3 protection of the lives, safety and health of public employees.
4 Subject to subsection (b), the secretary shall promulgate and
5 repeal such regulations as may be necessary to conform to the
6 standards established pursuant to the Occupational Safety and
7 Health Act of 1970. Where no Federal standards are applicable,
8 the secretary shall provide for the development of such State
9 standards as may be necessary in special circumstances.

10 (b) Interstate commerce.--The secretary may not adopt
11 standards for products distributed or used in interstate
12 commerce that are different from Federal standards for the
13 products unless the standards are required by compelling local
14 conditions and do not unduly burden interstate commerce.

15 (c) Challenge to standard or regulation.--A person who may
16 be adversely affected by a standard or regulation issued under
17 this act may challenge the validity or application of the
18 standard or regulation by bringing an action for declaratory
19 judgment.

20 Section 8. Variances.

21 (a) Variance procedure.--

22 (1) A public employer may apply to the secretary for a
23 temporary order granting a variance from a standard or any
24 provision of a standard promulgated under this act. A
25 temporary order shall be granted only if the employer files
26 an application that meets the requirements of subsection (b)
27 and establishes all of the following:

28 (i) The employer is unable to comply with a standard
29 by its effective date because of unavailability of
30 professional or technical personnel or of materials and

1 equipment needed to come into compliance with the
2 standard or because necessary construction or alteration
3 of facilities cannot be completed by the effective date.

4 (ii) The employer is taking all available steps to
5 safeguard employees against the hazards covered by the
6 standard.

7 (iii) The employer has an effective program for
8 coming into compliance with the standard as quickly as
9 practicable.

10 (2) (i) A temporary order issued under this section
11 shall prescribe the practices, means, methods, operations
12 and processes that the employer must adopt and use while
13 the order is in effect and state in detail the employer's
14 program for coming into compliance with the standard.

15 (ii) A temporary order may be granted only after
16 notice to employees and an opportunity for a hearing,
17 provided that the secretary may issue one interim order
18 to be effective until a decision is made on the basis of
19 a hearing.

20 (iii) A temporary order may not be in effect for
21 longer than the period needed by the employer to achieve
22 compliance with the standard or one year, whichever is
23 shorter, except that an order may be renewed not more
24 than twice so long as the requirements of this section
25 are met and an application for renewal is filed at least
26 90 days prior to the expiration date of the order.

27 (iv) An interim renewal of an order shall not remain
28 in effect longer than 180 days.

29 (b) Contents of application for variance.--An application
30 for a temporary variance order shall contain all of the

1 following:

2 (1) A specification of the standard or portion of the
3 standard from which the employer or owner seeks a variance.

4 (2) A representation by the employer, supported by
5 representations from qualified persons who have firsthand
6 knowledge of the facts represented, that the employer is
7 unable to comply with the standard or portion of the standard
8 and a detailed statement of the reasons therefor.

9 (3) A statement of the steps the employer has taken and
10 will take, with specific dates, to protect employees against
11 the hazard covered by the standard.

12 (4) A statement of when the employer expects to be able
13 to comply with the standard and what steps the employer has
14 taken and will take, with dates specified, to come into
15 compliance with the standard.

16 (5) A certification that the employer has informed its
17 employees of the application by giving a copy of the
18 application to the authorized employee representative,
19 posting a statement giving a summary of the application and
20 specifying where a copy may be examined at the place or
21 places where notices to employees are normally posted, and by
22 other appropriate means. A description of how employees have
23 been informed shall be contained in the certification. The
24 information to employees shall also inform them of their
25 right to petition the secretary for a hearing.

26 (c) Variance for experimental program.--The secretary may
27 grant a variance from any standard or portion of the standard
28 whenever the secretary determines that a variance is necessary
29 to permit an employer to participate in an experimental program
30 approved by the secretary, which is designed to demonstrate or

1 validate new and improved techniques to safeguard the health or
2 safety of workers.

3 (d) Hearing and order.--

4 (1) An affected employer may apply to the secretary for
5 a rule or order for a variance from a standard promulgated
6 under this act. Affected employees shall be given notice of
7 each such application and an opportunity to participate in a
8 hearing.

9 (2) The secretary shall issue a rule or order if the
10 secretary determines on the record, after opportunity for an
11 inspection where appropriate and a hearing, that the
12 proponent of the variance has demonstrated by a preponderance
13 of the evidence that the conditions, practices, means,
14 methods, operations or processes used or proposed to be used
15 by an employer will provide employment and places of
16 employment that are as safe and healthful as those that would
17 prevail if the employer complied with the standard. The rule
18 or order shall prescribe the conditions the employer must
19 maintain and the practices, means, methods, operations and
20 processes that the employer must adopt and utilize to the
21 extent they differ from the standard in question.

22 (3) A rule or order may be modified or revoked upon
23 application by an employer, employee or authorized employee
24 representative, or by the secretary on the secretary's own
25 motion, in the manner prescribed for its issuance under this
26 section at any time after six months from the date it was
27 entered.

28 (e) Challenge to standard or regulation.--A person who may
29 be adversely affected by a standard or regulation issued under
30 this act may challenge the validity or applicability of the

1 standard or regulation by bringing an action for declaratory
2 judgment.

3 Section 9. Pennsylvania Occupational Safety and Health Review
4 Board.

5 (a) Establishment.--The Pennsylvania Occupational Safety and
6 Health Review Board is established to have and exercise the
7 powers and duties provided by the provisions of this act. The
8 board shall consist of five persons appointed by the Governor
9 from among persons who, by reason of training, education or
10 experience, are qualified to carry out the functions of the
11 review board under this act.

12 (b) Terms of members.--Members shall serve terms of four
13 years and until their successors are appointed. The Governor
14 shall designate one of the members to serve as chairperson.

15 (c) Power to hear appeals.--A member of the review board
16 shall hear and rule on appeals from compliance orders,
17 notifications and penalties issued under the provisions of this
18 act. The secretary shall adopt and promulgate rules and
19 regulations with respect to the procedures for review board
20 hearings.

21 (d) Schedule for hearing appeals.--A board member hearing an
22 appeal or appeals under the provisions of this act shall be paid
23 a per diem amount to be determined by the secretary. The members
24 shall alternate the hearing of appeals according to a schedule
25 adopted by the secretary. If a member is unable to hear an
26 appeal, the next available member, in accordance with the
27 schedule, shall hear the appeal. A member shall be selected to
28 hear the appeal within 30 days after the date it was filed.

29 (e) Necessary staff.--Any staff necessary for the purposes
30 of conducting hearings under this act shall be provided by the

1 Department of Labor and Industry.

2 (f) Subpoena power and oaths.--In the conduct of hearings,
3 the review board member may subpoena and examine witnesses,
4 require the production of evidence, administer oaths and take
5 testimony and depositions.

6 (g) Ruling on appeal.--After hearing an appeal, the review
7 board member may sustain, modify or dismiss a compliance order
8 or penalty, provided that decision shall be issued within 120
9 days after the appeal was filed.

10 Section 10. Appeal from review board.

11 A person, including the secretary, adversely affected or
12 aggrieved by an order of the review board, after all
13 administrative remedies provided by this act have been
14 exhausted, is entitled to judicial review.

15 Section 11. Inspection and investigation powers.

16 (a) Right to inspect.--

17 (1) In order to carry out the purposes of this act, the
18 secretary, upon presenting appropriate credentials to the
19 employer, may:

20 (i) enter without advance notice and at reasonable
21 times any workplace or environment where work is
22 performed by an employee of an employer;

23 (ii) inspect and investigate, during regular working
24 hours and at other reasonable times and in a reasonable
25 manner, any place of employment under subparagraph (i)
26 and all pertinent conditions, structures, machines,
27 apparatus, devices, equipment and the materials therein;
28 and

29 (iii) question privately any employer or employee.

30 (2) Whenever the secretary, proceeding pursuant to this

1 section, is denied admission to any place of employment, the
2 secretary may obtain a warrant to make an inspection or
3 investigation of the place of employment from any judge of
4 Commonwealth Court.

5 (b) Witnesses and evidences.--

6 (1) In making inspections and investigations under this
7 section, the secretary may require the attendance and
8 testimony of witnesses and the production of evidence under
9 oath. Witnesses shall be paid the same fees and mileage that
10 are paid witnesses in the courts of this Commonwealth.

11 (2) In case of a failure or refusal of any person to
12 obey an order, the court of common pleas for the judicial
13 district wherein the person resides, is found or transacts
14 business shall issue to the person an order requiring the
15 person to appear to produce evidence if asked, and when so
16 ordered, and to give testimony relating to the matter under
17 investigation or in question.

18 (3) A failure to obey an order of the court may be
19 punished by the court as a contempt.

20 (c) Persons to accompany secretary or representative.--

21 (1) Subject to regulations issued by the secretary, a
22 representative of the employer and an authorized employee
23 representative shall be given an opportunity to accompany the
24 secretary during the physical inspection of any workplace for
25 the purposes of aiding the inspection. Where there is no
26 authorized employee representative, the secretary shall
27 consult with a reasonable number of employees concerning
28 matters of health and safety in the workplace.

29 (2) No employee who accompanies the secretary on an
30 inspection may suffer any reduction in wages as a result

1 thereof.

2 Section 12. Inspection and investigation of violations.

3 (a) Request for inspection.--

4 (1) An employee or authorized employee representative
5 who believes that a violation of an occupational safety or
6 health standard exists or that an imminent danger exists may
7 request an inspection by giving notice of a violation or
8 danger to the secretary.

9 (2) The notice and request shall be in writing, shall
10 set forth with reasonable particularity the grounds for the
11 notice and shall be signed by an employee or authorized
12 employee representative.

13 (3) A copy of the notice shall be provided by the
14 secretary to the employer or its agent no later than the time
15 of inspection, except that on the request of the person
16 giving notice, the names of individual employees or the
17 authorized employee representative shall be kept
18 confidential.

19 (b) Action by secretary.--

20 (1) Whenever the secretary receives a request for
21 inspection and determines that there are reasonable grounds
22 to believe that a violation or danger exists, the secretary
23 shall make an inspection as soon as practicable to determine
24 if a violation or danger exists. The inspection may be
25 limited to the alleged violation or danger.

26 (2) If the secretary determines there are no reasonable
27 grounds to believe that a violation or danger exists, the
28 secretary shall notify the employer, employee or authorized
29 employee representative in writing of the determination.

30 Notification may not preclude future enforcement action if

1 conditions change.

2 (c) Notice of violation during inspection.--

3 (1) Prior to or during any inspection of a workplace, an
4 employee or authorized employee representative employed in
5 the workplace may notify in writing the secretary or any
6 representative of the secretary responsible for conducting
7 the inspection of any violation of this act that the person
8 has reason to believe exists in the workplace.

9 (2) The secretary shall by regulation establish
10 procedures for informal review of any refusal by a
11 representative of the secretary to issue a citation with
12 respect to any alleged violation and shall furnish the
13 employer and the employees or authorized employee
14 representative requesting a review a written statement of the
15 reasons for the secretary's final disposition of the case.
16 Notification may not preclude future enforcement action if
17 conditions change.

18 (d) Summary by secretary.--The secretary shall compile,
19 analyze and publish in either summary or detailed form all
20 reports or information obtained under this section.

21 (e) Rules and regulations.--The secretary shall prescribe
22 such rules and regulations as the secretary may deem necessary
23 to carry out the secretary's responsibilities under this act,
24 including rules and regulations dealing with the inspection of
25 an employer's or owner's establishment.

26 Section 13. Recordkeeping.

27 (a) Employer's duties prescribed by regulation.--In
28 accordance with the secretary's regulations, an employer shall
29 make, keep and preserve and make available to the secretary such
30 records regarding its activities relating to this act as the

1 secretary deems necessary or appropriate for developing
2 information regarding the causes and prevention of occupational
3 accidents and illnesses. The regulations may include provisions
4 requiring an employer to conduct periodic inspections. The
5 secretary also shall issue regulations requiring that an
6 employer, through posting of notices, training or other
7 appropriate means, keep its employees informed of their
8 protections and obligations under this act, including the
9 provisions and regulations of this act.

10 (b) Records relating to death and injury.--The secretary
11 shall prescribe regulations requiring an employer to maintain
12 accurate records and to make public periodic reports of work-
13 related deaths, injuries and illnesses, other than minor
14 injuries requiring only first aid treatment and not involving
15 lost time from work, medical treatment, loss of consciousness,
16 restriction of work or motion or transfer to another job.

17 (c) Exposure to toxic or harmful agents.--

18 (1) The secretary shall issue regulations requiring an
19 employer to maintain accurate records of employee exposures
20 to potentially toxic materials or harmful physical agents
21 that are required to be monitored or measured under any
22 occupational safety and health standard adopted under this
23 act. The regulations shall provide employees or the
24 authorized employee representative with an opportunity to
25 observe monitoring or measuring and have access to the
26 records. The regulations shall make appropriate provisions
27 for each employee or former employee to have access to
28 records that will indicate the employee's own exposure to
29 toxic materials or harmful physical agents.

30 (2) An employer shall promptly notify any employee who

1 has been or is being exposed to toxic materials or harmful
2 physical agents in concentrations or at levels that exceed
3 those prescribed by an occupational safety and health
4 standard promulgated under this act and shall inform any
5 employee who is being thus exposed of the corrective action
6 being taken.

7 Section 14. Compliance orders.

8 (a) Issuance.--Whenever the secretary, upon inspection or
9 investigation, determines that an employer has violated a
10 provision of this act or an occupational safety or health
11 standard or regulation promulgated under this act, the secretary
12 shall with reasonable promptness issue a compliance order to the
13 employer. Each compliance order shall be in writing and shall
14 describe the nature of the violation, including a reference to
15 the provisions of this act or the standard, regulation or order
16 alleged to have been violated. The compliance order shall fix a
17 reasonable time for the abatement of the violation.

18 (b) Posting of order.--Each compliance order issued under
19 this section or a copy or copies of the order shall be
20 prominently posted as prescribed in regulations issued by the
21 secretary at or near each place a violation referred to in the
22 compliance order occurred and at other locations within the
23 workplace reasonably accessible to the employees.

24 Section 15. Enforcement procedures.

25 (a) Notice of order and penalty.--

26 (1) If, after inspection or investigation, the secretary
27 issues a compliance order under section 14, the secretary
28 shall, within a reasonable time after the termination of the
29 inspection or investigation, notify the employer by certified
30 mail of the penalty, if any, proposed to be assessed under

1 section 17. The notification shall inform the employer that
2 the employer has 15 working days from the receipt of notice
3 within which to notify the secretary that the employer wishes
4 to contest the compliance order or proposed assessment of
5 penalty.

6 (2) If the employer fails to notify the secretary within
7 15 days and if no notice is filed by an employee or
8 authorized employee representative under subsection (c)
9 within 15 days, the compliance order and the assessment, as
10 proposed, shall be deemed a final order of the secretary and
11 not be subject to review by any court or agency.

12 (b) Notice of failure to correct violation.--

13 (1) If the secretary has reason to believe that an
14 employer has failed to correct a violation for which a
15 compliance order has been issued within the period permitted
16 for correction, the secretary shall notify the employer by
17 certified mail of the failure and of the penalty proposed to
18 be assessed under section 17 by reason of the failure. In the
19 case, however, of a review proceeding initiated by the
20 employer under this section in good faith and not solely for
21 delay or the avoidance of penalties, the period permitted for
22 correction of the violation may not begin to run until the
23 entry of a final order by the review board. Notification by
24 the secretary shall inform the employer that the employer has
25 15 working days from the receipt of the notice within which
26 to notify the secretary that the employer wishes to contest
27 the notification or the proposed assessment of penalty.

28 (2) If, within 15 days from receipt of notification
29 under this section, the employer fails to notify the
30 secretary that it intends to contest the notification or

1 proposed assessment of penalty, the notification and
2 assessment, as proposed, shall be deemed a final order of the
3 review board and not be subject to review by any court or
4 agency.

5 (c) Action by review board.--

6 (1) If an employer notifies the secretary that it
7 intends to contest a compliance order issued under section
8 14(a) or a notification issued under subsection (a) or (b) or
9 if, within 15 days after the issuance of a compliance order
10 issued under section 14(a), an employee or authorized
11 employee representative files a notice with the secretary
12 alleging that the period of time fixed in the compliance
13 order for abatement of the violation is unreasonable, the
14 secretary shall immediately advise the review board of the
15 notification, and the review board shall afford an
16 opportunity for a hearing.

17 (2) The review board shall thereafter issue an order,
18 based on findings of fact, affirming, modifying or vacating
19 the secretary's compliance order or proposed penalty or
20 directing other appropriate relief. The order shall become
21 final 30 days after its issuance.

22 (3) Upon a showing by an employer of a good faith effort
23 to comply with the abatement requirements of a compliance
24 order and a showing that abatement has not been completed
25 because of factors beyond the employer's reasonable control,
26 the secretary, after an opportunity for a hearing as provided
27 in this subsection, shall issue an order affirming or
28 modifying the abatement requirements in the compliance order.

29 (4) The rules of procedure prescribed by the secretary
30 shall provide affected employees or the authorized employee

representative of affected employees an opportunity to participate as parties to hearings under this subsection.

Section 16. Injunction proceedings.

(a) Temporary restraining order.--

(1) The Commonwealth Court shall have jurisdiction, upon petition of the secretary, pursuant to law and general rules, to restrain any conditions or practices in any place of public employment that pose a danger that could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the abatement procedures otherwise provided for by this act.

(2) An order issued under this section shall require steps to be taken as may be necessary to avoid, correct or remove the imminent danger and prohibit the employment or presence of an individual in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove the imminent danger.

(3) A temporary restraining order issued without notice may not be effective for more than five days.

(b) Action by inspector.--Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of public employment, the inspector shall inform the affected employees and employers of the danger and shall further inform them that the inspector is recommending to the secretary that relief be sought.

(c) Failure of secretary to seek relief.--If the secretary arbitrarily or capriciously fails to seek relief under this section, an employee who may be injured by reason of the

1 failure, or the authorized employee representative of the
2 employee, may bring an action against the secretary in
3 Commonwealth Court to compel the secretary to seek an order and
4 for such further relief as may be appropriate.

5 Section 17. Penalties.

6 (a) Willful or repeated violations.--An employer who
7 willfully or repeatedly violates the requirements of section 4
8 or 5, an occupational safety and health standard promulgated
9 under section 7 or regulations prescribed under this act may be
10 assessed a civil penalty of not more than \$10,000 for each
11 violation.

12 (b) Compliance order for serious violation.--An employer who
13 has received a compliance order for a serious violation of the
14 requirements of section 4 or 5, an occupational safety and
15 health standard promulgated under section 7 or regulations
16 prescribed under this act shall be assessed a civil penalty of
17 not more than \$1,000 for each violation.

18 (c) Compliance order for lesser violation.--An employer who
19 has received a compliance order for a violation of the
20 requirements of section 4 or 5, an occupational safety and
21 health standard promulgated under section 7 or regulations
22 prescribed under this act, which violation has been determined
23 not to be of a serious nature, may be assessed a civil penalty
24 of not more than \$1,000 for each violation.

25 (d) Failure to correct violation.--An employer who fails to
26 correct a violation for which a compliance order has been issued
27 under section 14 within the period permitted for its correction,
28 which period shall not begin to run until the date of the final
29 order of the board in the case of any review proceeding under
30 section 15 initiated by the employer in good faith and not

solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than \$1,000 for each day during which the failure or violation continues.

(e) Violation causing death.--

(1) An employer who willfully violates a standard or order promulgated pursuant to section 7 or a regulation adopted under this act, which violation caused death to any employee, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$10,000 or to imprisonment for not more than six months, or both.

(2) If a conviction is for a violation committed after a first conviction, the person shall be sentenced to pay a fine of not more than \$20,000 or to imprisonment for not more than one year, or both.

(f) Providing advance notice of inspection.--A person who gives advance notice of any inspection to be conducted under this act without authority from the secretary commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than six months, or both.

(g) False statements.--A person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this act commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$10,000 or to imprisonment for not more than six months, or both.

(h) Violation of posting requirements.--An employer who violates any of the posting requirements as prescribed under the provisions of this act shall be assessed a civil penalty of not

1 more than \$1,000 for each violation.

2 (i) Refusing entry for investigation or inspection.--An
3 employer who refuses entry to the secretary while the secretary
4 is attempting to conduct an investigation or inspection under
5 this act or in any way willfully obstructs an authorized
6 representative from carrying out an investigation or inspection
7 commits a misdemeanor and shall, upon conviction, be sentenced
8 to pay a fine of not more than \$1,000 or to imprisonment for not
9 more than six months, or both.

10 (j) Causing bodily harm to secretary.--An employer or
11 individual who willfully causes bodily harm to the secretary
12 while the secretary is attempting to conduct an investigation or
13 inspection under this act commits a misdemeanor and shall, upon
14 conviction, be sentenced to pay a fine of not more than \$10,000
15 or to imprisonment for not more than one year, or both.

16 (k) Authority to assess civil penalties.--The review board
17 shall have authority to assess all civil penalties provided for
18 in this act, giving due consideration to the appropriateness of
19 the penalty with respect to the size of the business of the
20 employer being charged, the gravity of the violation, the good
21 faith of the employer and the history of previous violations.

22 (l) Determination of serious violation.--For the purposes of
23 this act, a serious violation shall be deemed to exist in a
24 place of employment if there is a substantial probability that
25 death or serious physical harm could result from a condition
26 that exists, or from one or more practices, means, methods,
27 operations or processes that have been adopted or are in use, in
28 the place of employment unless the employer did not and could
29 not with the exercise of reasonable diligence know of the
30 presence of the violation.

1 (m) Disposition of civil penalties.--Civil penalties owed
2 under this act shall be paid to the secretary for deposit in the
3 State Treasury and may be recovered in a civil action in the
4 name of the Commonwealth brought in Commonwealth Court.

5 (n) Unauthorized disclosure of confidential information.--A
6 person who violates the provisions of section 22 commits a
7 misdemeanor and shall, upon conviction, be sentenced to pay a
8 fine of not more than \$1,000 or to imprisonment for not more
9 than one year, or both. In the event that the person is an
10 officer or employee responsible for carrying out the provisions
11 of this act, the officer or employee shall be removed from
12 office or employment upon conviction under this section.

13 Section 18. Discrimination against employees.

14 (a) General rule.--An employer or any other person may not
15 discriminate against an employee because the employee has filed
16 a complaint or instituted or caused to be instituted a
17 proceeding under or related to this act or has testified or is
18 about to testify in a proceeding or because of the exercise by
19 an employee on the employee's own behalf or on behalf of others
20 of a right afforded by this act.

21 (b) Remedy.--

22 (1) An employee who believes that the employee has been
23 discharged, disciplined or otherwise discriminated against by
24 a person in violation of this section may, within 30 days
25 after a violation occurs, file a complaint with the secretary
26 alleging discrimination.

27 (2) Upon receipt of the complaint, the secretary shall
28 cause an investigation to be made as deemed appropriate and
29 shall, if requested, withhold the name of the complainant
30 from the employer.

1 (3) If, upon investigation, the secretary determines
2 that the provisions of this section have been violated, the
3 secretary shall request the Attorney General to bring an
4 action in Commonwealth Court against the person or persons
5 alleged to have violated this act. In any such action, the
6 Commonwealth Court shall have jurisdiction, for cause shown,
7 to restrain violations of this act and to order all
8 appropriate relief, including reinstatement of the employee
9 to the employee's former position with back pay and benefits.

10 (c) Notice of determination of complaint.--Within 90 days of
11 receipt of a complaint filed under this section, the secretary
12 shall notify the complainant and the complainant's
13 representative by registered mail of the secretary's
14 determination of the complaint.

15 (d) Other rights preserved.--Nothing in this act may be
16 construed to diminish the rights of an employee under any law,
17 rule or regulation or under any collective bargaining agreement.
18 Section 19. Research and demonstration projects.

19 (a) Secretary to conduct.--

20 (1) The secretary shall conduct research and undertake
21 demonstration projects relating to occupational safety and
22 health issues and problems either within the Department of
23 Labor and Industry or by grants or contracts. The secretary
24 may prescribe regulations requiring employers to measure,
25 record and make reports on exposure of employees to toxic
26 substances that the secretary believes may endanger the
27 health or safety of employees.

28 (2) The secretary shall cooperate with the Director of
29 the National Institute for Occupational Safety and Health of
30 the United States Department of Health and Human Services in

1 establishing the programs of medical examinations and tests
2 as may be necessary to determine the incidence of
3 occupational illnesses and employee susceptibility to the
4 illnesses.

5 (3) The programs, on the request of the employer, may be
6 paid for by the secretary, and the secretary shall provide
7 other assistance as may be required.

8 (b) Confidentiality.--Information obtained under this act
9 shall be made public without revealing the names of individual
10 workers covered by physical examination or special studies and
11 shall be made available to employers, employees and their
12 respective organizations.

13 Section 20. Education programs.

14 (a) Programs to train personnel.--The secretary shall
15 conduct directly, or by grants or contracts, education programs
16 to provide an adequate supply of qualified personnel to carry
17 out the purposes of this act and informational programs on the
18 importance and proper use of adequate safety and health
19 equipment.

20 (b) Short-term training.--The secretary may conduct
21 directly, or by grants or contracts, short-term training of
22 personnel engaged in work related to the secretary's
23 responsibilities under this act.

24 (c) Additional programs.--The secretary shall provide for
25 the establishment and supervision of programs for the education
26 and training of employers, owners and employees in the
27 recognition, avoidance and prevention of unsafe or unhealthful
28 working conditions in employment covered under this act. The
29 secretary shall consult with and advise owners and employers,
30 employees and organizations representing owners, employers and

1 employees as to effective means of preventing occupational
2 injuries and illnesses.

3 Section 21. Reports to United States Secretary of Labor.

4 In regard to the administration and enforcement of this act,
5 the secretary shall make reports to the United States Secretary
6 of Labor in a form and containing information that the Secretary
7 of Labor shall from time to time require.

8 Section 22. Confidentiality of information maintained.

9 All information reported to or otherwise obtained by the
10 secretary or any member of the review board in connection with
11 an inspection or proceeding under this act that contains or
12 might reveal a trade secret shall be considered confidential,
13 provided that the information may be disclosed to other officers
14 or employees concerned with carrying out this act or when
15 relevant in any proceeding under this act. In proceedings under
16 this act, the secretary, the review board or the court shall
17 issue orders that may be appropriate to protect the
18 confidentiality of trade secrets.

19 Section 23. Funding.

20 Nothing in this act may prohibit the secretary from pursuing
21 Federal or State funding for the purposes of this act.

22 Section 24. Effective date.

23 This act shall take effect in 60 days.