



OSHA Protections for Public Employees

PA Joint Democratic Policy Committee Hearing

Hearing Room 8-EA | Pennsylvania State Capitol

March 20, 2023, 12:00 PM

Opening Remarks (12:00 - 12:10)

- **Senator Christine Tartaglione**, Senate Democratic Whip
- **Representative Patrick J. Harkins**
- **Representative Ryan Bizarro**, House Democratic Policy Committee Chair
- **Senator Katie Muth**, Senate Democratic Policy Committee Chair

Panel 1: Local Government (12:10 - 12:40)

- **Keith Wentz**, County Commissioners Association of Pennsylvania - Risk Management Director
- *Question & Answer Period*

Panel 2: Advocates for Expanding OSHA Protections (12:40 - 1:50)

- **Angela Ferritto**, President - Pennsylvania AFL-CIO
- **Arthur G. Steinberg**, President - PA American Federation of Teachers
- **J. David Henderson**, Executive Director, AFSCME Council 13
- *Question & Answer Period*

Closing Remarks (1:50 - 2:00)

- **Senator Christine Tartaglione**, Senate Democratic Whip
- **Representative Patrick J. Harkins**
- **Representative Ryan Bizarro**, House Democratic Policy Committee Chair
- **Senator Katie Muth**, Senate Democratic Policy Committee Chair



Pennsylvania Municipal
League



County Commissioners Association of Pennsylvania
Pennsylvania Municipal Authorities Association
Pennsylvania Municipal League
Pennsylvania School Boards Association
Pennsylvania State Association of Boroughs
Pennsylvania State Association of Township Commissioners
Pennsylvania State Association of Township Supervisors

**TESTIMONY ON
SENATE BILL 93
OSHA FOR PUBLIC EMPLOYEES**

Presented to the House and Senate Democratic Policy Committees

Presented by
Keith Wentz, ARM-P, ARM, CRM, Risk Management Director
County Commissioners Association of Pennsylvania

March 20, 2023

Thank you for the opportunity to testify before the House and Senate Democratic Policy Committees today on the creation of a state Occupational Safety and Health Act as proposed in SB 93. I am Keith Wentz, Risk Management Director at the County Commissioners Association of Pennsylvania (CCAP), a non-profit, non-partisan association representing the commonwealth's 67 counties. I am offering testimony today on behalf of CCAP, as well as the Pennsylvania State Association of Township Supervisors, the Pennsylvania Municipal League, the Pennsylvania State Association of Township Commissioners, the Pennsylvania Municipal Authorities Association, the Pennsylvania State Association of Boroughs and the Pennsylvania School Boards Association.

I am here today representing local governments in Pennsylvania because of the impacts legislation like SB 93 will have on local governments as public employers. Our personnel complements vary greatly – typically counties, cities and school districts maintain larger workforces, while some townships only employ a few part-time workers and have no departmental structure and other townships have formal departments and dozens of employees. A small borough may employ only a few individuals for jobs such as borough manager and support staff, while other boroughs still maintain their own police forces and health departments, for example. In most school districts, the great majority of workers are classroom teachers.

We extend our appreciation to the sponsors for their concerns about worker safety. However, while we agree that worker safety is an important issue, we do not believe that stringent regulatory requirements, new administrative overhead, and substantial fines will truly promote or improve worker safety at the local government level. Our group opposes any effort to enact a state Occupational Safety and Health Act (OSHA) that would mandate compliance by political subdivisions or would require political subdivisions to come under the federal law.

We contend that SB 93 would be costly when compared to any potential benefit, both for local government units and for the commonwealth. Specifically, we question the need for the legislation in the absence of statistics establishing that there is a worker safety problem in local government. Both proponents and opponents of the legislation have argued its need or lack of need based primarily on philosophy and anecdotal evidence of isolated incidents. Existing statistical data do not indicate that there is any greater incidence of workplace injury in the public sector as compared to the OSHA-covered private sector, and suggest that before embarking on the expensive path SB 93 calls for, the legislature ask the Department of Labor and Industry to develop a valid statistical study of workplace injuries between comparable public and private sector occupations; it is our belief that such a comparison will show little material difference between the OSHA-regulated private sector and our public sector counterparts and will support our contention that the legislation is unnecessary. The expenditures SB 93 would entail, both in diversion of local funds and the cost to the commonwealth of establishing and maintaining a vast new regulatory regime, should be devoted instead to many other pressing and urgent needs.

Local government officials are concerned about public worker safety and take considerable measures to ensure that workplaces are safe. First and foremost, most local governments are

actively engaged in risk management activities and measures to protect the safety of employees. To promote worker safety and reduce the costs of liability and workers' compensation insurance, municipalities implement training, workplace inspection, risk management, and other workplace procedures. A large number of the state's counties and municipalities are self-insured for workers' compensation, and many are participants in pooled programs that incentivize worker safety through premium reductions earned by completing an extensive array of risk control and prevention activities. As participants in a self-insured program, these entities are also required by Department of Labor and Industry regulations to have certain safety programs, including such elements as an employee safety committee, as can be seen for example in Chapter 129 of Title 34 of the Pennsylvania Code.

Governmental workplace safety already involves other components of oversight as well. In addition to a plethora of workplace safety statutes and regulations the commonwealth already has in place addressing specific areas of hazard all public sector employers are required to comply with the Pennsylvania Worker and Community Right to Know Act, which requires employers to provide employees and the community with information about any hazardous materials present in the workplace. The Department of Labor and Industry has developed and periodically updates a list of regulated substances.

We are also required to comply with federal commercial driver's license requirements and must also follow PennDOT safety regulations for work zones on public roads where employee risks may be greatest. Significant training hours are mandated by law for our workers, in addition to a great deal of additional training that while not expressly mandated by law, is necessary to mitigate liability exposures.

Senate Bill 93 seems to indicate that the Secretary of Labor and Industry would be required to adopt in their entirety the federal OSHA rules, and the Secretary would also have the ability to develop state standards for situations where no federal standards are currently applicable. We argue that federal OSHA standards are not entirely applicable or appropriate to local governments, and in fact many of those standards do not make sense for public entities.

Local government employees, when considered as a whole, engage in limited activities that would be covered by OSHA, so requiring local government to comply with irrelevant rules and documentation requirements is an unnecessary and burdensome mandate. While the proposed legislation contains a method for public employers to apply for a temporary variance on an OSHA requirement, this process results in piecemeal regulatory solutions and does not present a long-term alternative to federal regulations that are incompatible with the working conditions of local government employees. Section 1956.1(b) of the federal regulations for OSHA on adopting a state plan for state and local government employees says that "in adopting these requirements and procedures, consideration should be given to differences between public and private employment. For instance, a system of monetary penalties applicable to violations of public employers may not in all cases be necessarily the most appropriate method of achieving compliance." We believe this legislation does not leave the state any flexibility to adopt requirements that are sensitive to these differences.

We also note particularly that there are some classifications of public employees for which no private workplace comparables might be available, and these are in some of the most inherently dangerous, yet most essential, services such as police, fire, corrections, highway construction, snow removal, and hazardous materials response.

The costs and benefits of SB 93 must be weighed to determine if the purported increase in safety for workers that the bill's supporters believe will result from it will be of greater benefit than the cost taxpayers will be required to shoulder. We believe the cost of compliance, including paperwork and filings to comply with this act, will be onerous, and of minimal additional benefit to workers beyond public safety procedures already in place. The recordkeeping requirements in this bill are vague, but public employers will have to present unspecified documentation to the Secretary on demand. Many municipal authorities, townships, boroughs, and even some cities and counties could be forced to raise property taxes and user fees if forced to comply with this expensive mandate. OSHA was not written with public sector workplaces in mind, and the experience of other states that have tried what SB 93 proposes should be carefully studied to learn what it cost and whether it made a true difference in public sector workplace safety.

The cost to governmental entities is not the only issue at stake in this legislation. We ask Committee members to take note that the bill's definition of public employer includes "any nonprofit organization or institution and any charitable, religious, scientific, literary, recreational, health, educational or welfare institution receiving grants or appropriations from federal, state or local governments" unless the employer is already subject to OSHA requirements. Many local governments issue payments to these types of entities for provision of services, with this practice particularly prevalent in the provision of human services at the county level and emergency services, including volunteer fire departments and non-profit EMS at the municipal level. It is difficult to quantify the number of organizations that will be drawn under the umbrella of this legislation by this definition, but it is important for policymakers to consider the impact this will have on many community service organizations. These organizations, no matter how large or small, will now have to comply with the requirements for recordkeeping, and will be subject to random inspections.

We also believe that the penalties established in SB 93 are problematic for public entities. The bill prescribes civil penalties of up to \$1,000 for a lesser violation, ranging up to civil penalties of \$10,000 for "willful or repeated violations" of the law. Financial punishment for government means that taxpayer money will be utilized to satisfy the fines. The language also does not explain who will be fined -- is it the government entity, its elected officials, or a supervisory employee responsible for the violation? The fines for even a technical violation may exceed the amount of compensation for a local township supervisor, borough council member or other volunteer elected official.

In closing, I want to reiterate that we strongly believe that worker safety is of vital concern and we also believe that we have demonstrated a commitment to worker safety in current practice.

The financial incentives and financial self-interest inherent in the workers' compensation system and liability risk management programs provide a far better path to doing the right thing for worker safety and we wish to continue to work within our existing regulations and risk management programs to do what is best for our employees.

Thank you again for the opportunity to testify today and your consideration of these comments. I would be pleased to answer any questions you may have.



AFT Pennsylvania
A Union of Professionals

AFT Pennsylvania
President Arthur Steinberg

*Testimony to the
PA Senate & House Democratic Policy Committees
On Public Sector OSHA
Monday, March 20th, 2023 | Written Testimony*

Thank you, Chairpersons Muth and Bizzarro, Senator Tartaglione, Representative Harkins and all of the members of the Senate and House Democratic Policy Committees for inviting AFT Pennsylvania to testify on the important and timely topic of adoption of a Public Sector OSHA here in Pennsylvania.

I am the President of AFT Pennsylvania, the Pennsylvania affiliate of the American Federation of Teachers. I am humbled to offer the following testimony on behalf of our 36,000 professional and paraprofessional educators into whose care we entrust our Commonwealth's most precious resource, our children, every day, in every community in our State.

The Health and Safety of our members and of the students entrusted to us has been a paramount concern of our Union for the entirety of my professional career. Beyond the responsibility of my position as the State President of AFT Pennsylvania, I serve as the Chief Trustee and Lead Coordinator of the Philadelphia Federation of Teachers Health and Welfare Fund. I have been integrally involved in the development of our Union's asbestos, lead and mold program to assess the safety of school facilities and oversaw development of the Healthy Schools Tracker mobile app, that allows our members to report facility safety issues in real time.

As far back as I can remember, the American Federation of Teachers, our national union—of which I also serve as a Vice President—has advocated for state-level OSHA plans. In 1992—31 years ago—AFT passed a resolution calling on OSHA to extend protections to public sector workers. This has been one of our fights for a very long time.

The Federal OSHA Act, passed in 1970, made state provision to provide OSHA like protections to public employees optional thereby creating an inexplicable and breathtakingly dangerous second-class status for all public employees including those who I am privileged to represent. Imagine, if you will, two people, in the same workplace doing the same job and one is entitled to minimally safe basic working conditions and the other is not ...sound far-fetched? Well here in Pennsylvania, when a public school district contracts out the retention of substitute teachers or retains a private custodial or maintenance service that is precisely the situation. It is not a mere possibility it is a practical reality every day in our state, and it demands legislative attention and action.

A majority of U.S. states and territories (27) have enacted laws that provide at least OSHA level protections for public employees *before* an incident occurs. (*Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, Nevada, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington, Wyoming*). The most recent State to adopt Public Sector OSHA was the Commonwealth of Massachusetts.

When the Massachusetts legislature was debating the bill which ultimately became its Public Sector OSHA Law, research revealed that each week, an average of 28 public

sector workers in that state suffer injuries serious enough to be out of work for five or more days; this statistic was according to a conservative estimate from the Massachusetts Department of Industrial Accidents (DIA). Pennsylvania, however, does not collect this type of data at a state level and each local governmental unit may or may not record such incidents in the workplace or may record them inconsistently. Because there is no uniformity in how political subdivisions collect, identify, record and utilize such data, we have no access to dependable, reliable or even informative records at the Commonwealth level. The result, as is plainly predictable, is that many members of our General Assembly unfortunately do not identify or even comprehend a need for this type of legislation while public employees at every level of government face dangers that result in illness, injury and death in their effort to earn a living and serve our communities.

National data indicates that local government employees have twice the rate of nonfatal occupational injury and illness as private sector employees— over 6 cases per 100 full-time public employees vs. Just over 3 cases per 100 workers in the private sector. Because of the hodgepodge of inconsistent or nonexistent reporting structures or disclosure, we have no reliable data, which breeds a groundless belief that we are not facing an Issue of literally life and death proportion. Our local union in Philadelphia has fought for this transparency with the local school district and that is why there is so much data from that political subdivision, however, these injuries and illnesses are happening in school buildings from Lake Erie to the Delaware River and everywhere in between the Commonwealth.

The median age of our public-school buildings in Pennsylvania is over 60 years, with many school buildings in our less affluent urban and rural areas, over 100 years of age Pennsylvania's failure to invest in K-12 education results in schools that fail to meet basic standards for being safe, healthy and clean. Students and educators are exposed to lead, asbestos, mold and other environmental hazards. Too many classrooms are without heat in the bitter cold and without air conditioning on hot days. The aging infrastructure of our school buildings is a significant contributor to increased asbestos exposure, that has been clearly linked to fibrotic pulmonary disease, asbestosis, and mesothelioma. According to one study by the National Center for Health Statistics, employees in elementary and secondary schools were the second most frequently impacted by mesothelioma deaths – even higher than workers in industries known for frequent asbestos exposure risks.

Schools across the Commonwealth are approaching, at, or beyond their useable lives. That means pipes that contain lead and construction materials containing asbestos. When a school building's age alone or retrofit improvement or a weather event causes the damage and disturbance of asbestos, the educators, and students inside are put at grave risk. Just over three years ago, four schools in Scranton alone had to temporarily close after asbestos was discovered. That was a full quarter of all schools in Scranton School District, closed due to lack of upkeep or improvement.

To put a fine point on the subject, if an outside contractor were hired to remediate that asbestos, employees of that contractor would be covered by OSHA, but the educators, staff, cafeteria workers, and janitors employed by the school district, and who are being exposed to these toxins every day, are not.

Without OSHA-like protections, public agencies have no clear guidance on how they ought to protect workers. Moreover, because OSHA protections don't apply, school staff and other public employees have little recourse to facing dangerous working conditions. In a news report last April on WHYY radio, Adam Finkel, professor of environmental health sciences at the University of Michigan and a former regional administrator at OSHA, stated, "If you're a private school employee, you have a private employer and you can file a complaint, you can call OSHA and have an inspection done." He went on, "If they're over the asbestos limit, you can get relief from that. If you're a public-school teacher in a state without a state [OSHA] plan, you are not covered by the federal government, so you have very limited recourse."

There is abundant evidence that this lack of oversight puts workers and by extension, children, at risk. We need to do better; we must do better.

Recommendations:

AFT Pennsylvania respectfully but urgently demands the General Assembly to follow the example of states like Massachusetts and enact legislation to extend OSHA protections to all public employees so that teachers and school staff have recourse when their health and safety are put at risk by chronic neglect and disinvestment. Lawmakers should require public school districts to have a safety plan for every school building developed in consultation with educators and school employees.

We also urge you to prioritize funding for facilities remediation and modernization. This begins with immediately lifting the moratorium on PLANCON (PA Public School Building Construction and Reconstruction Advisory Committee) applications and funding. The state program that could help subsidize this work is funded at 0 percent. Schools facilities funding should provide for things like more school cleaning and maintenance staff; rodent and pest control; asthma control; accelerated and expanded lead paint and asbestos stabilization; repair of water leaks; electrical and lighting upgrades; bathroom upgrades; window replacement; and COVID-related response and upgrades, including upgrades to address air quality.

Closing

We know that passing Public Sector OSHA and funding our facilities properly will not stop accidents from happening in our workplaces. However, accidents, injuries, and illnesses will be reduced and clear guidance on how employers should be protecting workers will be mandated.

Thank you again for inviting us to offer our views. AFT Pennsylvania wants our schools to be safe, healthy, and clean so our members can most effectively educate the next generation of Pennsylvanians, creating the foundation upon which they may reach their unlimited potential.