

Legislative Analysis



ABOLISH OSHA STANDARDS COMMISSIONS

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<http://www.house.mi.gov/hfa>

House Bill 5917 as amended
Sponsor: Rep. Joseph Graves

Senate Bill 1335 (Substitute S-1)
Sponsor: Sen. Tonya Schuitmaker

House Bill 5922 as amended
Sponsor: Rep. Jon Bumstead

Senate Bill 1336 without amendment
Sponsor: Sen. Patrick Colbeck

House Committee: Regulatory Reform
Senate Committee: Reforms, Restructuring, and Reinventing

Complete to 11-29-12 *(Enacted as Public Acts 415, 416, 447, and 448 of 2012)*

A SUMMARY OF HOUSE BILLS 5917 & 5922 AND SENATE BILLS 1335 & 1336 AS REPORTED FROM HOUSE COMMITTEE ON 11-28-12

Taken together, the bills would abolish the Safety Standards Commissions within the Occupational Safety and Health Act.

The bills in this package represent the recommendations for statutory changes by of the Office of Regulatory Reinvention (ORR) regarding workplace safety regulation. According to the recommendation, "eliminating the standing commissions will return the original purpose for which they were created - to provide professional guidance - to advisory committees made up of persons directly impacted by the standards."

By statute, those entities are granted authority to promulgate safety standards within their respective jurisdictions. The authority to promulgate safety standards was transferred to the director of the Department of Licensing and Regulatory Affairs (LARA) through Executive Reorganization Order 1996-2 and the commissions currently exist without any promulgation authority.

Accordingly, the bills would remove references to the ability of those commissions to promulgate safety standards and, instead, provide the statutory authority to the LARA director. The bills would also make other changes which are described below. The bills are all tie-barred to one another, meaning none can take effect unless all are enacted.

In general, the bills reflect some of the recommendations made by the Office of Regulatory Reinvention for changes in the promulgation process for the state's workplace safety standards. In its report, issued on January 27, 2012, the ORR recommended eliminating safety standards commissions and "assigning the LARA director the responsibility for developing or revising standards" and defining what constitutes a "clear and convincing need."

House Bill 5917 would repeal Section 18 (MCL 408.1018) of the Occupational Safety and Health Act and abolish the ***Construction Safety Standards Commission***. Under statute, the Commission is able to promulgate construction safety standards based upon "generally accepted nationwide engineering standards and practices designed to prevent accidents and to protect the life and safety of employees engaged in construction operations." Accordingly, the bill would remove reference to the commission's ability to promulgate standards and, instead, provide that statutory authority to the LARA director.

House Bill 5922 would repeal Section 15 (MCL 408.1015) of the Occupational Safety and Health Act and abolish the ***General Industry Safety Standards Commission***. The bill also makes changes to reflect the director's authority to promulgate regular and emergency safety standards (instead of the commissions) and clarifies that standards promulgated by the former General Industry and Construction Safety Standards Commissions that are in effect on the effective date of the bill would be continued. Additionally, the bill removes the statutory authority of the following commissions to promulgate rules:

- General Industry Safety Standards Commission
- Construction Safety Standards Commission
- Occupational Health Standards Commission
- Standards Promulgation Commission

Senate Bill 1335 (S-1) would amend Section 14 of the Occupational Safety and Health Act to do the following:

- Under current law, the LARA director is required to begin the process of an administrative rule that is substantially similar to the federal standard within 10 days of the U.S. Department of Labor adopting or promulgating an occupational safety and health standard. The rule then has to be presented to the Joint Committee on Administrative Rules (JCAR) unless one of the standards commissions determines and certifies the federal standard is clearly inconsistent with the statutory criteria. The bill would require a proposed rule to be presented to JCAR unless the LARA director determines the federal standard was clearly inconsistent with the statutory criteria.
- Under current law, a proposed rule that would address a matter not addressed by a federal standard cannot be processed and presented to JCAR unless the appropriate standard commission determines and certifies there is a clear and convincing need for the standard. The bill would shift that responsibility to the LARA director, and require that the director include a statement of the specific facts that establish the clear and convincing need when processing and presenting the rule to JCAR. The statement would have to (1) explain the unique characteristics of industry in Michigan that necessitate the standard or (2) demonstrate that the standard was requested by a broad consensus of union and non-union employers and employees in the specific industry affected by the standard.

Senate Bill 1336 would repeal Section 23 (MCL 408.1023) of the Occupational Safety and Health Act and abolish the *Occupational Health Standards Commission*. Additionally, the bill would delete a provision requiring the Commission to appoint and consult with an advisory committee before promulgating a proposed standard. The bill would also make the following changes:

- Clarify that occupational health standards in place on the effective date of the bill would be continued.
- Clarify that the authority to promulgate occupational health standards would be vested with the LARA director, rather than the Commission.
- Transfer from the Commission to the LARA director, the responsibility to prescribe by standard that medical exams or tests are made available (at the employer's cost) to employees to determine if they have been adversely affected by exposure to health hazards.
- Incorporates the Occupational Safety and Health Hazard Communication standard from the U.S. Department of Labor as of May 25, 2012 (updates standards from the one issued April 7, 1984).
- Under current law, employers who are chemical manufacturers in a standard industrial classification 20 - 39 of the Standard Industrial Classification Code must comply with the federal standard and the requirements of the act concerning use of hazardous chemicals in a workplace. The bill would add employers in a classification provided by sector 31 - 33 - Manufacturing, of the North American Industry Classification System, United States, 1997, published by the Office of Management and Budget.
- Under current law, in non-emergency situations, manufacturers, importers, or employers claiming a trade secret are required to disclose the specific chemical identity that would otherwise be allowed to be withheld under incorporated standards to an occupational nurse providing services to exposed individuals. The bill would require those entities to disclose the specific chemical identity, percentage composition, or both, in such a situation.

FISCAL IMPACT:

House Bills 5917 and 5922 and Senate Bills 1335 and 1336 would have a minor yet positive fiscal impact on the Michigan Occupational Safety and Health Administration to the extent that these bills eliminate the General Industry, Construction, and Occupational Health Standards Commissions and the stipulation requiring the appointment of Advisory Committees before promulgating standards. Between fiscal years 2005 and 2012, the average annual expenditures to support the Commissions and Advisory Committees totaled approximately \$13,000.

BACKGROUND INFORMATION AND DISCUSSION:

While statute still reflects the safety standards commissions' abilities to promulgate workplace safety standards, that authority was transferred to the LARA director in 1996. Since that time the commissions have operated in an advisory capacity to the director.

Under current law, the safety standards commissions currently appoint advisory committees to work with MIOSHA staff in the development of workplace safety standards. According to testimony, the advisory committees would continue to exist to provide industry guidance to MIOSHA in the drafting and revision of workplace safety standards. The advisory committee members would be directly appointed by MIOSHA.

As noted earlier, the bills in this package represent the recommendations for statutory changes related to the ORR's recommendations regarding workplace safety. According to the recommendation, "eliminating the standing commissions will return the original purpose for which they were created - to provide professional guidance - to advisory committees made up of persons directly impacted by the standards."

In addressing the "clear and convincing standard" provision, the ORR recommendation says the following:

According to MCL 480.1014(8) a proposed MIOSHA administrative rule that would address a matter not addressed by federal standards cannot be processed unless the appropriate standards commission determines and certifies that there is a "clear and convincing need" for the standard. Executive Reorganization Order 1996-2, MCL 408.1019, transferred the certification authority to the director of the department (now LARA). Therefore, in practice, a Standard Commission issues a recommendation and certificate stating that a clear and convincing need exists, and the director of the department certifies that there is a clear and convincing need for the standard. The difficulty that remains is that "clear and convincing need" was never defined in the existing statute. Over the years, the lack of definitive criterion has led to inconsistent application of this determination. A statutory definition would provide for better expectations and consistent regulations for employers, employees, and regulators alike.

For the full text of the recommendation, see:

https://www.michigan.gov/documents/lara/ORR_Workplace_Safety_Recommendations_379045_7.pdf.

POSITIONS:

Office of Regulatory Reinvention supports the bills. (11-28-12)

Consumers Energy supports the bills. (11-28-12)

Grand Rapids Chamber of Commerce supports the bills. (11-28-12)

Michigan Association of Home Builders supports the bills. (11-28-12)

Michigan Chamber of Commerce supports the bills. (11-28-12)

Michigan Manufacturers Association supports the bills. (11-28-12)

Michigan Municipal Risk Management Authority supports the bills. (11-28-12)

Michigan Restaurant Association supports Senate Bills 1335 & 1336. (11-28-12)

National Federation of Independent Business - Michigan supports the bills. (11-28-12)

International Brotherhood of Electrical Workers - Michigan State Conference opposes House Bill 5917. (11-28-12)

United Auto Workers (UAW) opposes the bills. (11-28-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.