



Senate Fiscal Agency
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BILL



ANALYSIS

Telephone: (517) 373-5383
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Senate Bill 1335 (Substitute S-1 as reported)
Senate Bill 1336 (as reported without amendment)
Sponsor: Senator Tonya Schuitmaker (S.B. 1335)
Senator Patrick J. Colbeck (S.B. 1336)
Committee: Reforms, Restructuring and Reinventing

(as enrolled)
(as enrolled)

Date Completed: 10-26-12

RATIONALE

The Michigan Occupational Safety and Health Act was first enacted in 1974 to help prevent workplace injuries, illnesses, and fatalities by setting and enforcing occupational safety and health standards, promoting safety and health training and education, and developing programs to prevent workplace hazards. The Act created the Michigan Occupational Safety and Health Administration (MIOSHA) and established three commissions to develop standards: the Occupational Health Standards Commission, the General Industry Safety Standards Commission, and the Construction Safety Standards Commission. Originally, these commissions had the authority to promulgate standards, according to the rule-making process in the Administrative Procedures Act; in 1996, however, that authority was transferred by Executive Order to the Director of the Department of Consumer and Industry Services—which has evolved into the present Department of Licensing and Regulatory Affairs (LARA), where MIOSHA is housed. The commissions continue to function in an advisory capacity and the LARA Director is responsible for promulgating workplace health and safety standards. The Director also is required to promulgate rules that reflect Federal standards, and must establish a clear and convincing need for rules that exceed Federal standards.

In January 2012, two recommendations related to the commissions and the rules were made by the Workplace Safety Advisory Rules Committee in LARA's Office of Regulatory Reinvention. Specifically, the Committee recommended eliminating the

three commissions and assigning the responsibility for developing standards to the LARA Director. With respect to rules that exceed Federal standards, the Committee recommended defining what constitutes "clear and convincing need". It has been suggested that these recommendations be enacted.

CONTENT

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

- **Require the Director of the Department of Licensing and Regulatory Affairs to provide a statement of specific facts establishing a clear and convincing need when processing a rule that exceeded Federal standards.**
- **Require the statement to explain unique characteristics of industry in Michigan or to show that the rule was requested by a broad consensus of employers and employees in the affected industry.**
- **Require a proposed rule to be presented to the Joint Committee on Administrative Rules unless the Director determined that a Federal standard was inconsistent with statutory criteria.**

Senate Bill 1336 would repeal Section 23 of the Act, which creates the Occupational Health Standards Commission, and would amend the Act to do the following:

- **Require the LARA Director, rather than the Commission, to promulgate an occupational health standard.**
- **Delete the requirement that an advisory committee be appointed before an occupational health standard is promulgated.**
- **Incorporate by reference the Federal occupational safety and health hazard communication standard that was adopted or promulgated as of May 25, 2012.**
- **Identify a classification of employers subject to the requirements of that standard.**

The bills also would delete references to the Department of Public Health (now the Department of Community Health) and responsibilities of that Department. (The Act requires the Department of Public Health to administer provisions of the Act related to occupational health and requires the Department of Labor (now LARA) to administer provisions related to occupational safety, and assigns responsibilities to each Department. Executive Order 1996-1, however, transferred these responsibilities of the Department of Public Health to the Department of Labor.)

The bills are tie-barred to each other and to House Bills 5917 and 5922 (or equivalent Senate bills). Those bills would repeal sections of the Act that create the Construction Safety Standards Commission and the General Industry Safety Standards Commission. The bills also would delete provisions of the Act authorizing those Commissions and the Occupational Health Standards Commission to promulgate standards; would authorize the LARA Director to promulgate construction safety standards and standards to prevent accidents in places of employment and protect employees; and would delete a requirement for the appointment of an advisory committee before a standard is promulgated.

The Senate bills are described in more detail below.

Senate Bill 1335 (S-1)

The Act requires the LARA Director, within 10 working days after the U.S. Department of Labor adopts or promulgates an occupational safety and health standard, to

initiate the processing of an administrative rule that is substantially similar to the Federal standard.

The proposed rule must be presented to the Joint Committee on Administrative Rules unless the General Industry Safety Standards Commission, the Construction Safety Standards Commission, or the Occupational Health Standards Commission determines and certifies that the Federal standard is clearly inconsistent with criteria set forth in the Act.

The bill, instead, would require a proposed rule to be presented to the Joint Committee on Administrative Rules unless the LARA Director determined that the Federal standard was clearly inconsistent with the statutory criteria.

Currently, a proposed rule that would address a matter not addressed by a Federal standard may not be processed and presented to the Joint Committee on Administrative Rules unless the appropriate standards commission determines that there is a clear and convincing need for the standard to meet criteria set forth in the Act.

The bill would refer to the Director, rather than the appropriate standards commission, and would require the Director, when processing and presenting the administrative rule, to include a statement of the specific facts establishing the clear and convincing need. The statement would have to explain the unique characteristics of the industry in Michigan that necessitated the standard, or demonstrate that the standard was requested by a broad consensus of union and nonunion employers and employees in the specific industry affected by the standard.

Senate Bill 1336

Occupational Health Standards

The bill would repeal Section 23 of the Act, which creates the Occupational Health Standards Commission, and would delete provisions requiring the Commission to appoint and consult with an advisory commission before promulgating a proposed standard.

The bill would require the LARA Director, rather than the Commission, to promulgate

an occupational health standard. Standards governing occupational health in effect on the bill's effective date would be continued.

The Act also requires the Commission, if appropriate, to prescribe by standard that medical examinations or tests are made available to employees, at the employer's expense, to determine if they are adversely affected by exposure to health hazards. The bill would transfer this responsibility to the Director.

Hazard Communication Standard

The Act incorporates by reference the occupational safety and health communication standard that had been adopted or promulgated by the U.S. Department of Labor as of April 7, 1986. The bill would refer to the standard that had been adopted or promulgated as of May 25, 2012.

Currently, employers in a standard industrial classification of 20 through 39 of the Standard Industrial Classification Code, published by the U.S. Department of Management and Budget, must comply with that Federal standard as well as requirements of the Act concerning use of hazardous chemicals in the workplace. The bill also would refer to 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.

Disclosure of Chemical Identity

In nonemergency situations, the Act requires a chemical manufacturer, importer, or employer claiming a trade secret, upon request, to disclose a specific chemical identity that otherwise may be withheld under the occupational safety and health communication standard, to an occupational nurse providing services to exposed employees, to an authorized representative of an exposed employee, and to an exposed employee, if they comply with Federal requirements.

The bill would require the disclosure of a specific chemical identity, percentage composition, or both, under these circumstances.

MCL 408.1014 (S.B. 1335)
408.1005 et al. (S.B. 1336)

BACKGROUND

Executive Order 2011-5 established the Office of Regulatory Reinvention within LARA and charged it with "creating a regulatory environment and regulatory processes that are fair, efficient, and conducive to business growth and job creation through its oversight and review of current rules and regulations and proposed rule making and regulatory activities by all departments and agencies".

The Executive Order made the ORR responsible for completing a systematic review of all existing and proposed rules and rule-making processes, and required the Office to make a written report to the Governor with respect to its recommendations. The Executive Order required the ORR, in making its recommendations, to consider those made by advisory rules committees formed by the ORR in specific areas, including workplace safety.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Office of Regulatory Reinvention, with the Workplace Safety Advisory Rules Committee, was tasked with evaluating and making recommendations for changes to Michigan's workplace safety regulations, including existing administrative rules, nonrule regulatory actions, regulatory processes, and, as necessary, statutes. The ORR issued its recommendations regarding workplace safety regulations on January 27, 2012.

One of these recommendations is to define "clear and convincing need" for purposes of a proposed rule that would go beyond Federal standards. Over the years, according to the ORR's report, the lack of definitive criteria has led to inconsistent application of this determination. The report suggested that a statutory definition would provide for better expectations and consistent regulations for employers, employees, and regulators.

Senate Bill 1335 (S-1) would add teeth to the requirement for a clear and convincing need, by requiring a statement of specific facts establishing the need, and requiring the statement to explain the unique characteristics of the regulated industry that necessitated the standard, or to show that it was requested by a broad consensus of employers and employees in the affected industry. These requirements would help ensure that a State-specific standard was justified and did not arbitrarily burden a regulated industry. If a broad consensus requested the standard, there would be assurance that it was not promulgated for a small segment of the industry.

Response: The term "broad consensus" is overly ambiguous.

Supporting Argument

The first of the ORR's recommendations concerning workplace safety regulations is the elimination of the three commissions that develop workplace safety standards, including the Occupational Health Standards Commission. Although their authority to promulgate standards was removed in 1996, the commissions continue to propose rules in a purely advisory capacity. According to the ORR's report, "The Standards Commissions are subject to political influence and are not accountable to the regulated community, and the Commission members are not necessarily experts in their area of regulation."

By eliminating one of the commissions, Senate Bill 1336 would remove an unnecessary layer of the rule-making process, while retaining the LARA Director's authority to promulgate occupational health standards. Interested parties and other members of the public would continue to have an opportunity for input as required by the Administrative Procedures Act. In addition, MIOSHA could appoint advisory committees on ad hoc basis to address issues raised by stakeholders.

Opposing Argument

Workplace safety standards protect people from being injured or killed, and prevent families from losing their breadwinners. Although the standards commissions do not have rule-making power, they provide an important platform for both employers and employees to voice their concerns about workplace safety and potentially hazardous working conditions, or objections to

standards that might be unreasonable or unnecessary. The commissions also are required to appoint and consult with advisory committees, which can supply valuable expertise. Based on the advice of the committees and the input from interested parties, the commissions can make well-informed recommendations for standards.

In addition, some workplace safety issues are not the subject of an existing or proposed standard. In other cases, a standard might be vague, unenforceable, or out of date. The commissions provide a venue where these matters may be raised, and can work with MIOSHA to find a resolution.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 1335 (S-1)

The bill would have no fiscal impact on State or local government.

Senate Bill 1336

The bill would have an indeterminate, but likely very minor positive impact on State finances. The bill would no longer require the Occupational Health Standards Commission to appoint an advisory committee before considering new safety standards. Statute currently allows the committees to be reimbursed for their expenses according to a schedule established annually by the Legislature, but it appears that such a schedule has not been established recently. To the extent that employees of the Department of Licensing and Regulatory Affairs are appointed to these committees as part of their official duties, costs associated with that staff time could be reduced.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.