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BILL



ANALYSIS

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Senate Bills 1335 and 1336 (as introduced 9-27-12)
Sponsor: Senator Tonya Schuitmaker (S.B. 1335)
Senator Patrick J. Colbeck (S.B. 1336)
Committee: Reforms, Restructuring and Reinventing

Date Completed: 10-16-12

CONTENT

Senate Bill 1335 would amend the Michigan Occupational Safety and Health Act to do the following:

- **Require the Director of the Department of Licensing and Regulatory Affairs (LARA) to provide a statement of specific facts establishing a clear and convincing need when processing an administrative rule.**
- **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 a section of the Act creating 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 the responsibilities of the Department of Public Health under the Act to the Department of Labor. A subsequent series of executive orders eliminated the Department of Labor and created LARA, which houses the Michigan Occupational Safety and Health Administration.)

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

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. When processing and presenting the administrative rule, the Director would have to include a statement of the specific facts establishing the clear and convincing need.

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)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 1335

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.