



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 299

PRINTER'S NO. 962

PRIME SPONSOR: Harkins

### COST / (SAVINGS)

FUND	FY 2022/23	FY 2023/24
General Fund	\$0	See Fiscal Impact

### SUMMARY:

House Bill 299, Printer's Number 962 establishes the Public Employees Occupational Safety and Health Act. It would require public employers to provide safe employment and places of work in conformance with state-level plan put forth and enforced by the Department of Labor and Industry, in conformance with federal OSHA standards.

### ANALYSIS:

#### State Plan Submission

The commonwealth is required to prepare a state plan for the development of occupational safety and health standards with respect only to public employers and employees, in accordance with 29 U.S.C. 667(b), which allows states to submit plans for approval that establish state standards. The federal Secretary of Labor will approve the plan if, among other requirements, the plan provides for standards and enforcement that is or will be at least as effective in providing safe and healthful workplaces, contains assurances that the state will maintain an effective program that applies to all employees of public agencies of the state and its political subdivisions. The plan must also give satisfactory assurances that the state will devote adequate funds to administration and enforcement of the standards, and that the state agency charged with enforcement has both the legal authority and qualified personnel necessary to enforce the standards.

#### Regulations and Other Duties of the Secretary

The secretary is empowered to promulgate regulations to administer and enforce the act and is charged to:

- Encourage safety efforts of public employers and employees to create safe working conditions
- Provide appropriate reporting procedures
- Provide for unannounced inspections of workplaces
- Create and distribute educational, informational and training materials
- Create programs that promote occupational safety and health education and voluntary compliance with the act

## Adoption of Federal Standards and Variances

The bill requires the secretary to adopt by regulation all of the federal occupational safety and health standards, which will then apply to public employers and employees. The secretary will continue to promulgate regulations to conform with federal standards and can develop state specific standards in special circumstances if no federal standards are applicable.

Public employers can seek variances from the standards promulgated by the act. The bill lays out detailed procedures for variances.

## Pennsylvania Occupational Safety and Health Review Board

A new board is established to handle appeals of compliance orders, notifications and penalties issued under the act. The board consists of 5 people appointed by the governor, who shall serve four year terms.

Board members will be assigned to hear appeals on a rotating basis. Board members hearing appeals are entitled to receive a per diem amount, determined by the secretary, and will be provided with necessary staff to conduct the hearings in support.

## Inspection Powers

The secretary is granted powers to inspect workplaces and job sites without advance notice whenever work is being performed. Other inspections can occur during regular working hours and other reasonable times to inspect conditions, structures, machines, equipment and materials. During these inspections, inspectors can question an employer or employee privately.

If witnesses are required in the course of inspections and investigations, the secretary can require their attendance, testimony and production of evidence under oath. Witnesses shall be paid the same fees and mileage as court witnesses. The secretary can seek court orders to compel compliance.

Employer and authorized employee representatives shall be given the opportunity to be present during the physical workplace inspection. Employees who accompany an inspection shall not lose wages.

Employers or authorized employee representatives can request an inspection, if they believe that a violation of health or safety standards exist, or that an imminent danger exists. The bill lays out the requirements to trigger an investigation and other procedures for the investigations.

## Recordkeeping

Employers are required to keep various records required by the secretary and to post educational notices or conduct training. Employers must maintain records of work-related deaths, injuries and illnesses, other than minor incidents. They must also track exposure to potentially toxic materials or harmful physical agents as required by health and safety standards, and notify employees who are subject to exposure that exceeds the standard.

## Enforcement

The secretary can issue compliance orders when an inspection or investigation determines that an employer violated the act or a health and safety standard. Orders must be posted near where the violation occurred, or at accessible locations at the workplace.

The secretary can issue penalties to employers in conjunction with compliance orders, or for failures to correct violations. Employers can contest both compliance orders or penalties to the review board.

If necessary, the secretary can petition Commonwealth Court for a temporary restraining order to stop conditions or practices at public employers under certain conditions.

## Penalties

Employers can be assessed penalties for different violations

<b>Violation</b>	<b>Penalty</b>
Willful or repeated violation	Not more than \$10,000/violation
Compliance order for serious violation	Not more than \$1,000/violation
Compliance order for lesser violation	Not more than \$1,000/violation
Failure to correct violation	\$1,000/day during which failure or violation continues (starting after correction period has expired)
Willful violation causing death	Misdemeanor; Not more than \$10,000, up to 6 months imprisonment, or both
Willful violation causing death, second offense	Not more than \$20,000, up to 1 year imprisonment, or both
Providing advance notice of inspection	Misdemeanor, up to \$1,000, or up to 6 months imprisonment, or both
False statements	Misdemeanor, up to \$10,000, or up to 6 months imprisonment, or both
Violation of posting requirement	Not more than \$1,000
Refusing entry for investigation or inspection	Misdemeanor; not more than \$1,000, up to 6 months imprisonment, or both
Causing bodily harm to secretary	Misdemeanor; not more than \$10,000, up to 1 year imprisonment, or both

The board holds the authority to assess the administrative penalties, and will consider the size of the business, gravity or violation and employer conduct.

Penalties will be deposited into the State Treasury. Absent other directing language, this would be the General Fund.

## Confidentiality

Information reported to or obtained by the secretary or the review board from inspections or proceedings that contains trade secrets is confidential, with limited exceptions. The secretary and board shall issue orders to protect the trade secrets. Unauthorized disclosure of confidential information is a misdemeanor, punishable by a fine of up to \$1,000, or imprisonment of up to 1 year, or both.

## Other Provisions

The bill contains a nondiscrimination protections for employees who file a complaint or testify in proceedings.

Section 19(a)(1) requires the secretary to conduct research and demonstration projects related to occupational safety and health issues, either through the department or via grants or contracts. This section also contains broad authority to issue regulations requiring employers to measure and report on exposure to toxic substances that the secretary believes may endanger the health or safety of employees. This authority is not tied to federal standards.

The secretary shall cooperate with NIOSH at the US Dept. of Health and Human Services in establishing medical examination programs and tests to determine the incidence of occupational illness and employee susceptibility to those illnesses.

For both the research and demonstration projects, and the NIOSH programs, employers can request that the department pay for the costs of the program, which may be granted.

The secretary shall conduct education programs to ensure an adequate supply of qualified personnel to carry out the act, and informational programs on how to use safety and health equipment.

The bill takes effect in 60 days.

**FISCAL IMPACT:**

The fiscal impacts of HB 299 for state and local governments are expected to fall into several categories:

- Department of Labor and Industry costs to establish the standards under the state plan and administer the program
- State level direct costs to comply with the new safety standards
- Local costs to municipalities, school districts and other local governmental entities to comply with new safety standards
- Facility remediation and infrastructure

Timeframe

States initially submit their proposed plan to OSHA for approval as a developmental plan. During this stage, a state must assure OSHA that within three years, it will have all of the required structural elements in place, including legislation, regulations and procedures for standards setting, enforcement, appeals, and a sufficient number of enforcement personnel.

After the developmental steps are complete, the US Secretary of Labor can certify the plan, which approves its structural completeness. At least one year following certification, states can seek final approval of the state plan.

Approval of a state plan will require several years to complete and implement. It is likely that the state will not incur costs within 2022/23 or 2023/24.

Department Administrative Costs

Common functions to administer state plans include health and safety compliance inspectors, staff available to provide consultation services to employers to help them become compliant, support staff and management.

Based on these functions, and review of OSHA state plan monitoring reports that discuss staff allocations in other states with public sector-only plans, this analysis assumes the following positions for an administrative budget. The department’s Bureau of Occupational and Industrial Affairs was used as a reference for positions which might have similar compensation schedules to the new positions

<b>Position</b>	<b>FTE</b>	<b>Annual Salary</b>	<b>Total Salary</b>	<b>Reference Position for Salary Assumption (Midrange of Salary Band)</b>
Inspectors	20	\$68,300	\$1,366,000	UCC Building Inspector 2
Employer Consulting	5	\$68,300	\$341,500	UCC Building Inspector 2
Director	1	\$115,900	\$115,900	Director Occupational and Industrial Safety
Supervisors	2	\$77,900	\$155,800	UCC Building Inspector Supervisor
Clerical	3	\$46,000	\$138,000	Clerical Assistant 3
Program Support	1	\$59,800	\$59,800	Administrative Officer 1
<b>Total - Salaries</b>	<b>32</b>		<b>\$2,177,000</b>	

The governor’s executive budget uses a benefit factor of 73.4% for the Bureau and proposes an operating budget for the Bureau of about 23% of personnel costs. Using these assumptions and increasing the operating allocation to account for fixed assets that would need to be purchased, a reasonable administrative budget could total \$4.7 million.

<b>Assumed Administrative Operating Budget</b>	
Salaries	\$2,177,000
Benefits	\$1,598,000
<i>Subtotal - Personnel</i>	<i>\$3,775,000</i>
Operating and Fixed Asset	\$944,000
<b>Total</b>	<b>\$4,719,000</b>

The Pennsylvania Occupational Safety and Health Review Board members would receive a per diem amount for each day they hear appeals of the secretary’s decisions. The volume of cases will influence the number of days the board will meet and work, which in turn drive the total per diem costs.

For purposes of a cost estimate, the Industrial Board within the department has similar characteristics to the Pennsylvania Occupational Safety and Health Review Board. For the 2021/22 fiscal year, actual expenditures associated with the Industrial Board, which met monthly and had 6 members, totaled \$116,000.

States with approved OSHA state plans can be eligible for up to 50% federal funding to offset the cost of administration and enforcement, under Section 23(g) of the federal OSH Act. If the commonwealth received the full 50% for all administrative and enforcement costs, state share for the combined costs of the board and the department could be reduced from \$4.8 million to \$2.4 million.

State and Local Compliance Costs

The commonwealth and local governments will need to engage in an array of activities to become compliant with the new standards. Activities may include items such as training, acquisition of safety systems and equipment, purchase of personal protective equipment, conducting testing for hazards, and medical evaluation for employees who are exposed to different hazards.

The total costs to comply with the new safety standards depends on the degree to which current state and local safety practices differ from federal OSHA rules that would be adopted under the state plan. The extent to which state and local governments would be out of compliance is unknown, so an exact estimate of the magnitude of these costs is unavailable, but the aggregate costs across all state agencies and local governments subject to the act could be substantial.

Facility remediation and infrastructure

Commonwealth or local facilities may need to be upgraded to comply with the bill, which could lead to significant costs depending on the type of upgrades required. For commonwealth facilities, if the cost of upgrades has an estimated useful life in excess of five years and an estimated cost in excess of \$100,000, the commonwealth’s capital budget could be used to complete repairs and spread costs over the useful life of the asset. Capital projects are commonly paid for using general obligation debt, but also occasionally through current revenues.

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*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*