



**Written Testimony of Sean Ramaley
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Department of Labor & Industry

Before the House Labor and Industry Committee

**Harrisburg, Pennsylvania
September 14, 2016**

Good morning, Chairwoman Gingrich, Chairman Galloway, Committee members and Committee staff. I appreciate the opportunity to testify today before the Labor & Industry Committee in support of House Bill 1082 that would create the Public Employees Occupational Safety and Health Act.

The Department of Labor and Industry believes strongly that **ALL** Pennsylvanian workers should be insured a safe workplace with safe working conditions, regardless of who their employer is. Presently, when it comes to safety, public sector workers in Pennsylvania are **not** afforded the same protections in the workplace as their private sector counterparts. Private sector workers are protected by the Occupational Safety and Health Administration (OSHA), which is overseen by the United States Department of Labor (USDOL); OSHA **only** covers those employed by the private sector.

In Pennsylvania, the Department of Labor and Industry's Bureau of Occupational and Industrial Safety (BOIS), currently enforces the General Safety Law, 43 P.S. § 25-1 (Act No. 174, May 18, 1937, P.L. 654, *as amended* June 28, 1951, and July 13, 1953). The law was enacted to prescribe certain regulations and restrictions concerning where persons are employed, and the equipment, apparatus, materials, devices and machinery used therein, and bestows certain powers and duties upon the Department of Labor & Industry relative to the enforcement of the act, including fixing penalties.

The General Safety Law has been pre-empted by the U.S. Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq* (OSHA) with regard to all private sector employees. As a result, **the General Safety Law only covers public employees** of the commonwealth and its subdivisions.

HB 1082 would create the “Public Employees Occupational Safety and Health Act” to establish procedures for public employers and employees to address workplace safety issues and complaints. It directs the Secretary of the Department of Labor & Industry to adopt the standards set out by the federal government in OSHA. The legislation is intended to extend the same protections to public sector workers as those employees already being afforded those protections in the private sector of the commonwealth. Under HB 1082, the secretary is directed to promulgate regulations to establish reporting procedures; guidelines about disseminating information; programs to encourage voluntary compliance; and methods or programs to reduce safety and health hazards, and promote safe working conditions. The bill establishes detailed standards for inspections, including when, how, and what may be inspected or investigated. It provides for notice to the employer and employees of any violations that are found. This legislation also specifically prohibits any retaliation against any employee for cooperating with the department in its enforcement of the Act.

As part of the new legislation, a “Pennsylvania Occupational Safety and Health Review Board” would be established to hold hearings regarding compliance orders, violations, and penalties, with all five of the Board members appointed by the governor for four-year terms, and to be paid at a *per diem* rate.

So, how does HB 1082 compare to the General Safety Law? The General Safety Law, which was last amended in 1953, provides a list of specific items that the legislature deemed necessary at that time to protect employees and the public. Importantly, nearly seven decades later, HB 1082 does not list any such specific requirements for the protection of employees, but rather gives a comprehensive plan for procedures and time limits for ensuring that all public employers in this commonwealth are in compliance with the standards set forth by OSHA, as well as an appeals procedure for those who are not in compliance.

For example, Section 2(a), the catch-all provision of the General Safety Law, mandates that “All establishments shall be so constructed, equipped, arranged, operated, and conducted as to provide reasonable and adequate protection for the life, limb, health, safety, and morals of all persons employed therein.” Sections 2(b) through 2(i) mention very specific mechanisms and scenarios for protection of the health and welfare of employees.

In addition, Section 3 of the General Safety Law deals specifically with “Lighting, Heating, Ventilation and Sanitary Facilities,” while Section 4 addresses “Fireworks and Explosives Plants.” Section 5 of the General Safety Law concerns “Floor Space,” while Section 6 focuses on “Removal of Guards,” and Section 7 deals with “Prohibited Used of Machinery.” Section 8 requires “Air Space for Workroom,” and Section 9 deals with “Canneries and Labor Camps.”

By contrast, HB 1082, places heavy emphasis on procedures and programs for ensuring compliance with health and safety standards promulgated by the federal government, and provides an intricate mechanism for employers to seek variances from those standards, and to challenge violations and penalties issued under those standards.

The proposed Act gives the secretary of the department very significant duties, including:

- Providing for the preparation, adoption, amendment, *or repeal* of regulations governing the conditions of employment of general and special application in all workplaces;
- Providing methods for instituting programs to encourage safe and healthful working conditions;
- Requiring employers to report certain information to the department;
- Providing for the frequency, method, and manner of making workplace inspections;

- Providing for the dissemination of information and training materials to aid employers and employees in maintaining a safe workplace, and for the posting of such information, where appropriate; and
- Providing for occupational safety and health education programs for employers and employees.

Under HB 1082, the secretary is also tasked with reviewing and ruling on applications for variances, granting temporary variance orders after notice and a hearing, and granting interim variance orders in some cases until a hearing can be held. Further, the secretary's representative is in charge of inspections at all workplaces, and may apply for subpoenas and warrants if denied access by an employer. If violations are noted during an inspection, the secretary is to compile a report on the matter and issue a compliance order, which shall be posted, fixing a time for abatement of the violation, and a penalty, with the employer being given 15 days to contest the violation/penalty. If left uncontested, it will not be subject to review.

If, however, an employer contests a compliance order, notification, or penalty, issued by the secretary, a member of the Pennsylvania Occupational Safety and Health Review Board will hear the appeal within 30 days from filing. This review board is to be staffed by five well-qualified individuals chosen by the governor to serve four-year terms, and to be paid a per diem amount determined by the secretary. Staffing will be put in place as necessary to conduct the hearings. The board must issue a decision within 120 days, which may sustain, modify, or dismiss a compliance order or penalty. A person, including the secretary, aggrieved by the board's decision is entitled to judicial review.

Another important aspect of HB 1082 is the requirement for employers to maintain accurate records as to causes and prevention of occupational accidents or illness leading to death and injury, and potential exposures to toxic or other harmful materials.

If HB 1082 is enacted, it would seem that all of the provisions of the General Safety Law would remain in effect, but with the imposition of HB 1082's extremely

detailed enforcement procedures, there could be confusion amongst employers and practitioners alike. Section 6(1) of the proposed legislation provides that “[t]he Secretary may promulgate regulations to administer and enforce this act and shall provide for the preparation, adoption, amendment, *or repeal* of regulations governing conditions of employment of general and special application in all workplaces.” This provision seems to indicate that the drafters intend for this new legislation to be all encompassing.

It is the department’s opinion that the best option would be to combine the two documents into one comprehensive law for maximum coverage and clarity. Repealing the General Safety Law and amending HB 1082 to include the viable aspects of it seems to make the most sense. Certain portions of the General Safety Law are still viable as they speak to specific aspects of the modern era workplace and should be inserted into HB 1082 under Section 7 “Standards,” as subsection (b), moving “Interstate Commerce” to subsection (c), and “Challenge to Standard or Regulation” to subsection (d). This would achieve the goal of the new legislation to provide specificity as to the general safety and health requirements already mandated in Pennsylvania, while still utilizing the procedural mechanism of HB 1082, which provides for greater enforcement powers and specific procedures to effectively address requests for variances, violations, penalties, and appeals thereof.

The department conservatively estimates that this program would cost \$6.5 million dollars per year to implement and administer. The U. S. Department of Labor offers a grant that would match up to half of what the commonwealth would pay to administer the act. We understand in a time of fiscal austerity and government trying to do more with less, this may seem like a fairly large price tag, but what is the price of the safety and lives of 705,000 Pennsylvania workers? The workers of Pennsylvania are an invaluable asset to this commonwealth and its local governments, and deserve the same rights and protections in the workplace.

Regrettably, without additional funding, the department would be unable to afford this act and continue to lose out on the availability of federal matching dollars. We would need the legislature, should you choose to pass this Act, to simultaneously provide the department with the appropriate funding necessary to enforce the Act. Otherwise, to

pass this legislation without the proper amount of funding would be akin to not passing this worthwhile legislation at all.

In conclusion, I would again like to thank this committee for the opportunity to testify in support of House Bill 1082 and ensure the safety of Pennsylvania's public sector workers.

Labor & Industry is committed to providing all workers, both private and public sector, with a safe working environment and conditions across the commonwealth.

I would be glad to answer any questions that you may have.