HB 923
Labor and Employment - Worker Safety and Health - Injury and Illness Prevention Program
Economic Matters Committee
Position: Unfavorable

Maryland AGC, the Maryland Chapter of the Associated General Contractors of America, provides professional education, business development, and advocacy for commercial construction companies and vendors, both open shop and union. AGC of America is the nation's largest and oldest trade association for the construction industry. AGC of America represents more than 26,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty-contracting firms, all through a nationwide network of chapters. Maryland AGC opposes HB 923 and respectfully urges the bill be given an unfavorable report.

HB 923 would require employers with 10 or more employees, or whose rate of work-related injury and illness exceeds the average incidence rate of all industries in the State, to develop and implement a health and safety committee to promote health and safety in the workplace; the safety committee must have equal numbers of management and labor; requiring that the committee maintain certain records and retain the records for a certain period of time. The bill also requires each employer to establish and maintain an injury and illness prevention program, and, if the employer has 10 or more employees, in conjunction with the required safety committee. The requirements of the plan are specified. The plan must include a record of all inspections, unsafe conditions, and remedial action. The plan must be available on request to the Commissioner, employees, labor union representatives, and the general public.

HB 923 represents an unwarranted intrusion into the right of a business to manage its affairs. That the intent is to address safety makes it no less intrusive and inappropriate. The procedures entailed in the bill conflict with current Federal and Maryland law and regulations. Under federal and state law, the responsibility for providing a safe working environment is placed squarely on management. This requires management to establish whatever plans and procedures it deems appropriate to meet this responsibility, subject to penalties if management is found not to have provided a safe working environment. HB 923 would place management in the untenable position of having to accept the decisions of a committee it did not control but whose recommendations it was mandated to consider and reject at its peril.

Of all industries, construction is the most safety conscious. The importance of safety in construction is reflected in federal regulations and incorporated by reference in MOSH rules and regulations. OSHA 29 CFR 1910 regulations detail general industry safety regulations and apply to most worksites. The construction industry has its own unique set of regulations under OSHA 29 CFR 1926. Most of the activities required under §5-1303 are already in place throughout the construction industry. Owners require contractors to have safety plans and almost without exception review a prime contractor's safety record as part of the selection process. Similarly, general contractors impose these requirements on subcontractors.

The bill creates practical problems with the election of employee representatives. How are they to be chosen? What number of employees are required to serve on the safety committee? How are the elections to be conducted by employees? If the employer has multiple worksites, must all sites be represented on the committee? Can any group of employees decide who will serve on the committee? How are conflicts between different groups of employees to be decided? The employer in the meantime is required to accept the cost of lost production and disruption while the employee representatives are selected.

Safety committees including non-management workers are common in the construction industry, but the committees are created by and governed by management. Such committees are usually found only in larger employers and operate under the leadership of safety professionals, all of whom are management. Imposing the requirement for a safety committee on firms as small as 10 employees is just unworkable. Moreover, equal numbers of management and non-management is a prescription for stalemate over contentious issues.

The provision in §5-1302(B)(5)(ii) that the committee be authorized to initiate an investigation into a worksite injury or issue under its own initiative is inappropriate. The response to a workplace injury or incident is the responsibility of management, not of a committee. There is no reason to require duplicative investigations. Likewise, the provision in §5-1302(B)(7) that the committee, rather than management is the interface with the Commissioner is equally inappropriate. If the Commissioner wants to confirm that remedial action required of management has been taken, the Commissioner has the power to inspect and verify.

Section 5-1303 prescribes the content of a safety plan. While many of the provisions are unexceptional, it is not appropriate for the General Assembly to prescribe how or what a safety plan should contain. The General Assembly has the right and power to mandate an outcome in terms of safety, i.e., lost work days, worksite injury rates, etc. It is up to the employer to determine what is the best way to achieve the objective given the nature of its work and the resources available. HB 923 stands this on its head. It mandates in excruciating detail what a safety plan must contain, but says nothing about the desired end result.

One particular aspect of the mandated plan deserves notice. Section 5-1303(B) mandates that the entire work product of the safety committee, including all investigations, be given to "a collective bargaining agent and members of the public" within two days of a request, and copies are to be provided for free. In the first case, unless the employer is unionized and has a collective bargaining agreement, there is no collective bargaining agent. Access to a safety plan is a legitimate subject of collective bargaining and should not be mandated. Secondly, it is totally inappropriate that the information be given to the general public. That is an invitation for harassment of the employer by disgruntled former employees, neighbors annoyed by the disruption that always accompanies construction, advocacy groups opposed to whatever way the employer is transgressing their issue, etc. There is no limit on the number or frequency of requests or the cost to the employer. If one of the foregoing feels or has evidence of unsafe work practices, the recourse is to the Commissioner, who can investigate. The general public should not be given access.

Accordingly, Maryland AGC respectfully urges the Committee to give HB 923 an unfavorable report.

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