SB 728
Labor and Employment - Worker Safety and Health - Injury and Illness Prevention Program
Finance Committee
Position: Favorable with amendments

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 SB 728 in its present form. However, if the bill were amended to address the concerns outlined below, we would respectfully urge the bill be given a favorable report as amended.

SB 728 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.

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. SB 728 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.

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. At a minimum the firm size should be increased to at least 20. The provisions about the Commissioner creating a threshold of incident rates and tasking companies with higher than state-wide average rate is inappropriate because

different industries have significantly different incident rates. This provision would create an apples and oranges situation and should be stricken from the bill.

Requiring equal numbers of management and non-management on a safety committee is inappropriate. Safety committees frequently have more non-management employee members to account for different trades, different work sites, etc. The bill should be amended to require at least an equal number of management and non-management employees. Moreover, senior executive management should be a required member of the committee. That will ensure that senior management is both aware of any safety issues advanced by employees (guilty knowledge, if you will) and has the power and authority to take whatever remedial action is required. By having senior management as a required member, there is no need for elaborate protocols about how the committee interacts and communicates with senior management. And it sends a powerful message that senior management supports and stands behind creating and maintaining a safe working environment.

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. Election of employee representatives should be stricken from the bill.

With respect to the duties of the safety committee, the response to a workplace injury or incident is the legal 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.

With the changes to the composition of the safety committee stated above, the provisions in §5-1302(B) should be refined to the following:

(1) meet regularly, but not less than quarterly;
(2) submit recommendations to assist in the evaluation of employee safety suggestions to prevent injuries and illnesses;
(3) verify abatement actions taken by an employer in relation to citations issued by the Commissioner; and
(4) establish procedures for employees to share concerns regarding health and safety, without the fear of retaliation or reprisal.

Section 5-1303 prescribes the content of a safety plan. While many of the provisions are unexceptional, there are two areas where changes are appropriate. The bill provides in §5-1303(A)(III)(1) that the safety program include recognition of employees for safe practices. OSHA has reservations about such recognition programs because they can create an incentive for employees to underreport illness and injury in order to qualify for the recognition, which frequently is cash or time off. The bill should be amended to permit recognition programs only as long as the recognition program does not discourage reporting.

Second, §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. Copies are to be provided for free. There is no objection to the Commissioner or all employees having access to the plan, but the bill should allow for electronic copies. If the employer is unionized and has a collective bargaining agreement, the access should be restricted to the bargaining agent for the employees

in that bargaining unit. 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 opposed to a project or 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 has evidence of unsafe work practices, the recourse is to the Commissioner, who can investigate. The general public should not be given access.

Finally, since the bill is of general application to all industry, many sectors and companies will not have a safety program or have one that meets the requirements of the bill. It will not be possible for these companies to come into compliance by the July 1, 2021 effective date. The effective date should be extended to January 1, 2022 at a minimum, and July 1, 2022 would be even better.

Accordingly, Maryland AGC respectfully urges the Committee to amend SB 728 to address the concerns outlined above, and, with such amendments, give the bill a favorable report.

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