March 11, 2026

SB 804 – Labor and Employment – Occupational Safety and Health –
Revisions to Heat Stress Standards
Finance Committee
UNFAVORABLE

Chair Beidle, Vice Chair Hayes, members of the committee,

My name is Ellie Barbarash, and I serve as Senior Health and Safety Advocate for the American Federation of State, County and Municipal Employees (AFSCME). AFSCME's 1.4 million members provide the vital services that make America happen. With members in hundreds of different occupations — from nurses to corrections officers, child care providers to sanitation workers — AFSCME advocates for fairness in the workplace, excellence in public services and prosperity and opportunity for all working families. AFSCME strongly opposes Maryland Senate Bill 804, written to revise and weaken the 2024 Maryland Heat Stress Standard, Title 09, Subtitle 12, Chapter 32.

On August 2, 2024, our union brother Ronald Silver II suffered a protracted, hideous, preventable death on the job from heat stroke while employed by the Baltimore Department of Public Works. Silver was 36 years old, a beloved co-worker, husband and father to five young children. He died of heat exposure after his employer had not provided training, water, access to cooling, scheduled breaks and emergency medical care to sanitation workers while the heat index in Baltimore climbed over 100°F for days. The 2024 Maryland Heat Stress Standard, Title 09, Subtitle 12, Chapter 32 was collaboratively developed by Labor and Industry, MOSH/ Maryland Occupational Safety and Health, AFSCME, unions and public employers to prevent similar fatalities in the future.

SB 804 omits key heat stress protection as established by NIOSH, OSHA, CDC, NOAA and ANSI. SB 804 will not effectively protect workers from heat injury. Its proposals are not backed by science or data. What follows is a list of programmatic shortfalls in SB 804 and a list of relevant resources for effective heat injury and illness prevention. Resources include Maryland specific requirements for relative humidity measurements and heat index calculations in assessment of occupational heat injury risk. Most significantly, SB 804:

- Omits relative humidity and heat index from risk assessments of occupational heat exposure.
- Omits practical and specific requirements for rest breaks and rest/work scheduling during times of occupational heat exposure.
- Omits effective and thorough assessments of and scheduling for new employee's acclimatization needs.

- Omits defining what *'alternative cooling and control methods'* are, while allowing employers to use undefined *alternative cooling and control methods* to replace scheduled rest breaks or access to shade.
- Omits high-heat procedures for employees working in temperatures over 90°F, ignoring relative humidity, radiant heat and heat index monitoring.
- Omits specifying MOSH, employee representatives and unions as mandatory recipients of employer heat injury and illness prevention plans, acclimatization plans and training records upon request.
- Language is ambiguous and self-referential, making it difficult to understand exactly what SB 804 requires employer to do to protect workers from heat injury and illness.
- Ambiguous, unclear and undefined employer responsibilities will make the revised heat standard unenforceable, thereby stripping effective heat injury protection from Maryland workers.

AFSCME strongly opposes SB 804. We continue to support MD Chapter 32 Heat Stress Standards, which were collaboratively developed after the fatality of AFSCME Council 3, Local 44 member Ronald Silver II. We look forward to continuing collaboration with MOSH, the Commissioner and the State to protect the health and safety of AFSCME members and Maryland's workforce.

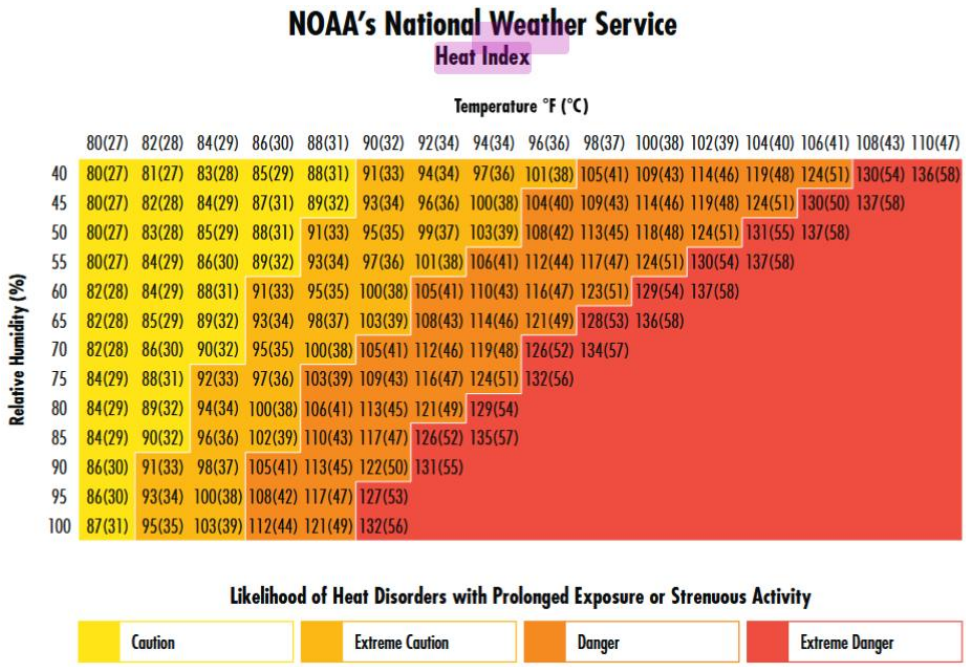
Sincerely,

Ellie Barbarash, MS, CPEA, #HS-413
Certified Professional Environmental Auditor, Health and Safety
AFSCME, AFL-CIO
Senior Health and Safety Advocate

<u>Chronological list of safety and health shortfalls in SB 804:</u>

- 5-1201 (a)(2)(D): References to temperature and heat thresholds used to assess employee risk of heat injury and illness are inadequate because they omit relative humidity (RH). Temperature in SB 804 is defined as "Dry bulb temperature in F obtainable by using a thermometer to measure the outside temperature in an area where there is no shade." Using this foundational definition omits environmental impact of RH upon the thermal load of the human body in high heat conditions. SB 804 omits accounting for local daily readings from the National Weather Service of the heat index to assess heat risk. According to OSHA, CDC, NIOSH and ANSI, RH must be taken into account when assessing and monitoring environmental heat hazards.
- 5-1202 (B) (4) (I-II): Acclimatization language in this section is vague and potentially exempts employers from responsibility to protect workers from heat related illness hazards. It states that for employees who are not regularly exposed to heat conditions exceeding the threshold of 80°F, where the employer *"takes reasonable steps to abate the heat exposure as soon as practicable,"* then the subtitle does not apply — the employer does not have to follow the program outlined in SB 804.
    - The definition of *"reasonable steps to abate heat exposure as soon as practicable"* are not defined. *"Reasonable steps"*are subjective and can neither be measured nor implemented against a known standard or recommendation.
    - Employees who are not regularly exposed to such heat conditions are, by definition, not yet acclimatized to heat exposure. They are vulnerable to heat illness and injury without a clear and implementable acclimatization schedule in place.
    - 5-1203 (C) (2): SB 804 requires that the employer's Heat Emergency Response Plan be provided to employees and the Commissioner upon request. This should specify that MOSH, employee representatives and unions also receive plans upon request.
- 5-1204 (A) (2): SB 804 states*,"For the purposes of this section, an employee is not considered newly exposed to heat if the employee has been exposed to comparable occupational heat conditions within the immediate preceding 7 days, even if the exposure occurred at a different worksite or while employed by a different employer."* However, detailed information about environmental exposure occurring at a worker's past employment cannot be verified by a new employer in any reliable and measured way. Employers cannot determine whether new hires were acclimatized appropriately on a prior job assignment. Workers cannot accurately compare past job experiences to a new position with tasks they have not performed yet. This paragraph could also function to reward workers who deny their need for acclimatization to their new employer. As mentioned, SB 804 does not include RH in hazard assessments or temperature thresholds for outside workers; so, the new employee could be facing even less protections at their new job compared to their earlier job. This paragraph should be completely omitted.
- 5-1204 (B) (1) & (2) SB 804: These paragraphs state that employers have options to develop and implement their own written acclimatization plans, OR they may follow plans outlined in NIOSH. But the acclimatization plans required in SB 804 are inadequate. They will not protect workers effectively because RH measurements and heat index calculations are omitted from temperature action thresholds. The use of the term "or" allows employers to implement a weak and overly flexible plan that will not protect workers from heat exposure.
- 5-1204 (C)(6)-(7) and (D): This paragraph states that when developing an acclimatization plan an employer should consider: *The use and maintenance of auxiliary cooling systems such as water-cooled garments, air cooled garments, cooling vests and wetted overgarments, AND the effect of exposure to direct sunlight.*

  - According to OSHA, NIOSH and ANSI standards, personal protective equipment (PPE) such as *water-cooled garments, air cooled garments, cooling vests and wetted overgarments* may not be used by the employer as a substitute for instituting appropriate engineering and administrative controls to protect workers from potentially fatal workplace hazards. Acclimatization is a medically necessary administrative control used to minimize risk of heat related illness and injury. Acclimatization requirements cannot be effectively replaced by the use of cooling PPE. There is no scientific basis or justification provided for this section, and it should be removed.
  - 5-1204 (D) includes requirements that the acclimatization plan be sent to the Commissioner upon request. Requirements should specify that MOSH, employee representatives and unions also receive plans upon request.
- 5-1205 (B): Addressing environmental monitoring for inside workers, the employer has been required to measure both temperature and RH for those indoors. There are no employer requirements that could be triggered by RH measurements indoors. RH is still not included in any temperature thresholds for action for either indoor or outdoor workers. RH should be monitored and measured for all workers exposed to heat.
- MISSING: Definition of "**alternative cooling and control measures."** SB 804 refers to alternative cooling and control measures as justifications to deny the employer's responsibility to provide employees with rest breaks. The definition of alternative cooling and control measures is not provided in SB 804, although the phrase is referred to six times in the bill. Alternative means of cooling and control measures need to be documented in writing and can be used by the employer as a substitute for providing shade. SB 804 states that the employer does not have to comply with providing employees with rest breaks if/when alternative cooling and controls measures are used.
  - This is not defined, measurable, consistent or applicable. It appears to provide the employer with permission to omit shade or rest breaks to workers during high heat exposures if 'alternative cooling and control measures' will provide effective heat management during the workday. 'Effective Heat Management' is never defined.
    - *5-1206 C-(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN EMPLOYER IS NOT REQUIRED TO COMPLY WITH PARAGRAPH (1) OF THIS SUBSECTION IF THE EMPLOYER CAN DEMONSTRATE EFFECTIVE HEAT MANAGEMENT AND PROTECTION FROM HEAT–RELATED ILLNESS THROUGH ALTERNATIVE COOLING AND CONTROL MEASURES.*
- 5-1206 (A): This section of SB 804 determines when the employer is required to institute high heat procedures. It states a dry bulb temperature threshold of 90°F and omits RH and heat index.



  - According to the National Weather Service, a dry bulb temperature of 82°F with 100% humidity can register as a heat index of 95°F. A dry bulb temperature of 86°F at 90% RH will register a heat index of 105°F. And at 88°F, 65% RH will register a heat index of 98°F. Omitting RH and heat index from high heat temperature thresholds will not protect workers from heat illness and potential death.

- 5-1206 (C) (1) *Except as provided in paragraph 2, the high heat procedures shall include a rest period that is 5-1206/C-1 (I) determined by the employer to be appropriate for the industry, workload, working environment and temperature, OR As provided for in NIOSH recommendations for work-rest schedules.*
  - The employer is not required to provide specific, measurable rest periods during high heat exposure. In MD Title 9, Subtitle 12, Chapter 32, Heat Stress Standards, there are different safety high heat procedures based on heat index measurements of 90°F or 100°F. While SB 804 provides employers the option of following NIOSH recommendations for scheduled work/break rests, SB 804 **does not require** employers to provide an established rest-work schedule for workers exposed to high heat. Under the existing statute, (Chapter 32, (8) (C) (1)) workers must — at least — be provided with a minimum rest period of 10 minutes for every two hours worked when exposed to a heat index above 90°F and below 100°Fand a worker must receive a minimum rest period of 15 minutes when exposed to a heat index over 100°F *(*or, as provided for in NIOSH recommendations.)
    - According to NOAA, a heat index of 100°F can occur at dry bulb temperatures as low 86°F — well below the SB 804 high heat threshold of 90°F.
- 5-1206 (C) (2)& (3): SB 804 removes employer's responsibility to provide **any** rest periods IF the employer states they are using *"alternative cooling and control measures."* As noted above, these measures are never specified nor defined. The employer does not have to provide rest periods if they *"demonstrate effective heat management and protection from heat."* The definition and qualities of *effective heat management* are not specified.

- 5-1206: This section is confusing and self-referential. 5-1206 proposes regulations requiring the employer to implement high heat procedures when the dry bulb temperature reaches is at least 90°F. There are four exceptions here, referring to paragraph 2 in (C) (1); **(C) (3) and (C) (3)** (III); and to paragraph 3 **in (C) (2).** It is unclear what the employer's responsibilities are regarding providing any high heat relief procedures to their employees.
- 5-1208 (B). When addressing the need to retrain employees about heat hazard protection, SB 804 requires retraining immediately following *confirmation by a medical professional* that another employee suffered a heat-related illness during the course of employment; and then retraining is only provided to workers working in the same heat conditions as the person injured. This weakens existing retraining requirements set forth in Chapter 32, which require retraining ((10)(A)(2)(b)) *immediately following any incident at the worksite involving a suspected or confirmed heat illness.*
    - The goal of a heat injury and prevention program is to prevent injury and illness, not just to respond after injury or illness occurs. Chapter 32 is more effective than SB 804 by providing retraining to any impacted employees as soon as practicable after a heat illness incident occurs. All workers potentially exposed to high heat conditions can benefit from a "lessons learned" refresher about how to prevent heat illness and how to recognize and respond to emergencies during high heat events. Workers should not have to wait for medical confirmation of their coworkers' injury (through the injured employee's personal physician or a workers compensation professional confirming with the employer) because that information can be significantly delayed and would delay retraining. Refreshers that incorporate 'lessons learned' after safety incidents can serve to alert and protect other employees from similar heat injury or illness during high heat conditions.
- 5-1208 (D) SB 804 states that training records should be made available to the Commissioner and employees. This paragraph should specify that MOSH, employee representatives and unions also receive plans upon request.

Resources supporting scheduled work-rest breaks and requiring heat index calculations and RH measurements for effective assessment and prevention of heat injury:

MDH Extreme Heat Emergency Plan 2025.docx
CDC: Acclimatization | Heat | CDC
MD heat index and temperature history: Pages - Reports: Heat
https://www.mpssaa.org/assets/HealthandSafety/nata%20ExternalHeatIllnesses.pdf
https://www.mpssaa.org/assets/1/6/NATA_Heat_Acclim_Guidelines.pdf
https://www.mpssaa.org/assets/1/6/2012_NFHS_SMAC_-_Heat_Acclimatization_and_Heat_Illness_Prevention_Position_Statement.pdf
https://www.mpssaa.org/assets/1/6/nata_consensus_statement.pdf
What is the heat index?
CDC:https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSHPUB2016106
Heat Safety Tool App (OSHA-NIOSH) | Heat | CDC
Heat - Heat Hazard Recognition | Occupational Safety and Health Administration
OSHA Technical Manual (OTM) - Section III: Chapter 4 | Occupational Safety and Health Administration