



**TESTIMONY OF THE
PENNSYLVANIA SCHOOL BOARDS ASSOCIATION
BEFORE THE HOUSE COMMITTEE ON LABOR AND INDUSTRY
ON
HOUSE BILL 1082, P.N. 1392
RELATING TO PUBLIC SECTOR WORKPLACE SAFETY AND
HEALTH PROTECTION**

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Good morning Chairman Gingrich, Chairman Galloway and members of the House Labor and Industry Committee. Thank you for inviting the Pennsylvania School Boards Association to present testimony regarding public sector workplace safety and House Bill 1082, proposing the creation of a state analog to the federal Occupational Safety and Health Act. I am Stuart L. Knade, PSBA's Senior Director of Legal Services.

To put the bottom line up front, PSBA commends the sponsors' interest in protecting the health and safety of public employees, but PSBA cannot support what House Bill 1082 proposes. We question whether the available data can justify the significant funding that implementation will require, not only for the Commonwealth and political subdivisions as employers, but also as the Commonwealth assembles and maintains a significantly expanded bureaucratic structure and regulatory regime. We suggest that that kind of money can be put to much better, far more urgent uses, such as adequately and fairly funding our public

schools, addressing the opioid addiction crisis, and shoring up our underfunded public pension systems.

So far as PSBA is aware, the need for this kind of legislation has not been sufficiently demonstrated by data showing that a genuine workplace safety or health problem exists in the public sector, or that the track record of workplace health and safety in the public sector is any worse than what exists for comparable private sector activities covered by the federal OSHA. There will be a significant cost for implementing this sea change in public sector administration, not only for local public sector employers, but also for the Commonwealth as it assembles a new and expensive bureaucracy and regulatory regime. The significant cost to the Commonwealth and political subdivisions of implementing what House Bill 1082 proposes will not likely be limited to the short term, and should be carefully calculated over the next several decades. That cost does not appear to be justified at this time.

It bears keeping in mind that OSHA was not written with public sector workplaces or the performance of governmental functions in mind. We may well discover it to be an ill-fitting garment. It will be critical to study the experience of other states that have tried it.

Pennsylvania already has numerous workplace safety measures in place that PSBA believes should be sufficient for our needs. In addition to a plethora of existing state statutes and regulations addressing specific areas of potential danger that apply both to private and public sector employers, Pennsylvania's workers compensation laws and regulations include extensive requirements for implementation of workplace safety programs, as can be seen in the regulations found at 34 Pa. Code Chapter 129.

Similar provisions apply both to insured and self-insured employers. Those who are self-insured obviously have a financial incentive to prevent work-related

injury and illness, but those that are insured are additionally incentivized by requirements that insurers give substantial premium discounts to employers that meet the safety and loss-prevention criteria. PSBA believes that financial incentives and financial self-interest provide a far better path to doing the right thing for worker safety than a new and expensive regulatory environment.

As we understand it, in addition to making OSHA-style workplace safety and health standards, inspections and other procedures applicable to public sector workplaces in Pennsylvania, House Bill 1082 would also begin the process of submitting a developmental plan to the federal OSHA administration for eventual certification as a federally approved OSHA state plan, which eventually can qualify the state for federal funding to help pay for part of the state's oversight and enforcement costs. As far as we are aware, 26 other states have done this or are in varying stages of the process of doing this. In twenty-one of those other states, the state plan will cover or eventually will cover both public and private workplaces, and the state will assume jurisdiction from OSHA to oversee and enforce compliance. In five of those states the state plan will or would cover only public sector workplaces: Connecticut, Illinois, Maine, New Jersey and New York.

In connection with today's hearing, there are two points worth noting about these public-sector-only plans. First, it appears this can be a very long process. Connecticut has been certified the longest, since 1986, 12 years after first gaining initial approval of its developmental plan. New Jersey began its efforts to develop a state OSHA plan in the early 1970s, but it was not until January 2016 that it finally became certified by OSHA. New York's journey was a bit shorter, from 1984 to 2006. Maine and Illinois have only recently gotten started.

Second, none of those other public sector-only plans defines "public employer" as broadly as House Bill 1082 would, to include not only the Commonwealth and its political subdivisions and instrumentalities, but also "any

nonprofit organization or institution and any charitable, religious, scientific, literary, recreational, health, educational or welfare institution receiving grants or appropriations from Federal, State or local government”. PSBA suggests that it will be extremely difficult to estimate the potential reach this might turn out to have, nor the unanticipated consequences of that reach. There are few if any private sector employers that are not already covered by the federal OSHA statute. House Bill 1082 potentially may extend OSHA coverage to things the federal statute does not cover, such as paid participants in religious services.

However, if it is indeed intended to reach that far, PSBA suggests that the definition specifically include employers that receive public funds in the form of what are known as “tax expenditures”, special tax credits such as are available under the Educational Improvement Tax Credit program. In addition, although charter schools are by statute considered to be public schools, they are not expressly included in the definition of public employer as currently drafted. We assume it is intended that what House Bill 1082 proposes would also apply to charter schools and their contracted private management companies, and urge that charter schools be specifically listed in the definition.

We have noted a number of other technical flaws in the House Bill 1082 that should be readily fixable, and we will be happy to work with appropriate legislative staff to address those if the bill moves forward.

I thank you for your attention and this opportunity to provide our input, and I will be happy to try to answer any questions you may have.