



County Commissioners Association of Pennsylvania
Pennsylvania Municipal Authorities Association
Pennsylvania Municipal League
Pennsylvania School Boards Association
Pennsylvania State Association of Boroughs
Pennsylvania State Association of Township Commissioners
Pennsylvania State Association of Township Supervisors

**TESTIMONY ON
SENATE BILL 93
OSHA FOR PUBLIC EMPLOYEES**

Presented to the House and Senate Democratic Policy Committees

Presented by
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Thank you for the opportunity to testify before the House and Senate Democratic Policy Committees today on the creation of a state Occupational Safety and Health Act as proposed in SB 93. I am Keith Wentz, Risk Management Director at the County Commissioners Association of Pennsylvania (CCAP), a non-profit, non-partisan association representing the commonwealth's 67 counties. I am offering testimony today on behalf of CCAP, as well as the Pennsylvania State Association of Township Supervisors, the Pennsylvania Municipal League, the Pennsylvania State Association of Township Commissioners, the Pennsylvania Municipal Authorities Association, the Pennsylvania State Association of Boroughs and the Pennsylvania School Boards Association.

I am here today representing local governments in Pennsylvania because of the impacts legislation like SB 93 will have on local governments as public employers. Our personnel complements vary greatly – typically counties, cities and school districts maintain larger workforces, while some townships only employ a few part-time workers and have no departmental structure and other townships have formal departments and dozens of employees. A small borough may employ only a few individuals for jobs such as borough manager and support staff, while other boroughs still maintain their own police forces and health departments, for example. In most school districts, the great majority of workers are classroom teachers.

We extend our appreciation to the sponsors for their concerns about worker safety. However, while we agree that worker safety is an important issue, we do not believe that stringent regulatory requirements, new administrative overhead, and substantial fines will truly promote or improve worker safety at the local government level. Our group opposes any effort to enact a state Occupational Safety and Health Act (OSHA) that would mandate compliance by political subdivisions or would require political subdivisions to come under the federal law.

We contend that SB 93 would be costly when compared to any potential benefit, both for local government units and for the commonwealth. Specifically, we question the need for the legislation in the absence of statistics establishing that there is a worker safety problem in local government. Both proponents and opponents of the legislation have argued its need or lack of need based primarily on philosophy and anecdotal evidence of isolated incidents. Existing statistical data do not indicate that there is any greater incidence of workplace injury in the public sector as compared to the OSHA-covered private sector, and suggest that before embarking on the expensive path SB 93 calls for, the legislature ask the Department of Labor and Industry to develop a valid statistical study of workplace injuries between comparable public and private sector occupations; it is our belief that such a comparison will show little material difference between the OSHA-regulated private sector and our public sector counterparts and will support our contention that the legislation is unnecessary. The expenditures SB 93 would entail, both in diversion of local funds and the cost to the commonwealth of establishing and maintaining a vast new regulatory regime, should be devoted instead to many other pressing and urgent needs.

Local government officials are concerned about public worker safety and take considerable measures to ensure that workplaces are safe. First and foremost, most local governments are

actively engaged in risk management activities and measures to protect the safety of employees. To promote worker safety and reduce the costs of liability and workers' compensation insurance, municipalities implement training, workplace inspection, risk management, and other workplace procedures. A large number of the state's counties and municipalities are self-insured for workers' compensation, and many are participants in pooled programs that incentivize worker safety through premium reductions earned by completing an extensive array of risk control and prevention activities. As participants in a self-insured program, these entities are also required by Department of Labor and Industry regulations to have certain safety programs, including such elements as an employee safety committee, as can be seen for example in Chapter 129 of Title 34 of the Pennsylvania Code.

Governmental workplace safety already involves other components of oversight as well. In addition to a plethora of workplace safety statutes and regulations the commonwealth already has in place addressing specific areas of hazard all public sector employers are required to comply with the Pennsylvania Worker and Community Right to Know Act, which requires employers to provide employees and the community with information about any hazardous materials present in the workplace. The Department of Labor and Industry has developed and periodically updates a list of regulated substances.

We are also required to comply with federal commercial driver's license requirements and must also follow PennDOT safety regulations for work zones on public roads where employee risks may be greatest. Significant training hours are mandated by law for our workers, in addition to a great deal of additional training that while not expressly mandated by law, is necessary to mitigate liability exposures.

Senate Bill 93 seems to indicate that the Secretary of Labor and Industry would be required to adopt in their entirety the federal OSHA rules, and the Secretary would also have the ability to develop state standards for situations where no federal standards are currently applicable. We argue that federal OSHA standards are not entirely applicable or appropriate to local governments, and in fact many of those standards do not make sense for public entities.

Local government employees, when considered as a whole, engage in limited activities that would be covered by OSHA, so requiring local government to comply with irrelevant rules and documentation requirements is an unnecessary and burdensome mandate. While the proposed legislation contains a method for public employers to apply for a temporary variance on an OSHA requirement, this process results in piecemeal regulatory solutions and does not present a long-term alternative to federal regulations that are incompatible with the working conditions of local government employees. Section 1956.1(b) of the federal regulations for OSHA on adopting a state plan for state and local government employees says that "in adopting these requirements and procedures, consideration should be given to differences between public and private employment. For instance, a system of monetary penalties applicable to violations of public employers may not in all cases be necessarily the most appropriate method of achieving compliance." We believe this legislation does not leave the state any flexibility to adopt requirements that are sensitive to these differences.

We also note particularly that there are some classifications of public employees for which no private workplace comparables might be available, and these are in some of the most inherently dangerous, yet most essential, services such as police, fire, corrections, highway construction, snow removal, and hazardous materials response.

The costs and benefits of SB 93 must be weighed to determine if the purported increase in safety for workers that the bill's supporters believe will result from it will be of greater benefit than the cost taxpayers will be required to shoulder. We believe the cost of compliance, including paperwork and filings to comply with this act, will be onerous, and of minimal additional benefit to workers beyond public safety procedures already in place. The recordkeeping requirements in this bill are vague, but public employers will have to present unspecified documentation to the Secretary on demand. Many municipal authorities, townships, boroughs, and even some cities and counties could be forced to raise property taxes and user fees if forced to comply with this expensive mandate. OSHA was not written with public sector workplaces in mind, and the experience of other states that have tried what SB 93 proposes should be carefully studied to learn what it cost and whether it made a true difference in public sector workplace safety.

The cost to governmental entities is not the only issue at stake in this legislation. We ask Committee members to take note that the bill's definition of public employer includes "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 governments" unless the employer is already subject to OSHA requirements. Many local governments issue payments to these types of entities for provision of services, with this practice particularly prevalent in the provision of human services at the county level and emergency services, including volunteer fire departments and non-profit EMS at the municipal level. It is difficult to quantify the number of organizations that will be drawn under the umbrella of this legislation by this definition, but it is important for policymakers to consider the impact this will have on many community service organizations. These organizations, no matter how large or small, will now have to comply with the requirements for recordkeeping, and will be subject to random inspections.

We also believe that the penalties established in SB 93 are problematic for public entities. The bill prescribes civil penalties of up to \$1,000 for a lesser violation, ranging up to civil penalties of \$10,000 for "willful or repeated violations" of the law. Financial punishment for government means that taxpayer money will be utilized to satisfy the fines. The language also does not explain who will be fined -- is it the government entity, its elected officials, or a supervisory employee responsible for the violation? The fines for even a technical violation may exceed the amount of compensation for a local township supervisor, borough council member or other volunteer elected official.

In closing, I want to reiterate that we strongly believe that worker safety is of vital concern and we also believe that we have demonstrated a commitment to worker safety in current practice.

The financial incentives and financial self-interest inherent in the workers' compensation system and liability risk management programs provide a far better path to doing the right thing for worker safety and we wish to continue to work within our existing regulations and risk management programs to do what is best for our employees.

Thank you again for the opportunity to testify today and your consideration of these comments. I would be pleased to answer any questions you may have.