

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairman Donald Dahl at 9:00 a.m. on February 10, 2003 in Room 243-N of the Capitol.

All members were present except: Representative Doug Patterson, Unexcused
Representative Rick Rehorn, Unexcused

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department
Renaë Jefferies, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Representative Bob Bethell
Linda Berndt, Executive Vice President, Kansas Health Care Association
Sue Jackson, Coordinator of Safety & Human Resource, Nu Wa Industries, Inc.
William C. Welch, President, WCW Property Management, Inc., and Rental City.net, LLC
Terry Leatherman, Vice President, Legislative Affairs, Kansas Chamber of Commerce
Sandra Jacquot, Director of Law/Legal Counsel, League of Kansas Municipalities
Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, Inc.
Don Greenwell, The Builders Association and Kansas City Chapter, Associated General Contractors
Larry W. Magill, Jr., Executive Vice President, Kansas Association of Insurance Agents
Wayne Maichel, Executive Vice President, Kansas AFL-CIO
Barb Conant, Kansas Trial Lawyers Association

Others attending: See attached sheet

The Chairman called the meeting to order at 9:00 a.m. and opened the hearing on: **HB 2129 - State Occupational Safety Plan.**

Staff gave a briefing on **HB 2129**. The bill establishes a state occupational safety plan. The act shall apply to all workplaces in the state covered by the workers compensation act except that nothing in this act shall apply to working conditions of employees with respect to which federal agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

Representative Bob Bethell testified as a proponent to **HB 2129**, stating this bill would have three beneficial effects for employers and employees in the state; (1) Resources could be focused more efficiently in areas which directly impact Kansas (grain handling industry, airplane manufacturing, oil and gas Industry, etc. (2) Fines and penalties would remain in Kansas. (3) Appeals would be made through the state administrative procedures.

A major advantage of the State Plans is that fines and penalties stay in the state. In response to a Freedom of Information act request, OSHA disclosed that Kansas employers had been assessed fines which resulted in an average of over \$1 million dollars leaving the state each year in fines and penalties.

OSHA funds 50% of these enforcement programs and up to 90% of their consultation programs. Petitioning for OSHA funding can begin as soon as enabling legislation is passed by the state of Kansas.

In Section 10, line 40, strike "other" and change to "municipalities or quasi-municipalities" (See Attachment

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1).

Linda Berndt, Executive Vice President, Kansas Health Care Association, testified as a proponent to **HB 2129**. Kansas Health Care Association represents 200-plus long-term-care facilities including professional nursing homes, assisted living facilities and long-term-care units of hospitals.

It has become increasingly challenging to meet both federal and state regulations. The Association has worked the Kansas Department of Human Resources volunteer safety and health consultations and have found this to be a true partnering and consultative relationship.

The Association has some concerns about the bill as written and propose amendments (Attachment 2).

Sue Jackson, Coordinator of Safety & Human Resource Nu Wa Industries, Inc., testified in support of **HB 2129**. Nu Wa is committed to providing a safe, healthy and environmentally responsible workplace for their employees and community. Nu Wa is resolved to pursue any reasonable course of action to ensure the achievement of these standards, including a pro-active application of all appropriate health, safety and environmental protection regulations.

The Kansas OSHA Plan would advance the safety of workers and has several advantages and objectives; (1) Kansas can better focus resources in areas that will improve the safety and health of Kansans. (2) Fines and penalties would remain in the state. (3) More frequent state plan inspections would result in more hazards being identified and abated, Kansas businesses would be assessed less in penalties. (4) Kansas could assume a national leadership role in safety and health. The Kansas OSHA Plan would provide the most efficient and effective means of administering all matters relating to the health and safety of Kansas workers (Attachment 3).

William (Bill) C. Welch, President, WCW Property Management, Inc., and Rental City.net, LLC, testified supporting **HB 2129**. Other states have experienced dramatic reductions in work place injuries and fatalities since implementing their state plan. State workers or facilities should not be exempt from regulations, enforcement or citations generated by the state run OSHA plan. The human and economic benefits are boundless for having a state plan (Attachment 4).

Terry Leatherman, Vice President, Legislative Affairs, testified opposing **HB 2129**. First and foremost, **HB 2129** places financial burden for this new state bureau squarely on the backs of Kansas business. The bill authorizes program costs be paid for through a 1% assessment on workers compensation insurance companies and self-insuring employers. A maximum assessment would cost Kansas employers around \$4M annually to pay for the program. The bill would create an on-going multi-million dollar annual expense paid exclusively by Kansas employers.

The second concern would be the impact a State OSHA plan might have on today's safety consultation services offered by the Kansas Department of Human Resources. This program has been well received by employers to inform them of potential work safety problems. If the consultation service would be in the same office as the safety enforcement agency, the program's effectiveness and current business confidence in the service could be damaged.

KCCI contends **HB 2129** is not needed (Attachment 5).

Sandy Jacquot, Director of Law/Legal Counsel, League of Kansas Municipalities, testified in opposition to **HB 2129** based on public policy and the probable fiscal impact on Kansas cities.

Under current law, K.S.A. 44-636 gives the Kansas Department of Human Resources the authority to enter a workplace, including a municipal workplace, for the purpose of ensuring the safety of the employees and general public. A state plan would require that all public sector employers, as well as the private sector employers become subject to regulations at least as effective as the federal regulations, i.e., the OSHA regulations. Currently, government in Kansas is not investigated by OSHA, nor is there a requirement that OSHA regulations be followed. The fiscal note is of great concern to municipalities. Municipalities are

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concerned about the possibilities of additional fee requirements to finance the start-up costs and ongoing maintenance of the program ([Attachment 6](#))

Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, Inc.(KFDA), testified opposing **HB 2129**. Kansas funeral homes are heavily regulated by OSHA on the federal level. The KFDA believes the current system of federal regulation works and opposes creating a state OSHA plan. There is no need to change a system that works. It is assumed it is the bill's intent that regulations would be adopted on the state level that are at least as stringent as current federal regulations so that Kansas may opt out of the federal program. The state OSHA plan would be funded through workers compensation insurance premiums. Increasing premiums to pay for the program would be, in essence, a tax on business ([Attachment 7](#)).

Don Greenwell, The Builders' Association And Kansas City Chapter of the Associated General Contractors of America testified in opposition to **HB 2129**. There is no need for additional regulatory infrastructure at the state level. The safety of commercial construction work sites is a key objective and measure of success in the industry.

While The Builders' Association and Kansas City AGC do not cite any deficiencies in the federal program, it is our strong position that such deficiencies be addressed through the federal OSHA program and not by creating additional regulatory infrastructure. The proposed state plan would only drive insurance costs higher at a time when many contractors are struggling ([Attachment 8](#)).

Larry W. Magill, Kansas Association of Insurance Agents, appeared in opposition of **HB 2129**. The principal concern with this bill is the fact that it funds the Kansas OSHA program with a 1% assessment on workers compensation claims payments. The cost is built in to the premium for workers compensation. The businesses in Kansas pay for it but don't know it. Anytime a tax is hidden from the ultimate payer, it's much easier to increase it ([Attachment 9](#)).

Wayne Maichel, Executive Vice President, Kansas AFL-CIO, stated the AFL-CO had no position on **HB 2129**. We are concerned about safety in the workplace. It is recommended that the Committee instruct the Secretary of Human Resources put together a task force of business and labor representatives and report their findings next legislative session ([Attachment 10](#)).

Barb Conant, Kansas Trial Lawyers Association (KTLA), testified safe working environments are an essential component of a productive economy and Kansas employees expect and deserve safe working conditions. KTLA supports any meaningful effort that protects workers from illness, injury or death and promotes a safer workplace. The establishment of a Kansas Occupational Safety Plan would have far-reaching implications. There are concerns that the state would be able to adequately fund such a new program. There are also concerns about the scope of a State Occupational Safety Plan. Current Kansas law exempts employers with payrolls of less than \$20,000 a year and agricultural employers from the Workers Compensation Act. KTLA recommends that the statutory establishment of such a program should not proceed without continued study of its feasibility and careful and deliberate consideration of the economic and enforcement options ([Attachment 11](#)).

Staff distributed the conclusions and recommendations of the 2002 interim on initiating a State Occupational Safety Plan ([Attachment 12](#)).

Ron Pomeroy, Kansas Castings, Belle Plaine, Kansas, provided written testimony in support of **HB 2129** ([Attachment 13](#)).

Don Greenwell said he would send further information on what other states have done regarding State Occupational Safety Plans.

Representative Grant requested that Research see how much money Kansas remits to OSHA.

Secretary Garner was in the audience and responded he had no position on this bill as he has not had time to digest the intricacies of switching from a federal to a state plan.

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The Chairman asked if Secretary Garner thought a Task Force was needed?

Secretary Garner responded, yes, the employees and employers need to get together and work this out.

The meeting adjourned at 10:40 a.m.

COMMERCE AND LABOR

DATE February 10, 2003

NAME	REPRESENTING
Andy Shaw	Goodyear Tire + Rubber Co.
Bill Grimes	" " "
Hal Hedson	NFIB/KS
Terry Leatherman	KCCI
Jackie Clark	Hallmark Cards
Tot Buel	KSTA
Doug Hollandswood	State of KS SSIF
Cindy Wren	Goodyear Tire + Rubber
Gandy Jacquet	LKM
Barb Cozant	KTLA
Phil Harner	KDHR - Div. of Work. Emp.
Ricky Leentzinger	KDHR
Sue Jackson	MU UJA
Tom Deverport	KMCA
John Rubenick	The Boeing Co.
Tom Burgess	KHCA
Bill Welch	BRB, WCV, RentalCity.net
Bob Totta	Ks Contractors Association
Kathy Danner	Kansas Health Care Assoc.
Linda Bentz	" " "
LARRY MAGILL	Ks. ASSN OF INS. AGENTS
Bob Bethell	House
Wayne Maubro	KS AFL-CIO
Don Greenwell	KC-ABC; The Builders' ASSOC
Tom Slottman	AGC/Ks
Corey Peterson	AGC/KS
Pam Scott	Ks Funeral Directors Assn.

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 ALDEN, KS 67512
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 VICE-CHAIR: KANSAS FUTURES
 MEMBER: APPROPRIATIONS
 SOCIAL SERVICES BUDGET
 STATE CAPITOL—ROOM 175-W
 TOPEKA, KS 66612-1504
 785-296-7693

TOPEKA

Kansas State Plan: The Time Has Come

Under the Occupational Safety and Health Act of 1970 (OSH Act), Kansas may become a State Plan. This action would have three beneficial effects for employers and employees in the state:

1. Resources could be focused more efficiently in areas which directly impact Kansas (grain handling industry, airplane manufacturing, oil and gas industry, etc.);
2. Fines and penalties would remain in Kansas; and
3. Appeals would be made through the state administrative procedures.

Implementation of a State Plan with local control would allow Kansas to experience a reduction in workplace injuries and illness similar to that of Iowa, the only State Plan in USDOL Region 7. Iowa has documented an 11% decline in workers compensation claims over the last 4 years; Kansas has remained unchanged over that same time period.

Section 18(b) of the Act encourages states to develop and operate their own occupational safety and health programs. States and Territories may elect to develop their own unique occupational safety and health programs which are approved and monitored by OSHA. About 40% of the nation's workforce is covered by State Plans

In Federal states, employers pay stiffer penalties for cited violations when inspected. A major advantage of State Plans is that **finances and penalties stay in the state.** In response to a Freedom of Information act request, OSHA disclosed that Kansas employers had been assessed fines of \$324,521, \$653,297, \$2,311,332, and \$937,611 from FY1996 through FY2000. **This resulted in an average of over \$1 million dollars leaving the state each year in fines and penalties.**

There are currently 23 approved State Plans covering both private and public sectors (21 states and 2 territories): Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington and Wyoming. Three other states, Connecticut, New Jersey, and New York, have approved programs covering public sector employers and employees only. **OSHA funds 50% of these enforcement programs and up to 90% of their consultation programs. Petitioning for OSHA funding can begin as soon as enabling legislation is passed by the state of Kansas.**

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 Atch #1

Testimony on HB 2129 cont.

The New York Department of Labor in a presentation titled **“The Real Cost of OSHA Citations”** compared State Plan activity to Federal activity in FY1999. OSHA has 1,242 inspectors. In FY 1999, Federal inspectors conducted 34,342 inspections in **Federal States**, identified 77,196 hazards, which resulted in **penalties of \$90,087,324**. During the same year in **State Plans** with nearly identical numbers of inspectors, 54,989 inspections were performed, 202,962 hazards were identified, but **only \$61,274,118** were assessed in penalties. **The average cost of a citation written by OSHA was \$1,166.99 in FY 1999; the average cost in a State Plan was \$301.89.**

How is this to be accomplished?

To become an approved State Plan, four structural elements must be in place:

1. Standards “at least as effective as” comparable Federal standards must be adopted. Most states simply adopt the OSHA standards and republish them under their respective regulatory standards. However, adoption of other regulations “at least as effective as” OSHA is permissible.
2. Enforcement inspections must be conducted. Currently, KDHR conducts enforcement inspections in public sector agencies as well as private sector consultations.
3. Public sector employers and employees must be included in the enforcement program. This program is already in place.
4. Occupational safety and health training programs must be provided. The Consultation Project already has trainers who provide training on a wide variety of health and safety topics to employers and employees throughout the state.

Thank you for allowing me to present my interest and support for this issue. I would seek your support of HB 2129 and recommendation that it be passed favorably for all of Kansas.

February 10, 2003

Testimony
Before the House Committee on Commerce and Labor
By
Linda Berndt, Executive Vice President
KANSAS HEALTH CARE ASSOCIATION

Chairman Dahl and other Committee Members:

I speak this morning on behalf of the Kansas Health Care Association. Our Association represents 200-plus long-term-care facilities including professional nursing homes, assisted living facilities, and long-term-care units of hospitals. We speak in support of HB 2129 that will establish a 'State Occupational Safety Plan'.

Being a highly regulated profession, dedicated to providing high quality care, efficiently and at a reasonable cost, it has become increasingly challenging as our facilities strive to meet both federal and state regulations. We welcome any opportunity to reduce layers of regulation that detract from providing care to Kansas' most frail and elderly. Yet we recognize the importance of providing facilities that are safe and healthy for both our residents and our employees.

We have long been committed to reducing occupational hazards and have been active in Kansas Department of Human Resources' volunteer safety and health consultations. Our nursing facilities report that this program has been a true partnering and consultative relationship.

As stated earlier, we are already a highly regulated profession and have a few concerns about the bill as written. We propose the following:

1. The bill creates a Kansas' occupational safety and health review committee to assist in standard formulation and interpretation.

We ask that standards and inspections be based on statistical data and driven by performance rather than arbitrary schedules, such as requiring annual inspections.

2. The bill "provide(s) for safety and health workplace surveys."

It is our concern that the number of surveys and inspectors will grow unchecked as the plan is funded through fees and assessments of insurance carriers, self-insurers and group-funded workers compensation pools. Again, standards formulations should determine proper survey standards that truly promote safe and healthy work environments while promoting and incenting voluntary compliance through training and consultative services.

3. The bill allows for assessing "civil penalties...paid into the general fund... One half of those penalties shall be credited to the occupational safety and health grant program."

Proper safeguards should be legislated to insure this does not become an avenue to grow revenues for the State. Businesses in receipt of frivolous and capricious citations must have legal recourse. In addition, we ask that disputed Citations be addressed through a 3rd party Informal Dispute Resolution process and that a 'you lose, you pay' settlement be applicable.

Thank you for your consideration of these amendments to HB 2129.

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Atch # 2

Testimony in the support of House Bill 2129

February 10, 2003

By:

Sue Jackson,
Coordinator of Safety & Human Resource
Nu Wa Industries, Inc.

RE: House Bill 2129

Honorable Chairperson and Members of the Committee:

It is a pleasure to appear before you this morning to request your support and endorsement of House Bill #2129. My name is Sue Jackson and for the past nine years I have been the Safety & Health Coordinator for Nu Wa Industries in Chanute, Kansas. Nu Wa was established in the late 1950's and is a 400 plus employee manufacturer of recreation vehicles. Nu Wa's business relationships with other local manufacturers in Chanute also helps the nearby communities benefit by over 1000 jobs.

Nu Wa is committed to providing a safe, healthy and environmentally responsible workplace for our employees and community. Because of this, Nu Wa is resolved to pursue any reasonable course of action to ensure the achievement of these standards, including a pro-active application of all appropriate health, safety and environmental protection regulations.

We all must work towards a common vision and a common goal. In sharing that one common goal, we will succeed in providing a workplace which strives to: Improve workplace safety and health for all workers, by insuring fewer hazards, reduced exposures, fewer injuries, illnesses and fatalities. Through strategic planning I feel that in implementing a Kansas OSHA Plan, we will achieve this goal; and, by measuring outcomes and holding ourselves accountable, we will ensure success in providing the best possible protection for Kansas workers. In our efforts to fulfill our vision we will move toward providing an administration that works smarter and more efficiently, and is responsive to the needs of all.

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The Kansas OSHA Plan has been advocated as a way to advance the safety of our workers and has several advantages and objectives:

- 1) Kansas can better focus resources in areas that will improve the safety and health of Kansans.
- 2) Fines and penalties will remain in the state.
- 3) More frequent State Plan inspections will result in more hazards being identified and abated, Kansas businesses would be assessed less in penalties.
- 4) Kansas can assume a national leadership role in safety and health.

All Kansas employers must accept their responsibilities concerning the provision of a safe environment for Kansas employees. A Kansas OSHA Plan will provide the most efficient and effective means of administering all matters relating to the health and safety of our Kansas workers.

Members of the Committee I would like to thank you for your continued leadership, in working toward the effective and efficient management of Kansas resources.

Sincerely,

A handwritten signature in cursive script that reads "Sue Jackson". The signature is written in dark ink and is positioned above the printed name and company name.

Sue Jackson
Nu Wa Industries, Inc.

February 10, 2003

TESTIMONY OF WILLIAM (BILL) C. WELCH

RE: SUPPORT OF SB 105 & HB 2129

Commerce
& Labor
2-10-03
Atch #4

Re: SB 105 & HB 2129

William (Bill) C. Welch
925-3648
wcw1@prodigy.net

My background:

Education – Kansas University

Work Experience – I have worked construction since I was a kid. I have progressed through the ranks from laborer, carpenter, operator, crew chief, estimator, project manager, division manager, safety director and executive.

I am president of WCW Property Management, Inc., and RentalCity.net, LLC. I also hold a real estate license with GRI and ABR designations through Realty Executives of Topeka.

Safety Background: I am presently the Safety Director for BRB Contractor's, Inc. and have been since 1996. I have been treasurer and president of the Kaw River Safety Association, and vice chair and chair of the Kansas Contractor's Association Safety Committee. I have led BRB to several safety awards including a national first place. I was a key player in developing the existing partnering agreement between OSHA and the KCA, of which BRB is a participant. I have been very active as a public trainer with regard to construction safety to include training OSHA compliance officers during an OSHA 30hr course. I am also a certified Red Cross trainer in CPR and 1st Aid.

I speak on behalf of BRB Contractors, Inc., WCW Property Management, Inc., and RentalCity.net, LLC – all Kansas based small businesses.

I am a proponent of the proposed state run OSHA plan. My reasons are several fold.

1. Arguments against the state plan based on the *up to* 1% increase in Workers Compensation Insurance are muddy. If statistics from other state plans are referenced, on average, those states experienced dramatic reductions in work place injuries and fatalities. This translated into similar reductions in Work Comp insurance after the state plans were enacted. The 1% would be a small price to pay if Kansas experiences the benefit of dramatic work comp rate reductions. This is an approach and an opportunity we cannot overlook in our current economic condition. Please reference an example given by Rudy Leutzinger, project manager of the Kansas Consultation Project (KDHR), in the letter dated February 4th, 2003, p. 2, pp. 4 "It uses Oregon's state plan as an example. Oregon has shown a decrease in rates for 12 consecutive years and is currently at 50% of what it was 10 years ago! (Incidentally, Oregon with 1.6 million workers suffered only 45 fatalities in FY2001, while Kansas with 1 million workers had 52 fatalities." This is incredible!
2. There are concerns as to whether the State would begin using the enforcement arm of the program as a revenue source and simply mandate more citations when the state needed more funds. This should not be a concern. The proposed plan has a built in checks and balances system via the Oversight Committee comprised of two from general industry, two from the construction industry, two from labor, and two from the general public. The Oversight Committee will serve as the watchdog over this program for the people/ businesses of Kansas. In addition, statistics again prove this not to be a legitimate concern. On average, other state run plans have citations that amount to about a fourth of their federal counterparts.
3. There is some mention of a concern surrounding the potential for political influence on the program from local elections. This is a ridiculous concern. Even if this were true, wouldn't we much rather have political influences limited to a local level, a point of view we locally have control over? The alternative would be political influence brought on us from the national level. I'll use this to make my next point.
4. We want local control over our enforcement and consultation resources. The federal government puts strict constraints on non-18b states. Another example Rudy has given can be seen in the same letter p.1, pp.1 "(federal budget constraints restricted Kansas to participating in one of two national emphasis programs – logging or ship building.) As seen from reading on in Rudy's example, this inefficiency in federal bureaucracy may have cost lives. Having local say over how our resources are spent, we can

- focus these resources where they are most needed. We as Kansans know best where those areas are. Local control will translate into fewer workplace injuries and fatalities, thus lower workers compensation insurance!
5. Another great benefit to a state run plan with our 'home town' Oversight Committee, is that we can establish what our measuring criteria for success of the program will be. We don't have this option with the feds. Let's look at how the system works now. Our current system's performance is measured heavily based off of how many employees the enforcement branch oversees in a year. This is how the state fed OSHA's justify keeping or increasing their budgets from year to year. This is a flawed performance measurement. What this creates is a lazy system that is completely counterproductive to the stated mission of OSHA – to prevent workplace injuries and fatalities. Instead, their current mission is to be able to say that they have overseen as many employees as possible with as little effort as possible. This is partially why we find OSHA concentrating on large businesses far more than "ma and pops". They hit the biggest jobs they can (generated from the Dodge reports out of the University of Tennessee). This allows them to 'oversee' as many employees in one location as possible. Let's forget about whether or not these businesses already have sophisticated safety programs in place and full time safety professionals working for them. What would you do if you were OSHA? Inspect one large job and be able to get credit for dozens or hundreds of employees at once, by completing only one report, and only exposing yourself to one opening for litigation? Or would you go where the real safety problems are – the small operators with no safety program and no one designated to watch out for safety? These same small companies are the ones working from two and three story buildings with no fall protection in plain view of everyone driving by. They're the ones in fifteen feet deep trenches with no slope, shoring or shielding right next to the roadway. Why doesn't OSHA spend its time helping or inspecting these companies? They're obviously the ones most in need, yet OSHA drives by them daily without incident. Instead of one visit with credit for one hundred employees, OSHA would need to make ten or twenty visits involving ten to twenty times more paperwork, etc. OSHA is also clearly following the money. They search out the deep pockets. They know their likelihood of collecting against the "ma and pop" is minimal and they'll certainly never get several hundred thousand dollars out of them. Is this holding true to OSHA's stated mission? I think not. The larger the company, the further along they are in the business evolutionary process. A larger company (while often still considered a small business) has already figured out the benefits of being safe. OSHA is no longer a driver for safety. Being safe adds to the bottom line in many ways. Most owners these days won't hire general contractors that have less than excellent safety records. Loss control translates into cheaper insurance which translates into being able to bid jobs more competitively, experiencing less turnover in your workforce, higher moral, etc. etc. "Ma and pops" haven't learned this yet and thus, this is where our educational and enforcement efforts need to be focused. Our Oversight Committee could mandate the performance measurement criteria for our state plan, and if they mandate wisely, they will measure performance based on reductions in our statewide work comp rates. Goals should be set annually with results tracked quarterly and people held strictly accountable for achieving these goals. We don't want arbitrary, deceiving measurements. We want results, and with a state plan we can demand them!
 6. Some are concerned about the national statistics that show state plans conduct more inspections. I can concur that I would also not want more inspections. However, I'm not concerned about OSHA coming to inspect us. Our last four OSHA visits have gone without citation. The reason is that we push safety like crazy. We do this for ethical and moral reasons, and yes, for profitability. As seen in some of the paperwork that I've given you, state plan citations are about a fourth of the amount of what the feds have charged. Thus, the state run plan could inspect you four times before you would incur the fine from only one fed inspection. It makes me question what some companies have to hide? I surmise those in strongest opposition to the state plan because of this argument may actually be the ones who need to be cited the most. These companies and their lack of safety culture are likely the ones raising work comp premiums for the rest of us!
 7. Let's not forget about the proposed safety and health grant program that will be built into our state plan. This will be great for helping some of these smaller businesses in purchasing safety equipment, free training, etc. Safety equipment and training is often very costly. This is why a lot of small businesses try to sneak around the rules. They simply don't think they can afford it. The grant program will help to eliminate the economic infeasibility excuse.

I have several other reasons why I support the state run OSHA plan, but I'll stop here. I do however want to voice a few of my desires for the program if it is implemented.

1. I don't believe state workers or state facilities should be exempt from regulations, enforcement or citations generated by our state run OSHA plan. Unfortunately, this is how the system has always operated. By doing this the system has failed to protect over 8,400,000 public sector workers each year. Statistically, this has allowed for many unnecessary disabling injuries and deaths of public workers. Look at the OSHA statistics I've given you showing the dramatic difference in the number of public workers injured and killed compared to those in the private sector. This is pure negligence disguised as a perk/privilege/exemption of being a government worker. This is also not fair to the public worker, to the taxpayer, or private enterprise. This 'perk' for government employees is costing us millions in injuries that could be prevented. It also stifles private enterprise since private enterprise has to comply with all the rules and regulations, bear citations, law suits, etc., but the public sector does not. This same public sector rationalizes keeping public works projects in-house because they say they can do it cheaper than private enterprise. Could they do anything cheaper if they were playing by the same rules on the same playing field? It's highly unlikely. Let's take the politics out of OSHA, and reinstate the pure mission of preventing workplace injuries, illnesses and fatalities. This doesn't allow for exempting up to 14% of the state's workforce! To achieve this goal, and put Kansas in the forefront of ethical treatment of all workers, in HB 2129, I would like to motion for striking and removing p.8 line 43, p.9 line 1, and p.15 lines 22 through 27.
2. I also want to recommend that individual responsibility be a focal point for our state plan. This would translate not only into holding companies responsible for safety infractions, but also the individual employee. From my own experience in the safety field, I have come to realize that the only truly successful program is one that holds the individual accountable for their actions. An employer should be partially responsible for trying to maintain as safe a work environment as possible, but individual will is something an employer will never be able to completely control – thankfully! I believe OSHA should be run no differently than our justice system with our police departments. If an individual breaks any other law, it is the individual that pays (e.g. speeding, stealing, murder, rape, etc.). Why is this any different than when an individual breaks a law at work? The existing OSHA system caters way too heavily to the victim mentality – “someone else is always responsible for me”. We need to get away from this and we will see success! I believe OSHA must be able to cite employees (similar to traffic citations) when employees are found out of compliance after they have been trained to the contrary. It's not fair to employers or other employees when a company is cited for a flagrant or blatant act committed by an individual against what his/her company had trained them to do. These unsafe individuals are jeopardizing everyone else's job security at that company.
3. Existing OSHA has had a bad habit of notifying media of citations or catastrophes before due process of the law has had a chance to work. This causes guilt via public opinion/perception before a company has ever had a chance to defend itself. All OSHA investigations, citations, proceedings must remain completely confidential until a final verdict is given. We need to make sure this is mandated in our state plan.

In closing, I am very enthused at the possibility of Kansas taking over control of its own OSHA plan. The human and economic benefits are boundless. We can take local control of this ourselves and steer it into whatever productive frontier we see best for Kansas, or we can leave it in the hands of Washington, DC to tell us what is best for us and continue the way we've been going. I say we take control of our own destiny!

February 4, 2003

Bill Welch
BRB Contractors, Inc.
P. O. Box 8128
400 N. W. Curtis
Topeka, KS 66608-0128

Re: SB 105 & HB 2129

Dear Bill:

Last Thursday, the above listed bills were introduced into this legislative session. The bills are identical save that one is in the Senate and the other in the House. A copy may be obtained online at www.kslegislature.org/bills/2004/2129.pdf. Now that we have a bill to work with, it makes my response to your question that much easier.

You have requested that I put down in writing my expectations of a State Plan under the conditions (1) that it is adopted and (2) that I should become the program administrator. I believe that numerous positive benefits will accrue regardless of who may be the administrator but I also believe that I could bring a unique perspective to the program. Let me begin by identifying seven general benefits which will occur with passage of the bills regardless of who the administrator might be:

1. **Local control over Enforcement/Consultation resources.** In 1996, I approached the Wichita OSHA Area Office with a safety concern in the grain handling industry and a request that some type of local emphasis program be initiated. The Area Director was in concurrence with my observations but was not permitted by federal budget constraints to focus on this vital Kansas industry. (At this time, I was advised that Kansas could participate in one of two national emphasis programs—logging or ship building.) In 1998, the DeBruce Grain Elevator, Haysville, exploded killing 7 workers. Immediately after that event, there were enough funds to conduct a local emphasis program in the grain handling industry and those resources have been available since. In discussions with other state plans, it is the ability to focus local resources which has allowed them to decrease both workers compensation rates and occupational fatalities.
2. **The Kansas Occupational Safety & Health Review Committee.** Currently, there are many questions regarding the OSHA Enforcement Program in Kansas which remain unanswered. How are sites chosen for inspection? How are

- penalties assessed? What are the costs of the program? How much money is actually collected from Kansas employers? What are the qualifications of compliance inspectors? These are but a few examples. By placing a committee comprised of Kansas business and industry people over the program, a source is immediately available to respond to such questions. The committee will also ensure that the goals and direction of the program is in the direction of the administration and legislature. Standards and interpretations will come thru the committee and the appeal process will be remain in the state. All of these are advantages for employers and employees.
3. **The Kansas Occupational Safety & Health Grant Program.** The new bills propose funding for grants that for which employers may apply to improve their safety and health programs. The specifics of the program have not yet been determined, but monetary assistance in equipment purchases or staff education and training is envisioned. This program would come under the Review Committee responsibilities.
 4. **Use of Workers Compensation data.** Federal OSHA has not been allowed to use the data gathered within individual states for targeting purposes because of variations from state to state. State plans which have implemented targeting programs using the data available have—as anticipated—shown remarkable decreases in workers compensation rates and occupational fatalities. It also gives a benchmark for measuring the success of the program. Oregon, as an example, has shown a decrease in rates for 12 consecutive years and is currently at 50% of what it was 10 years ago. (Incidentally, Oregon with 1.6 million workers suffered only 45 fatalities in FY2001, while Kansas with 1.0 million had 52 fatalities.)
 5. **Increase in inspections; increase in hazards identified and abated; decrease in fines/penalties.** State plans traditionally do more enforcement inspections and cite more hazards during those inspections. This results in a safer working environment for employees. The trade-off is that less has been assessed in fines and penalties. The New York Department of Labor identified that the average penalty in federal states in FY1999 was nearly 4 times the \$301 penalty in state plan states.
 6. **A Safety and Health Professional to administer the program.** The proposed bill requires that the program administrator be a certified industrial hygienist (CIH) or a certified safety professional (CSP). Such a provision will ensure that someone with the requisite experience and knowledge in occupational safety and health manages the enforcement effort.
 7. **Expansion of VPP and SHARP.** A state plan will be able to take charge of the Voluntary Protection Program (VPP) and the Safety & Health Achievement Recognition Program (SHARP) within its borders. This will encourage participation, especially in VPP, in that state employees will be performing the final inspection. Furthermore, SHARP limitations will be set by the state. Thus a large employer with an exemplary program could receive a SHARP recognition. These programs both result in exemptions from the programmed inspections.

In response to your question regarding my personal vision of an enforcement program, let me list

seven items:

- A. **A philosophy of respect for the employer and mutual concern for the health and welfare of the employee.** I have worked in the private sector for over 20 years and for a variety of companies. These have included such large corporations as Ford Motor Company, Union Carbide Corporation, Swift-Eckrich, Burns & McDonnell, and Wolf Creek Nuclear Operating Corporation. I have also worked for some small companies—KBE Consultants, Inc., and BES Consulting. I have yet to work for an employer who was ambitious to injure or harm an employee. Even in my present capacity as project manager of the Kansas Consultation Project, I find employers desirous to know what to do and how best to do it. I believe that the program executive should foster a spirit of mutual respect and shared responsibility for employee safety and health.
- B. **A program where Consultation and Enforcement are equal partners.** Having served as Project Manager for Kansas Consultation Project for six years, I am convinced that this program should have an equal share in determining emphasis programs in the state. The expertise of the staff and good rapport which they evidence with employers and employees should be put to work in areas such as investigations of employee complaints and education and training sessions. If an employee complaint were received from a company which had received a consultation, depending on the severity of the hazard perhaps the administrator could assign the consultant who had performed the original consultation to perform a follow-up consultation without the threat of citations or penalty to the employer.
- C. **An end to overlap visits.** Currently, about 10% of workplaces inspected by OSHA in the state of Kansas have had a consultation with the Kansas Consultation Project within the last year. A review of companies receiving a federal enforcement inspection during FY2002 after having had a voluntary state consultation found that 82% received no citations from OSHA. This data alone seems to indicate that for OSHA to perform an enforcement inspection following a consultation with the Kansas Consultation Project is not a good use of resources. I would eliminate these overlap visits by removing companies from the programmed inspection list for one year which have received a consultation.
- D. **Increased education and training programs.** Several years ago, the Kansas Consultation Project began to qualify personnel as trainers and provide the OSHA 10 hour Construction and General Industry courses across the state at little or no cost. These courses have been popular and continue to be filled when provided. The adoption of the bill would make funding available for the enhancement of the educational program. This could also be used as evidence of good faith effort in any subsequent action.
- E. **Emphasis on professional qualifications for inspectors/consultants.** I have always encouraged the consultation staff to become certified and more competent thru attendance at conferences, classes, and seminars. Only qualified employees are allowed to perform consultations. These elements would be impressed upon an enforcement program also.
- F. **Third party consultation.** Former Department of Human Resources Secretary

Richard Beyer previously asked about a third party consultation program in Kansas. This would allow professionals in the private sector to perform consultations for companies and have those companies removed from the programmed inspection list. This is not currently available to us in the private sector but would have been explored in the public sector had some funding not removed from us. Such a program would require refinement as to the qualifications of a safety or health professional and the required level of service to be provided. Disqualifications may occur if an employer has a fatality or serious incident. But it is worth pursuing and certainly would benefit the employer and employee in increasing the availability of safety and health professionals.

- G. **A SHARP for Construction.** From time to time OSHA has promised an exemption program for the construction industry. This has never come to pass. One of my first ambitions will be to begin working with the construction industry to formulate and implement such a program.

I have tried to respond to your questions and provide some information briefly regarding each item. There is much more that will happen as the program is implemented. But nothing can be done unless the bill is passed. Until then it is all speculation. If I can be of any further service, please don't hesitate to call.

Sincerely,

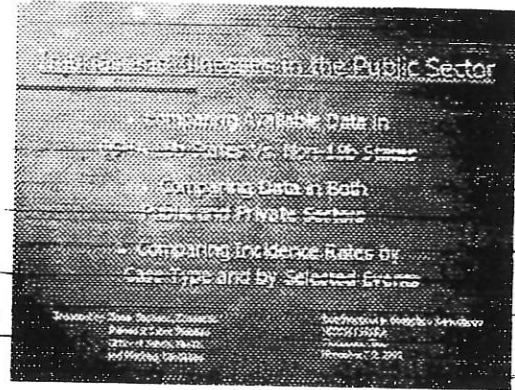
Rudy Leutzinger, CIH, CSP

Best Practices in Workplace Surveillance

Injuries and Illnesses in the Public Sector Comparing OSHA 18b States vs. Non-18b States

Shane Stephens

Some States have their own Occupational Safety and Health programs (18b States), which typically include protections for public sector workers, and in other states Federal OSHA, [Non-18b states] which does not apply to public sector workers, governs workplace safety and health. The need for in-depth data analysis on the effects of this difference was cited in a report by OSHA's Office of Inspector General. One of the findings of that report was that



"despite limited data available on Federal OSHA states, the BLS statistics show that, overall, public sector workers are experiencing lost workdays equivalent to or higher than private sector workers." This presentation further examines the differences between the two groups and compares public sector to private sector to determine if the differences in injury and illness incidence rates are statistically significant.

Using the most current BLS Survey of Occupational Injuries and Illnesses data, cumulative five-year (1995-1999) public sector incidence rates for both 18b States and Non-18b States were calculated (where data were available), along with percentage changes. The study examined the difference in percent changes from within the same sector (both public and private) for 18b States and Non-18b States. The study compares the incidence of Total Recordable Cases, Lost Workday Cases, and Days Away from Work as well as selected events, such as contact with objects; falls on the same level; overexertion; repetitive motion. Measuring change by Case type and event helps identify and communicate the areas of concern for workers' safety. The data from this particular study does so for public sector workers.

Over 8,400,000 public sector workers are not protected by OSHA requirements. What are the implications for the safety of these workers? With Non-18b states having higher rates than the OSHA 18b states in the public sector, should the currently administrated BLS survey be expanded to collect all public sector data in their entirety so that a "complete picture" is available?

[PDF Document](#) (336 KB)

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OSHA 18b States [State Plan states]:

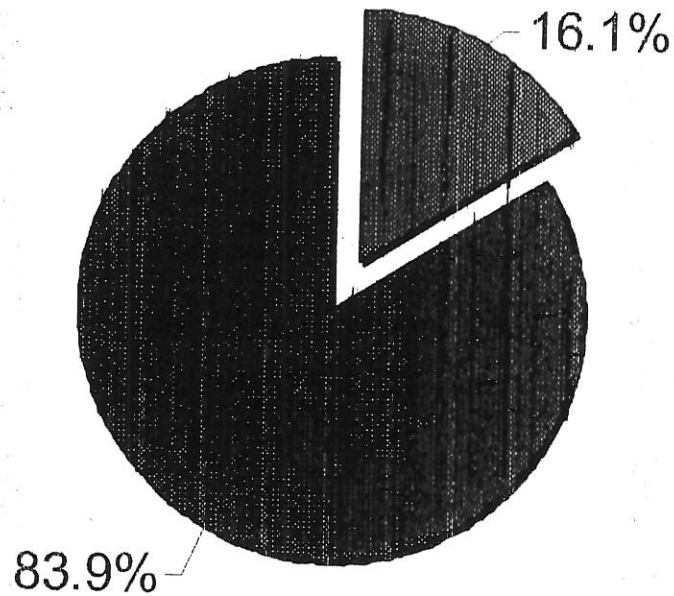
Alaska	Michigan	Tennessee
Arizona	Minnesota	Utah
California	Nevada	Vermont
Connecticut (public sector only)	New Mexico	Virginia
Hawaii	New York (public sector only)	Washington
Indiana	North Carolina	Wyoming
Iowa	Oregon	Puerto Rico
Kentucky	South Carolina	Virgin Islands
Maryland		

Non-18b States [Federal OSHA states]:

Alabama	Maine	Oklahoma
Arkansas	Massachusetts	Pennsylvania
Colorado	Mississippi	Rhode Island
Delaware	Missouri	South Dakota
Florida	Montana	Texas
Georgia	Nebraska	West Virginia
Idaho	New Hampshire	Wisconsin
Illinois	New Jersey*	Washington D.C.
Kansas	North Dakota	Guam
Louisiana	Ohio	

* = For the purposes of this analysis, New Jersey is a Non 18b state. However, in March, 2001, they became a state plan state for public sector only.

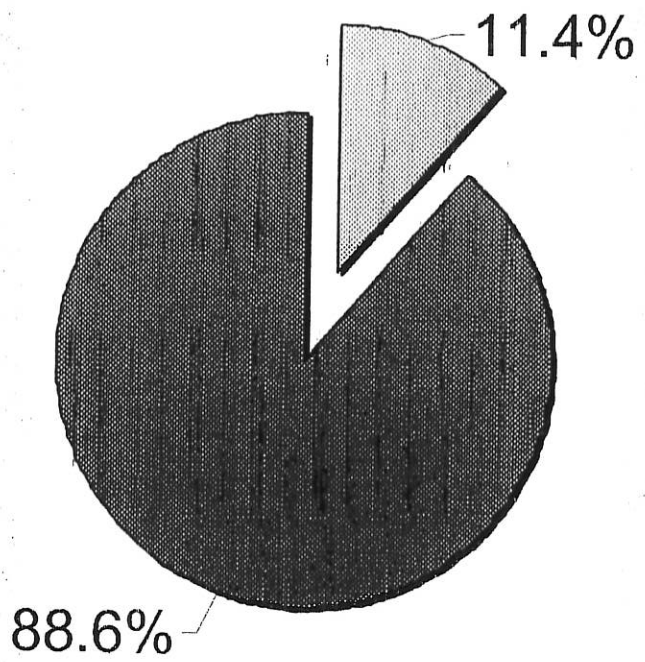
OSHA 18b States:
Percentage of State and Local Government Employment to
Total Employment
1995-1999



■ State and Local Government ■ All Other Employment

Source: U.S. Department of Labor, Bureau of Labor Statistics, ES-202 program.
Note: Data for Guam, Puerto Rico, and the Virgin Islands were not available.

Non-18b States:
Percentage of State and Local Government Employment to
Total Employment
1995-1999

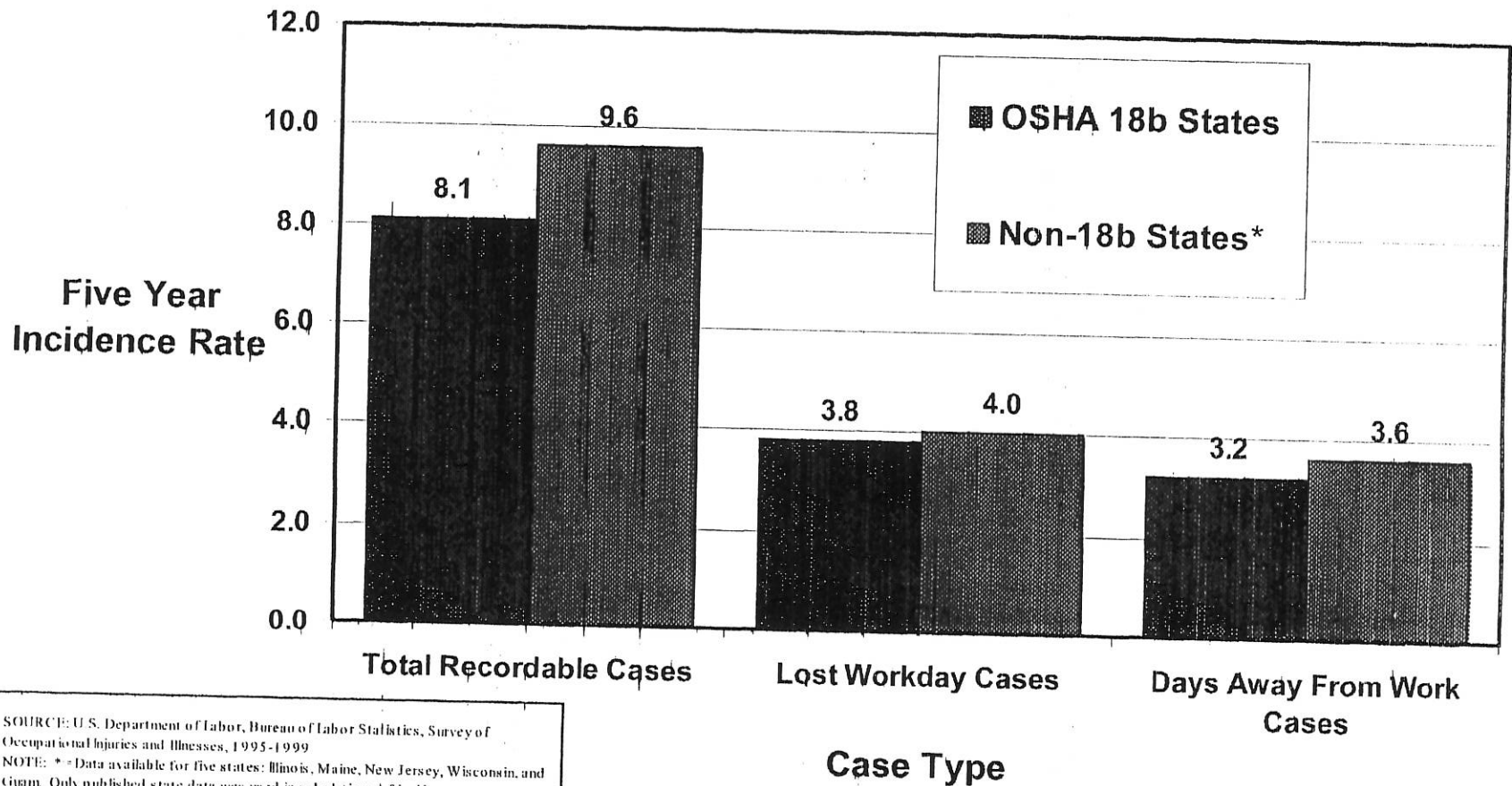


Over 8,400,000 public sector workers are not covered under OSHA recordkeeping requirements nationwide. Therefore have no occupational safety and health data collectively as a group.

■ State and Local Government ■ All Other Employment

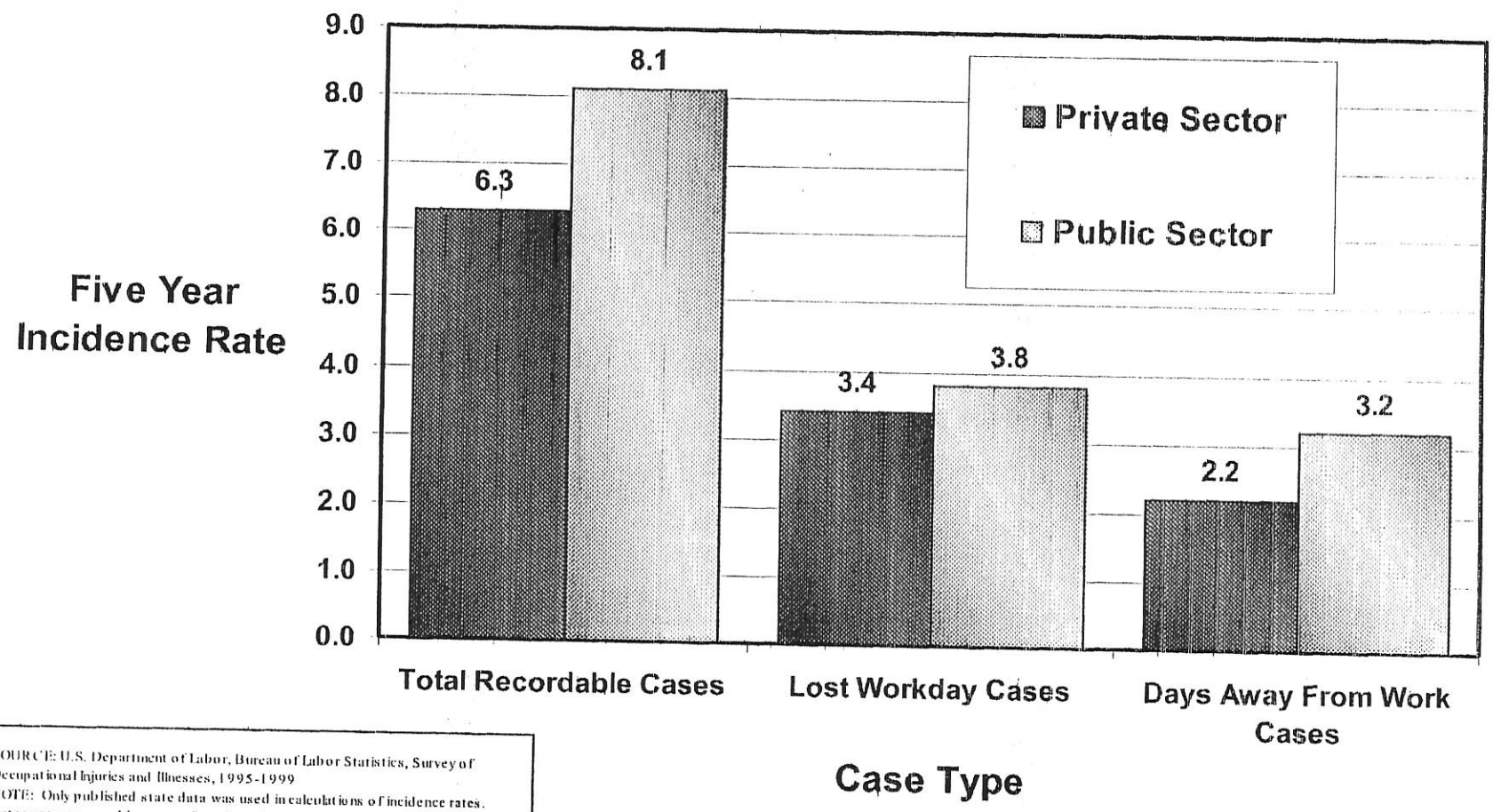
Source: U.S. Department of Labor, Bureau of Labor Statistics, ES-202 program.
Note: Data for Guam, Puerto Rico and the Virgin Islands were not available.

OSHA 18b States vs. Non-18b States*: Cumulative Five Year Incidence Rate by Case Type Public Sector, 1995-1999



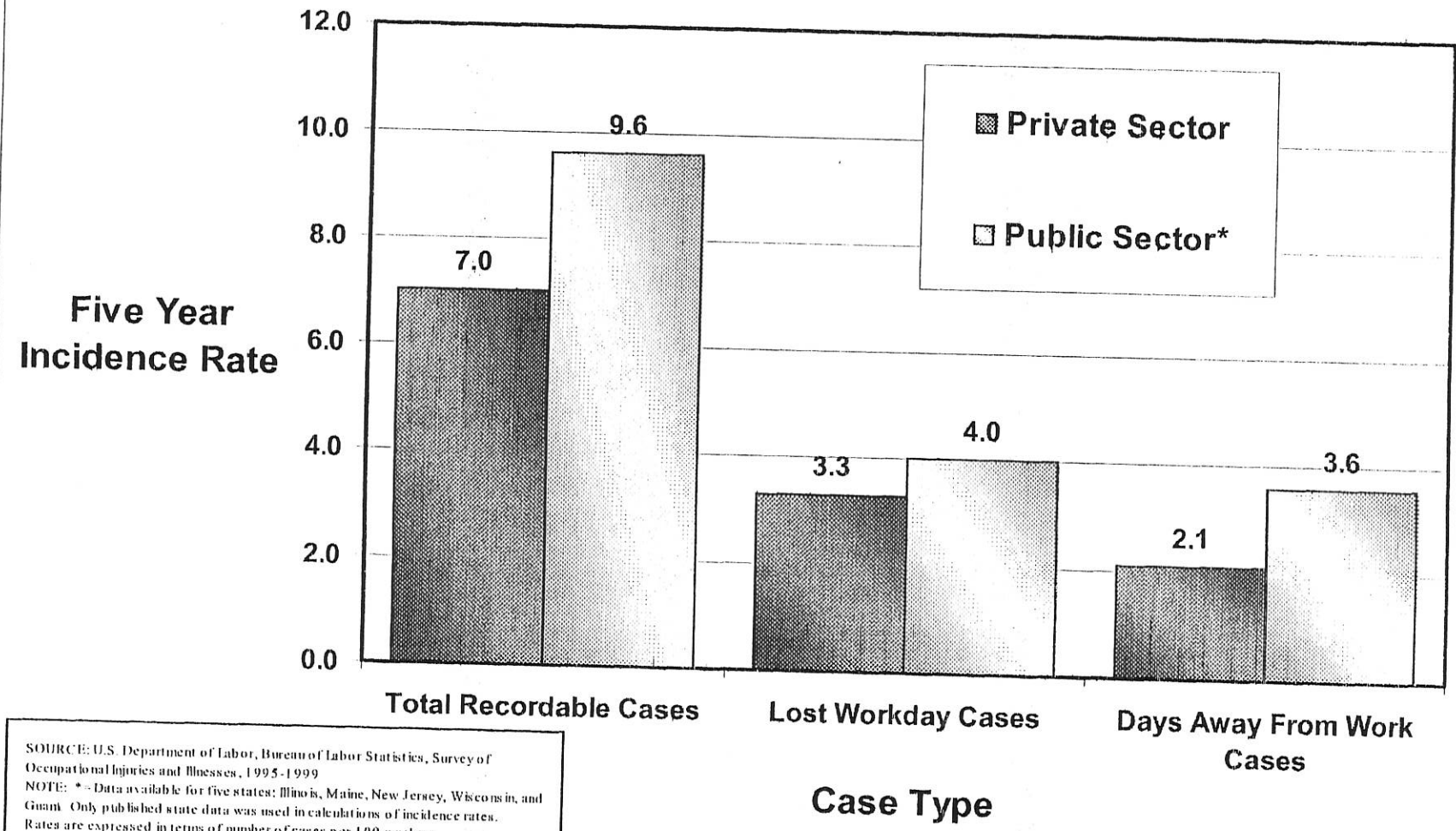
SOURCE: U.S. Department of Labor, Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses, 1995-1999
NOTE: * - Data available for five states: Illinois, Maine, New Jersey, Wisconsin, and Guam. Only published state data was used in calculations of incidence rates. Rates are expressed in terms of number of cases per 100 workers.

OSHA 18b States: Private Sector vs. Public Sector Cumulative Five Year Incidence Rate by Case Type, 1995-1999



SOURCE: U.S. Department of Labor, Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses, 1995-1999
NOTE: Only published state data was used in calculations of incidence rates. Rates are expressed in terms of number of cases per 100 workers.

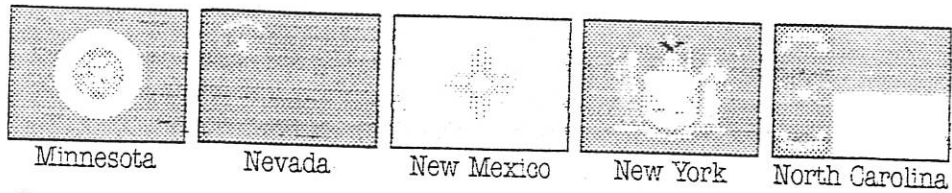
NON-18b States*: Private Sector vs. Public Sector Cumulative Five Year Incidence Rate by Case Type, 1995-1999



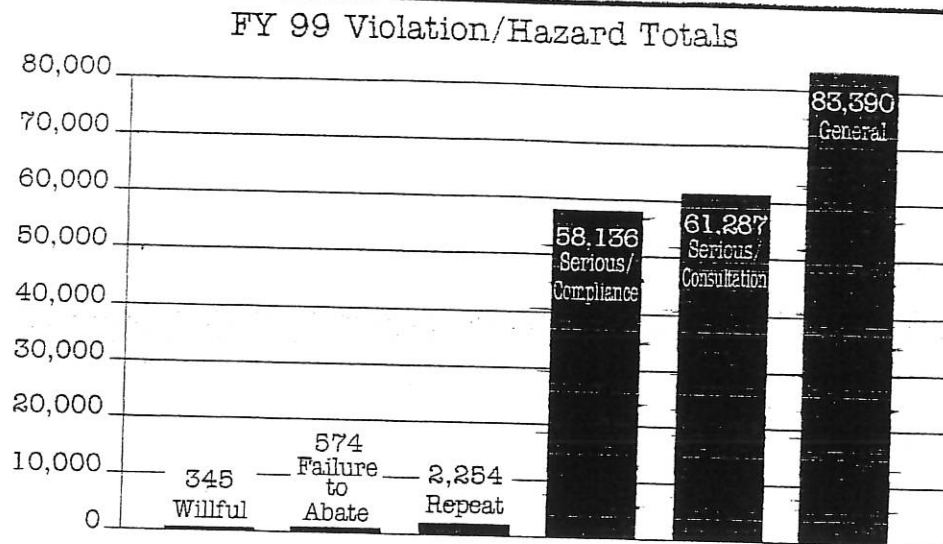
SOURCE: U.S. Department of Labor, Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses, 1995-1999
NOTE: * - Data available for five states: Illinois, Maine, New Jersey, Wisconsin, and Guam. Only published state data was used in calculations of incidence rates. Rates are expressed in terms of number of cases per 100 workers.

Comparative Analysis by Case Type

<u>18-b States</u>		<u>Five Non 18-b States</u>	
Case Type	Percent Difference in Incidence Rate From Private Sector to Public Sector	Case Type	Percent Difference in Incidence Rate From Private Sector to Public Sector
TRC	22.2%	TRC	27.1%
LWDC	10.5%	LWDC	17.5%
DAFWC	31.3%	DAFWC	41.7%
<u>All Totals</u> Private Sector		<u>Combined</u> Public Sector = State and Local Gov't	
Case Type	Percent Difference in Incidence Rate From OSHA 18b to Five Non-18b states	Case Type	Percent Difference in Incidence Rate From OSHA 18b to Five Non-18b states
TRC	10.0%	TRC	15.6%
LWDC	-3.0%	LWDC	5.0%
DAFWC	-4.8%	DAFWC	11.1%



October 1, 1998—September 30, 1999



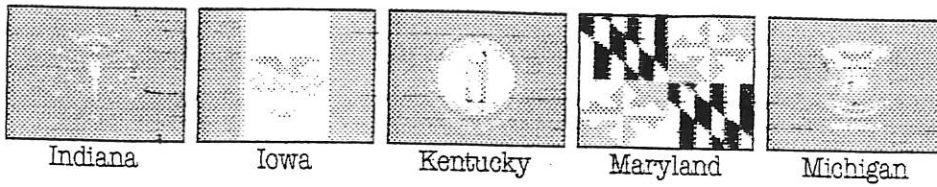
Average Number of Violations per Inspection	3.55
Total Penalties Assessed	\$ 59,384,441
Average Penalty per Serious Violation	\$ 695
Percentage of Inspections with No Violations	28 percent
Total Number of Contested Cases	5,773
Percentage of Inspections with Citations Contested	14 percent

Total Employers Covered	3,288,028
Private Sector Employers	3,183,572
Public Sector Employers	104,456
Total Employees Covered	53,211,536
Private Sector Employees	44,742,525
Public Sector Employees	8,469,011

FY 99 State Plan Expenditure Totals & Positions by Type

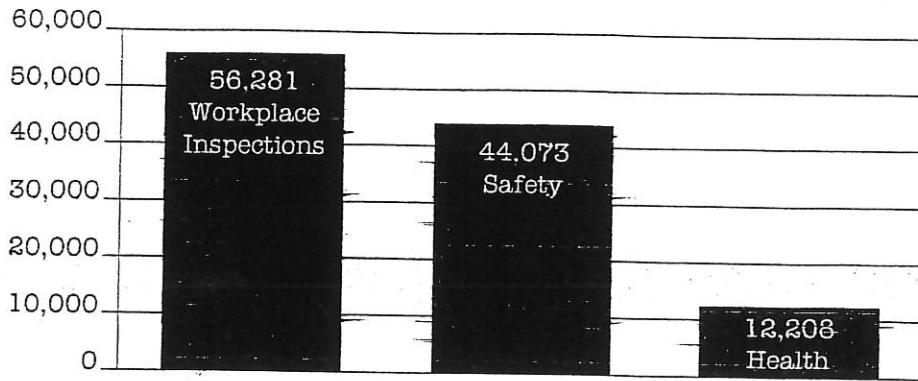
Federal 23(g) Enforcement Funds	\$ 80,326,650
State 23(g) Enforcement Funds	\$ 107,751,192
Federal 21(d) Consultation Funds	\$ 16,947,942
State 21(d) Consultation Funds	\$ 10,714,062
Safety Compliance Staff	816
Health Compliance Staff	498
Safety Consultation Staff	237
Health Consultation Staff	166
Training and Education Staff	113

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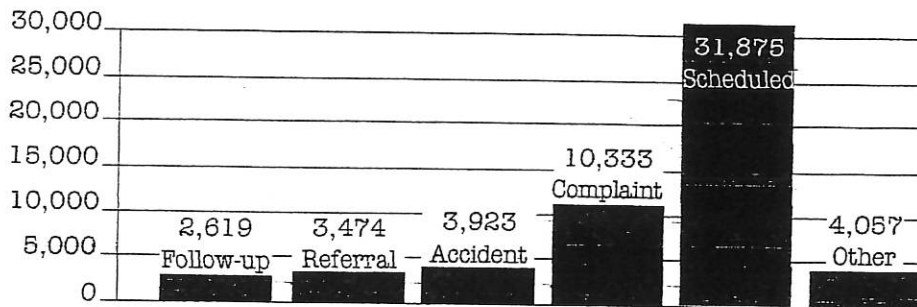


State Plan Statistics:

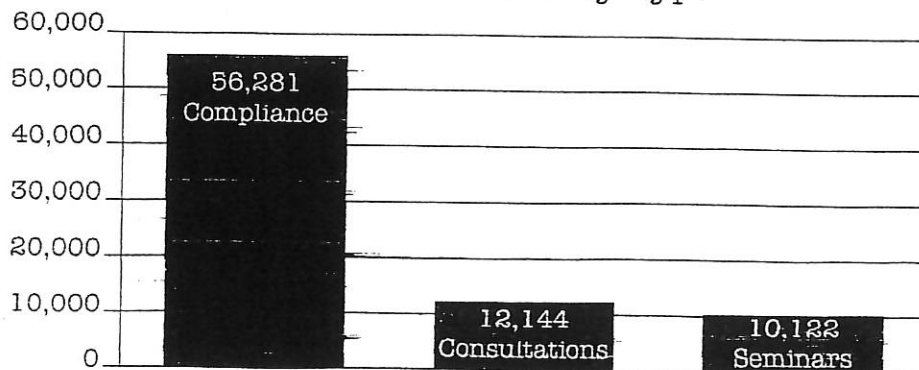
FY 99 Compliance Inspection Totals



FY 99 Compliance Inspections by Type



FY 99 On-site Visits by Type



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LEGISLATIVE TESTIMONY



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HB 2129

February 10, 2003

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony before the House Committee on Commerce and Labor

By Terry Leatherman
Vice President – Legislative Affairs

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to comment on HB 2129, which calls for the creation of a new state agency to administer the requirements of the federal Occupational Safety and Health Act.

KCCI is listed as an opponent of HB 2129 and we do have concerns regarding the legislation, which I will review in a moment. However, the idea of a state OSHA brings a government function closer to home. Instead of a federal agency, Kansas business would have a state operation, increasing the opportunity for business to be involved with agency rules and operations. While there are positive aspects to HB 2129, here are KCCI's concerns.

First and foremost, HB 2129 places financial burden for this new state bureau squarely on the backs of Kansas business. The bill authorizes program costs be paid for through a 1% assessment on workers compensation insurance companies and self-insuring employers. A maximum assessment would cost Kansas employers around \$4 million annually to pay for the program. Prior fiscal notes suggest the program could be operated at half that amount. Regardless, HB 2129 will create an on-going multi-million dollar annual expense paid exclusively by Kansas employers.

A second concern is the impact a State OSHA plan might have on today's safety consultation services offered by the Kansas Department of Human Resources. Consistently, this assistance program has been well received by employers to inform them of potential work safety problems they have. If the consultation service is in the same office as the safety enforcement agency, the program's effectiveness and current business confidence in the service could be damaged.

KCCI would contend the need for HB 2129 does not exist. Kansas employers are concerned about workplace safety and there are incentives in Kansas law to encourage employer attention to employee safety. If the compelling need

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change does not exist, a state OSHA proposal instead becomes something for close review, to determine whether it would deliver advantages to Kansas employers and workers. KCCI does not summarily dismiss this issue, but respectfully suggests this is not the time to further the cost of being in business in Kansas by passing HB 2129.

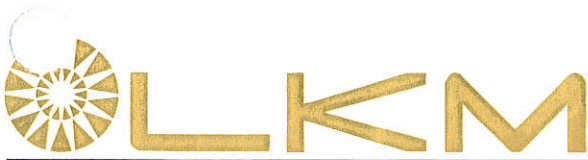
Thank you for the opportunity to comment on this bill. I would be happy to answer any questions.

About the Kansas Chamber of Commerce and Industry

The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.



League of Kansas Municipalities

TO: House Commerce and Labor Committee

FROM: Sandra Jacquot, Director of Law/Legal Counsel

DATE: February 10, 2003

RE: Opposition to HB 2129

I want to thank you on behalf of the League of Kansas Municipalities for the opportunity to testify today in opposition to HB 2129, the Kansas State Plan. I want to emphasize that the League's opposition has nothing to do with opposing safe municipal workplaces. Rather the opposition is based on public policy and the probable fiscal impact on Kansas cities.

Under current law, K.S.A. 44-636 gives the Kansas Department of Human Resources the authority to enter a workplace, including a municipal workplace, for the purpose of ensuring the safety of the employees and general public. The Secretary may order that any unsafe condition be remedied and, if the employer challenges the finding, the statute allows for a hearing under the Kansas Administrative Procedures Act. Willful violations are considered a misdemeanor and may subject the offender to a fine of not less than \$25 nor more than \$100. There has not been a showing that the current law is not working as to municipalities and, in fact, with respect to local governmental entities, last year's report from the Division of Workers Compensation on the Kansas State Plan states as follows: "These agencies have complied with recommendations for abating hazards in a timely manner and there have been no penalties assessed against these agencies." Of course the reason for no assessment of penalties, is that the current law does not allow for civil penalties. But the important factor to look at is that municipalities willingly comply. There is no problem.

Becoming a State Plan state would require that **all** public sector employers, as well as the private sector employers become subject to regulations at least as effective as the federal regulations; *i.e.* the Occupational Safety and Health Administration regulations. Currently, government in Kansas is not investigated by OSHA, nor is there a requirement that OSHA regulations be followed. While these regulations are for the most part what local government employers should have in place in the workplace, many of the regulations are promulgated in a political environment versus strictly looking at safety. In essence, the long arm of the federal government will be imposing regulations on municipalities in Kansas. This has the potential to increase costs for municipalities who would have to comply with regulations that may or may not improve safety.

When this measure was introduced during the 2002 Legislative session, it carried a significant fiscal note. I have attached it to my testimony. It was estimated that over three years, the Department of Human Resources would require an additional 30 FTE positions and the cost of the program would be in excess of \$4.4 million. Presumably

this is still the case. Funding is anticipated to come from a variety of sources including requiring all workers compensation carriers, self-insured entities and pools to contribute up to 1% of workers compensation claims paid. This is bound to affect municipalities, whether self-insured or through rate increases. Our municipalities are also concerned about the possibilities of additional fee requirements to finance the start-up costs and ongoing maintenance of the program.

There are many factors to consider before making this large a shift in public policy. The importance of this decision cannot be overstated. The League urges this Committee to reject HB 2129. Thank you again for allowing the League to testify in opposition to this bill.



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March 12, 2002

The Honorable Al Lane, Chairperson
 House Committee on Business, Commerce and Labor
 Statehouse, Room 115-S
 Topeka, Kansas 66612

Dear Representative Lane:

SUBJECT: Fiscal Note for HB 2868 by Representative Bethell

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2868 is respectfully submitted to your committee.

HB 2868 would require the Director of Workers Compensation to adopt and enforce occupational safety and health standards for Kansas employers and employees. The expenses for enforcing these standards would be assessed against every insurance carrier, self-insured employer, and group funded pool that pays workers compensation benefits in Kansas. The Kansas Occupational Safety and Health Advisory Committee, which would be appointed by the Secretary of the Department of Human Resources, would prepare workplace safety standards. These standards would have to be at least as effective as OSHA's standards, including emergency temporary standards in certain cases of toxic exposure. The standards set would ensure that no employee would suffer material impairment of health or functional capacity, even if the employee had regular exposure to the hazard. An employer could apply for a temporary order that would allow for variance from the standards. The temporary order would prescribe the practices, means, methods, operations, and processes that the employer would have to adopt, as a result of the inability of the employer to meet the standards set by the Director.

The Director of Workers Compensation would also:

1. Conduct research, experiments, and demonstrations, in occupational safety and health.
2. Develop safety and health statistics.
3. Conduct educational and informational programs.

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4. Establish and supervise programs for the education and training of employers and employees for recognition, avoidance, and prevention of unsafe or unhealthy working conditions.
5. Consult and advise employers and employees about effective means for prevention of any work-related injury or occupational disease.
6. Prescribe the use of labels or other forms of warning necessary to ensure that employees are informed of all hazards, relevant symptoms, and emergency treatment.

The Division of Workers Compensation would conduct workplace inspections to determine if violations of the safety and health standards exist. If the Division determines that an employer had violated any standard, rule, or order contained in this bill, the Division would issue a citation. The citation would include a description of the violation in writing, establish a deadline for correction, and must be posted by the employer. If the Division had a reason to believe the violation had not been corrected, the employer would be notified of the failure and a proposed assessment. The employer would have 20 days to notify the Division of its plans to contest the Division's notification or proposed assessment. If the employer fails to notify the Division in writing within 20 days from receipt of notification that the employer intends to contest the notification or proposed assessment, the notification and assessment would be final and subject to review. If the employer notifies the Division that it intends to contest the citation, the Division would hold a hearing in accordance with the Kansas Administrative Procedure Act. The Division could also assess civil penalties for violations of occupational safety requirements. The bill would criminalize the willful violation of occupational safety regulations, unapproved notification of inspections, and false statements, records, or reports that would be required to maintain compliance.

HB 2868 would give district courts jurisdiction to review actions brought by the Secretary of Human Resources, Director of Workers Compensation, or the Administrator of Occupational Health and Safety, and to enter restraining orders or injunctions.

The Department of Human Resources estimates that HB 2868 would require, over a three-year period beginning in FY 2003, an additional 24.5 FTE positions. The Public Sector Enforcement Program has 5.5 FTE positions that would be transferred to the new program for a total of 30.0 FTE positions. Ongoing costs over the three years would include training (\$202,000), equipment and supplies (\$760,400), salaries and wages (\$2,933,805), travel (\$223,000), and indirect costs of \$343,800. The following table shows the estimated costs per year:

FY 2003 FY 2004 FY 2005

Salaries and Benefits \$ 628,098 \$ 970,885 \$ 1,334,822

Other Operating Exp. 406,600 491,500 631,100

Total \$ 1,034,698 \$ 1,714,000 \$ 1,965,922

HB 2868 would require that revenue be generated for the occupational safety plan by assessing every insurance carrier, self-insured employer, and group funded pool that pays worker compensation benefits in Kansas. The portion of the assessment for this program could not exceed 1.0 percent of workers compensation benefits paid in the state. Revenues from the new assessment would be deposited in the Workers Compensation Fund, and be used to pay for the new program. The Department of Human Resources states that, if the bill were passed, it would apply to the Federal Occupational Safety and Health Administration for up to 50.0 percent for the funding required for the program. FY 2003 State General Fund dollars allocated for the Public Sector Enforcement Program would be replaced with the new assessment and federal dollars, saving current State General Fund expenditures of \$215,292. Finally, the Department estimates that found violations of the Occupational Safety Plan could total \$1.2 to \$1.5 million per year from the private sector once the program is at full operation. Any fines assessed for violations would be deposited in the State General Fund.

According to the Office of Judicial Administration, enactment of HB 2868 would increase case filings, but the Office does not have a reliable method of forecasting the number or the cost associated with these additional cases.

Sincerely,

Duane A. Goossen

Director of the Budget

cc: Gerald Schneider, Human Resources

Jerry Sloan/Ami Hyten, Judiciary

Kansas State Capitol - 300 SW 10th St - Topeka, Kansas 66612

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EXECUTIVE DIRECTOR

PAM SCOTT
Topeka

To: House Commerce and Labor Committee

From: Pam Scott, Executive Director

Re: House Bill No. 2129

Date: February 10, 2003

Mr. Chairman and Members of the Committee:

The Kansas Funeral Directors and Embalmers Association (KFDA) appreciates the opportunity to appear before you today in opposition to House Bill No. 2129. The KFDA represents over 300 Kansas funeral establishments.

Kansas funeral homes are heavily regulated by OSHA on the federal level. Among the standards funeral directors and embalmers must comply with are the bloodborne pathogens standard, the Hazard Communication standard and the formaldehyde standard. Employees of funeral homes receive annual training on these standards and are proud of their compliance record.

The KFDA believes that the current system of federal regulation works and opposes creating a state OSHA plan for the following reasons:

1. Kansas workplaces are safe. There is no need to change a system that works. Besides being regulated and subject to inspection by OSHA, funeral homes are annually inspected by the Kansas State Board of Mortuary Arts. Funeral homes are small businesses and another layer of inspections would be an undue burden. Funeral homes are self-motivated to insure a safe and healthful workplace. Good employees are in demand and a funeral home does not want to risk losing an employee to injury.
2. We assume it is the bill's intent that regulations will be adopted on the state level that are at least as stringent as current federal regulations so that Kansas may opt out of the federal regulations. There are no assurances that will happen. We do not know at this time what the proposed Kansas regulations will be and whether unreasonable requirements will be placed on our member funeral homes. Can we be sure the Director of Workers Compensation will enact fair OSHA regulations?
3. The State OSHA plan would be funded through workers compensation insurance premiums. Increasing premiums to pay for the program is, in essence, a tax on

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business. Our members already believe the cost of insurance is too high. Now they will pay to be inspected.

4. The KFDA has a fear that the state will aggressively inspect businesses for the purpose of assessing fines to fund budget shortfalls. Our experience has shown that the federal government has not used the OSHA program as a revenue source to fund their budget

The KFDA does not support the establishment of a State OSHA plan and urges you to oppose House Bill No. 2129.

**Testimony Before the House Commerce and Labor Committee
Regarding House Bill No. 2129
Presented by Don Greenwell,
The Builders' Association
And Kansas City Chapter, Associated General Contractors
Monday, February 10, 2003**

Mr. Chairman and members of the Committee, my name is Don Greenwell. I appear before you today on behalf of The Builders' Association and Kansas City Chapter of the Associated General Contractors of America. We represent approximately 450 general contractors, subcontractors, and suppliers engaged in commercial and industrial building construction in Kansas.

We *oppose HB 2129* and its establishment of duplicative regulatory infrastructure.

There is *no need* for additional regulatory infrastructure at the state level. The safety of commercial construction work sites is a key objective and measure of success in our industry. And, the strength of the federal Occupational Safety and Health Administration (OSHA) programs has been a significant factor in achieving this objective. We believe the federal program is well equipped to continue to do so.

While The Builders' Association and Kansas City AGC do not cite any deficiencies in the federal program, if there are interested parties with a differing opinion, it is our strong position that such deficiencies be addressed through the federal OSHA program and not by creating additional regulatory infrastructure.

Finally, the proposed state plan will only drive *insurance costs higher* at a time when many contractors are struggling. HB 2129 would be funded by collection from workers' compensation insurers and self-insurers up to 1% of benefits paid. Such an increase in the cost of insurance is particularly burdensome given the current climate of slimming commercial construction margins and increased levels of premiums for virtually all types of insurance.

We ask that you oppose HB 2129 and its negative impact on regulatory efficiency and the economy of the State. Thank you for your consideration of our opinions.

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Testimony on House Bill 2129
Before the House Commerce & Labor Committee
By Larry Magill
Kansas Association of Insurance Agents
February 10, 2003

Thank you mister Chairman and members of the Committee for the opportunity to appear today in opposition to House Bill 2129 that creates a state-run OSHA program. My name is Larry Magill and I'm representing the Kansas Association of Insurance Agents. We have approximately 550 member agencies and branches throughout the state and our members write approximately 70% of the commercial insurance in Kansas including workers compensation. Our members are free to represent many different insurance companies.

Our principal concern with the legislation is the fact that it funds the Kansas OSHA program with a 1% assessment on workers compensation claims payments.

While, admittedly, there is a relationship between workers compensation losses and safety, the same logic could be applied to auto safety. Why not tax auto insurance policies to pay for roads since better roads would lead to fewer claims? Or to pay for fire departments, police departments, ambulance services or many of the other functions of state and local government, since indirectly the industry "benefits". The problem with this concept is that:

It's a hidden tax on business. The cost is built in to the premium for workers compensation, so, if the system works as it should, the businesses in Kansas pay for it but don't know it. Anytime a tax is hidden from the ultimate payer, it's much easier to increase it.

It could drive carriers out of Kansas. Even though it should be built into the rate, it becomes one more cost, in addition to claims payments, that must be paid out of the premium dollars, making it that much more difficult to make a profit. The workers compensation market is restricted now, as it is, and it wouldn't be a good time to add additional burdens on to insurers.

Costs may not match revenues. There is no guarantee that 1% will be enough. Or it could generate more than is needed depending on claims payouts. Our guess is that there will be constant pressure to expand the OSHA program and the assessment will be easy to raise because it's hidden.

It adds to the perceived cost of the product. When businesses become upset over the high cost of workers compensation insurance, they probably don't become upset about all the hidden costs that help drive it up. It encourages businesses to look at alternatives to insurance, even if they don't escape this particular assessment.

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The legislature has raided the Workers Compensation Fund twice in the past two years. The legislature took \$7 million from the second injury fund last year and is in the process of taking another \$4 million this year. That will lead to higher assessments as the claims in the fund now are closed and to pay for uninsured employers or excess benefits. This bill would cause those assessments to go up even more.

This is not the year to be increasing taxes on Kansas businesses to pay for a program that is running fine the way it is. We urge the committee to put this off to better economic times. Please let me know if I can provide any additional information or answer questions.



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Testimony
Presented to the House Commerce & Labor Committee
by
Wayne Maichel, Executive Vice President
Kansas AFL-CIO
on
H.B. 2129

Thank you Mr. Chairman and members of the committee. My name is Wayne Maichel, and I represent the Kansas AFL-CIO, and we have no official position on H.B. 2129.

Even though we have no position on this bill, it does not mean that we are not concerned about safety in the workplace. We are concerned, and we believe it deserves the legislature's utmost attention.

The major players on the issue of safety in this state are employers and employees.

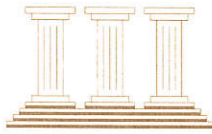
Our recommendation for this bill, Mr. Chairman, would be that the committee instruct the Secretary of Human Resources to put together a task force of business and labor representatives to study H.B. 2129 and make a recommendation back to your committee next legislative session.

Thank you for allowing us the opportunity to appear before your committee on H.B. 2129.

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KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Committee on Commerce and Labor

FROM: Barb Conant
Kansas Trial Lawyers Association

RE: 2003 HB 2129 / Establishment of a State Occupational Safety Plan

DATE: Feb. 10, 2003

Chairman Dahl and members of the committee – thank you for the opportunity to appear before you today. I am Barb Conant, director of public affairs for the Kansas Trial Lawyers Association (KTLA). KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to offer comments regarding 2003 HB 2129.

The importance of promoting and assuring safe working conditions for Kansans is a priority issue for KTLA and we believe that importance cannot be overstated. Safe working environments are an essential component of a productive economy and Kansas employees expect and deserve safe working conditions. To that end, KTLA supports any meaningful effort that protects workers from illness, injury or death and promotes a safer workplace. To Kansas employers, fewer injuries mean fewer workers compensation claims and lower insurance premiums.

The establishment of a Kansas Occupational Safety Plan would have far-reaching implications. KTLA testified before the 2002 Interim Committee on Economic Development that we believed the creation of such a program should not proceed without thorough study and careful and deliberate consideration of all of the ramifications. It continues to be KTLA's position that the Kansas Legislature should consider all options for improving workplace safety before proceeding with the creation of such a new state agency.

A review of work place safety data currently collected by the Kansas Division of Workers Compensation within the Kansas Department of Human Resources raises concerns about the State's ability to assume the regulatory, inspection and enforcement responsibilities of a new Occupational Safety Plan. The published data show a steady decline in inspections and a safety record that indicates Kansas employees face a higher risk of being injured on the job than the national average.

Terry Humphrey, Executive Director

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For example:

A report on the state of the *Workers Compensation Program in Kansas*, prepared by the Kansas Coalition for Workplace Safety and released in 2000, documented the need for increased safety effort. The report said that “by any number of measures, Kansas has a high rate of occupational injuries.” In 1996, the Bureau of Labor Statistics (BLS) ranked Kansas as the 8th highest in the nation for injuries and illness per 100 full-time employees (FTE) with almost nine injuries (8.9) per 100 FTEs. The national average, in comparison, was 7.4 injuries/100 FTEs.

It appears, from BLS data published in the Kansas Division of Workers Compensation’s 2002 annual report, that some progress has been made. The number of injuries/illnesses per 100 FTEs in Kansas has dropped to 7.8 injuries. However, the national average has also decreased to 6.1 injuries/100 full-time employees, resulting in Kansas still having a “higher frequency of injuries than the national average for every year of the study.”

The “Total Lost Workday Cases” incidence rate for Kansas has also declined from 4.2 days per 100 workers in 1994 to 3.3 days/100 workers in 2000. But again, that is higher than the national average of 3 days.

Kansas has higher than average rates for Total Cases Without Lost Workdays for every year of the study, which indicates, that Kansas has a greater frequency of the less severe type of occupational injuries and illnesses.” Kansas has 4.4 cases without lost workdays per 100 employees as compared to a national average of 3.2 cases.

Of most concern is a 20% increase this past year in the number of workplace fatalities. According to the Division’s FY 2002 Annual Report, 53 Kansas workers died as a result of work place injuries, nine more than died during FY 2001.

We also have concerns that the State would be able to adequately fund such a new program. HB 2129 proposes that the new program be financed in the same manner as the Workers Compensation Act with assessments and fines being submitted to the State General Fund. With heavy competition for SGF dollars, we are concerned that without a protected and directed funding source, the money collected for administration and implementation of the State Occupational Safety Plan would eventually be directed toward other State programs.

We are also concerned about the scope of a State Occupational Safety Plan. Current Kansas law exempts employers with payrolls of less than \$20,000/year and agricultural employers from the Workers Compensation Act. By creating this new program under the Division of Workers Compensation and adopting definitions under the current Workers Compensation Act, will the agricultural industry be extended the protection from State safety inspections? In a state that relies heavily on the agricultural industry, employing thousands of Kansans, we are concerned about exempting these businesses from state safety inspections.

Because the creation of a Kansas Occupational Safety Plan would have far-reaching implications, KTLA recommends that the statutory establishment of such a program should not proceed without continued study of its feasibility and careful and deliberate consideration of the economic and enforcement options. The Kansas Trial Lawyers Association encourages continued consideration all options for improving workplace safety before proceeding with the creation of a new state agency.

Thank you for the opportunity to present our concerns to the committee.

WORKPLACE SAFETY

CONCLUSIONS AND RECOMMENDATIONS

The Committee expressed concern with the costs of initiating an OSHA type program since the costs could be detrimental to the financial situation in Kansas.

Proposed Legislation: None

BACKGROUND

The Chairman of the House Business, Commerce, and Labor Committee requested an interim examination of 2002 HB 2868, which would have established a state Occupational Safety Plan. Specifically, the purpose of the bill was:

- To preserve human resources by providing for the safety and health of workers; and
- To provide a coordinated state plan to implement, establish, and enforce occupational safety and health standards as or more effective as the standards under the federal Occupational Safety and Health Act (OSHA).

The sponsor of the bill testified regarding HB 2868 and the reason it was drafted and introduced. According to the conferee there are advantages to a state Occupational Safety Plan in effect or opposed to the federal OSHA. According to federal law, states can opt out of OSHA.

Advantages of the bill would include the following benefits:

- Resources could be focused more efficiently in areas which directly impact Kansas (grain handling industry, airplane manufacturing, and

the oil and gas industry);

- Fines and penalties would remain in Kansas; and
- Appeals would be made through the state administrative procedures.

The fiscal note on the program would be approximately \$1.2 million to \$1.5 million.

The Director of the Division of Workers Compensation stated the federal OSHA encourages states to develop their own OSHA programs including enforcement. A review of how some states have structured their programs was presented.

The supervisor of Industrial Safety and Health in Kansas stated that the state OSHA plan would give Kansas the opportunity to become a leader in the industrial area and to focus resources where they can best benefit the state.

Representing Venture Corporation, a conferee spoke in favor of a state OSHA plan. Advantages cited included the federal funding of part of the costs, retaining fines in the state, and reduction of workers compensation rates.

A delegate from the Kansas Trial Lawyers Association (KTLA) expressed concern with the state OSHA plan.

Further, the conferee reviewed a report entitled "Workers Compensation Program in Kansas," prepared by the Kansas Coalition for Workplace Safety, released in 2000. According to the report Kansas has a high rate of occupational injuries. The KTLA spokesperson encouraged the Legislature to explore all options for improving workplace safety.

The House Democratic Leader remarked that HB 2888, and not HB 2868, would create a task force on workplace safety which is the route he prefers to address the issue of workplace safety.

The conferee also cited a recent study by the United Health Foundation and reviewed the incidents of occupational fatalities in the United States. The study ranked the states on a scale of 1 to 50, with 1 being the best and safest and 50

being the worst. Kansas ranked 40th in on-the-job deaths. The conferee indicated there is a need for legislation to deal with this problem.

The fiscal note on HB 2888 cannot be determined since the number of meetings required by the bill is unknown and the actual composition of the Task Force is unknown. The cost for a two-day meeting for six members would be approximately \$4,435.

CONCLUSIONS AND RECOMMENDATIONS

The Committee expressed concern with the costs of initiating an OSHA type program since the costs could be detrimental to the financial situation in Kansas.

**TESTIMONY
BEFORE THE KANSAS HOUSE BUSINESS & LABOR COMMITTEE
TOPEKA, KANSAS**

BY

**RON POMEROY
KANSAS CASTINGS
BELLE PLAINE, KANSAS**

Good morning, I would like to thank you for the opportunity to provide this testimony.

My name is Ron Pomeroy. I am president/owner of Kansas Castings, a metal casting operation located in Belle Plaine, Kansas employing 40 people. I am standing before this committee to voice the opinion of a Kansas small business owner in favor of **HB #2129/SB #105**.

PAST EXPERIENCE WITH SAFETY & HEALTH COMPLIANCE

I have been involved in the manufacturing community for over 23 years at several businesses in the State of Kansas. I have had the opportunity to work with the Kansas Department of Human Resources (KDHR) on two occasions during my career, once in 1986 and I am currently working with (KDHR) at this time. Let my testimony show that my experience with (KDHR) has been very positive.

It is an unfortunate fact however that the reason I am working with the (KDHR) is a direct result of the fear that is produced by the Occupational Safety & Health Administration (OSHA) tactics. The unannounced visit of an inconsiderate, badge wielding, (OSHA) inspector with a rule book in hand is an ever looming fear of most small business owners. This fear stems not because there is something to hide but because of the tactics involved and the extravagant fines that will surely follow.

My experiences with (KDHR) have been the opposite. Appointments for evaluations and inspections are made in advance so schedules can be adjusted, evaluations are fair, and after the evaluation suitable time is given to correct infractions before fines are imposed.

Some may argue that scheduled inspections only allow employers to clean up infractions before inspection. This is usually not the case, if the employer had the knowledge and or resources to identify the infraction it would have been taken care of prior to this time. In the case that the infractions are corrected before the scheduled inspection, then the inspection has accomplished it's goal of compliance by the employer. A surprise inspection's purpose is to generate fines not to induce compliance.

EXTRAVAGANT FINES AND PENALTIES

The extravagant fines levied by (OSHA) only take funds out of the small business owners pockets that could be used to comply with health and safety standards. If and when fines and penalties are imposed I believe that they need to remain in the state for economic development purposes. Unlike (OSHA), the "State plan" should be developed to have the common interest of the Kansas

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small business owner; to see Kansas business grow and develop and improved workplace environment for fellow Kansans.

CURRENT SITUATION

It is my opinion that most small business owners are fully willing to comply with health and safety standards but lack the knowledge and resources to do so. Many small business owners will not contact (OSHA) for knowledge or resources and risk calling attention to their businesses for a future surprise inspection. Small business owners need a state agency that they can contact that will work with them to insure health and safety for their employees without fear of being targeted for a surprise "attack". The surprise inspection is a very ineffective tool and should only be used in cases of willful neglect of compliance.

FUNDING

I am in agreement with the proposal for funding the "State plan" with the 1% assessment to workers compensation insurance carriers, group pools, and self-insured employers. I think this would be a small burden to pay in order to lift of the dark cloud of (OSHA) from over the Kansas small business owner's head. Many sleepless nights are spent by small business owners over the realization that a financially catastrophic surprise inspection could be just around the corner, by an agency that does not consider that the jobs that are lost are the jobs of workers that (OSHA) was created to protect.

CONCLUSION

(OSHA) was designed for education and consultation to business and workers, not in the current role of policeman. Kansas manufacturers and small business owners need a partner to help comply with current health and safety standards and a partner to develop new standards that are fair and meaningful. I think the development of a "State plan" with (OSHA) oversight would be a win/win situation for the State of Kansas, the Kansas workforce, and Kansas small business owners.

I am in favor **HB# 2129/SB #105**, the development of a state occupational safety plan that will cooperate with the small business owner to provide build a strong, safe economy for the State of Kansas.

Thank you again for opportunity to provide this testimony.