



TO: Members of the House Labor and Industry Committee
FROM: Douglas E. Hill, Executive Director
DATE: 12/04/2017
RE: **CCAP Opposes House Bill 1082**

On behalf of the County Commissioners Association of Pennsylvania, representing all 67 counties in the commonwealth, I write today to offer our comments to the House Labor and Industry Committee on House Bill 1082, which would create the Public Employees Occupational Safety and Health Act.

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

We believe House Bill 1082 would be costly when compared to any potential benefit. Specifically, we question the need for the legislation in the absence of statistics establishing that there is a worker safety problem in local government. Both proponents and opponents of the legislation have argued its need or lack of need based primarily on philosophy and anecdotal evidence, and we would suggest that the Committee ask the Department of Labor and Industry to develop some valid statistical study of workplace injuries between comparable public and private sector occupations. It is our belief that such a comparison will show little material difference between the OSHA-regulated private sector and our public sector counterparts, and therefore demonstrate our contention that the legislation is unnecessary.

Local government officials are concerned about public worker safety and take considerable measures to ensure that workplaces are safe. First and foremost, most local governments are actively engaged in risk management activities and measures to protect the safety of employees. A large number of the state's counties and municipalities are self-insured for workers compensation, and many are participants in pooled programs that incentivize worker safety through premium reductions earned by completing an extensive array of loss control and prevention activities. As participants in a self-insured program, these entities are also required by Department of Labor and Industry regulations to have certain safety programs, including such elements as an employee safety committee.

Government workplace safety already involves other components of oversight as well. All public sector employers are required to comply with the Pennsylvania Worker and Community Right to Know Act, which requires employers to provide employees and the community with information about any hazardous materials present in the workplace. The Department of Labor and Industry has developed and periodically updates a list of regulated substances.

Counties are also required to comply with federal commercial driver's license requirements and must also follow PennDOT safety regulations for work zones on public roads where employee risks may be greatest. In addition, counties are required to provide significant training hours for our sheriff departments, while our municipal counterparts offer many training opportunities for police, fire departments and other first responders.

House Bill 1082 seems to indicate that the Secretary of Labor and Industry would be required to adopt in their entirety the federal OSHA rules, and the Secretary would also have the ability to develop state standards for situations where no federal standards are currently applicable. Counties do not believe the federal OSHA standards are entirely applicable or appropriate to local governments, and in fact many of those standards do not make sense for public entities.

Local government employees, when considered as a whole, engage in limited activities that would be covered by OSHA, so requiring local governments to comply with irrelevant rules and documentation requirements is an unnecessary and burdensome mandate. While the proposed legislation contains a method for public employers to apply for a temporary variance on an OSHA requirement, this process results in piecemeal regulatory solutions and does not present a long-term alternative to federal regulations that are incompatible with the working conditions of local government employees.

In fact, section 1956.1(b) of the federal regulations for OSHA on adopting a state plan for state and local government employees indicates that "in adopting these requirements and procedures, consideration should be given to differences between public and private employment. For instance, a system of monetary penalties applicable to violations of public employers may not in all cases be necessarily the most appropriate method of achieving compliance." House Bill 1082 does not appear to leave the state any flexibility to adopt requirements that are sensitive to these differences.

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

The costs and benefits of HB 1082 must be weighed to determine if the purported increase in safety for workers that the bill's supporters believe will result will be of greater benefit than the cost taxpayers will be required to shoulder. We believe the cost of compliance, including paperwork and filings to comply with this act, will be onerous, and of minimal additional benefit to workers beyond public safety procedures already in place. The recordkeeping requirements in

this bill are vague, but public employers will have to present unspecified documentation to the Secretary on demand. Many counties are simply too small to be required to follow such regulations and could be forced to raise property taxes and user fees if forced to comply with this expensive mandate.

The cost to governmental entities is not the only issue at stake in this legislation. Specifically, the bill's definition of public employer includes "any nonprofit organization or institution and any charitable, religious, scientific, literary, recreational, health, educational or welfare institution receiving grants or appropriations from federal, state or local government" unless the employer is already subject to OSHA requirements. Many local governments issue payments to these types of entities for provision of services, with this practice particularly prevalent in the provision of human services at the county level. It is difficult to quantify the number of organizations that will be drawn under the umbrella of this legislation by this definition, but it is important for policymakers to consider the impact this will have on many community service organizations. These organizations, no matter how large or small, will now have to comply with the requirements for recordkeeping, and will be subject to random inspections.

The penalties established in HB 1082 are also problematic for public entities. The bill prescribes civil penalties of up to \$1,000 for a lesser violation, ranging up to civil penalties of \$10,000 for "willful or repeated violations" of the law. Financial punishment for government means that taxpayer money will be utilized to satisfy the fines. The language also does not explain who will be fined – is the government entity, its elected officials, or a supervisory employee responsible for the violation?

Again, counties agree that worker safety is an important issue, and believe we have demonstrated that commitment to worker safety in current practice in our comments. With that in mind, CCAP does not believe that regulatory requirements and fines will improve worker safety for local government employees, and must oppose HB 1082 or any similar legislation that would mandate political subdivisions law to comply with OSHA requirements.