

AMENDING THE OCCUPATIONAL SAFETY AND HEALTH ACT
OF 1970

MARCH 17, 1998.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GOODLING, from the Committee on Education and the
Workforce, submitted the following

REPORT

[To accompany H.R. 2877]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 2877) to amend the Occupational Safety and Health Act of 1970, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. INSPECTIONS.

Section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657) is amended by adding at the end the following:

“(h) The Secretary shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate employees directly involved in enforcement activities under this Act or to impose quotas or goals with regard to the results of such activities.”.

PURPOSE

The purpose of H.R. 2877 is to amend the Occupational Safety and Health Act (OSHAct) of 1970 to prohibit the Occupational Safety and Health Administration (OSHA) from setting penalty quotas for enforcement personnel.

COMMITTEE ACTION

The Subcommittee on Workforce Protections held a series of three hearings in 1997 on the subject of OSHA reinvention. Those hearings were the basis of several bills introduced by Representative Cass Ballenger on November 7, 1997, including H.R. 2877.

The first hearing was held on June 24, 1997, to learn the views and perspective of OSHA on its effort to “reinvent” the agency. The Acting Assistant Secretary for OSHA, Greg Watchman, testified at the hearing.

The second hearing was held on July 23, 1997, to examine OSHA’s reinvention project, hearing testimony from a variety of individuals who have either studied or had recent experiences with OSHA. The witnesses included Mr. Ronald Schaible, Director, Global Safety, AMP Incorporated, Harrisburg, Pennsylvania; Ms. Kathleen Winters, Corporate Manager, Environmental Health and Safety, Mack Printing Company, Easton, Pennsylvania; Dr. Gary Rainwater, President, American Dental Association, Dallas, Texas; Mr. James Gonzalez, Attorney-at-Law, Holland and Hart, Denver, Colorado; Mr. Richard S. Baldwin, Safety and Health Director, BE&K, Birmingham, Alabama; Professor John Mendeloff, Graduate School of Public and International Affairs, University of Pittsburgh, Pittsburgh, Pennsylvania; Ms. Lee Anne Elliott, Executive Director, Voluntary Protection Programs, Participants’ Association, Falls Church, Virginia; and Mr. Mike Wright, Director, Health, Safety and Environment Department, United Steelworkers of America, Pittsburgh, Pennsylvania.

The third hearing was held on September 11, 1997, to hear from individuals with a first hand knowledge of OSHA’s reinvention program and on changes that should occur as OSHA moves into the 21st century. The following witnesses testified: Mr. Gerald V. Anderson, President, Anderson Construction Company, Fort Gaines, Georgia; Mr. James Abrams, Corporate, Labor, and Employment Attorney, Denver, Colorado; Mr. Frank White, Vice President, Organization Resources Counselors, Inc., Washington, DC; Mr. Michael C. Nichols, Vice President, Management Development/Human Resources, Sysco Corporation, Houston, Texas; Mr. Norbert Plassmeyer, Vice President and Director of Environmental Affairs, Associated Industries, Jefferson City, Missouri; and Dr. Nicholas A. Ashford, Ph.D, Professor of Technology and Policy, Massachusetts Institute of Technology, Cambridge, Massachusetts.

The Subcommittee on Workforce Protections approved H.R. 2877, as amended, by voice vote, on February 4, 1998, and ordered the bill favorably reported to the Full Committee. The Committee on Education and the Workforce approved H.R. 2877 by voice vote on March 11, 1998, and ordered the bill favorably reported to the House.

SUMMARY

H.R. 2877 amends the OSHAct to prohibit OSHA from using the results of enforcement activities, such as the numbers of citations issued or penalties assessed, to evaluate OSHA enforcement officers.

COMMITTEE STATEMENT AND VIEWS

Background

The OSHAct was passed in 1970. Passage of the OSHAct culminated many years of debate and discussion about uniform federal law on worker safety and health. The OSHAct is one of the most extensive pieces of safety and health law in the United States, regulating workplace rules in about 6.5 million business establishments, including manufacturing, construction, and other industries. The OSHAct has been amended only once in its 25 year history.¹

Over the past three years, the Committee has held numerous hearings on issues surrounding the OSHAct and how OSHA operates. In a series of hearings in the 105th Congress, the Subcommittee on Workforce Protections reviewed the Clinton Administration’s plans to “reinvent” the agency and its programs and whether those plans are being successfully implemented.

¹The 1990 Budget Reconciliation bill included a provision that increased the maximum penalties for “non-serious” and “serious” violations from \$1,000 to \$7,000 and for “willful” and repeat violations from \$10,000 to \$70,000. It imposed a minimum penalty of \$5,000 for willful violations.

The Clinton Administration's effort to "reinvent" OSHA acknowledged that the goals of OSHA were often wrong. In a speech in May 1995 acknowledging the need to reinvent OSHA, President Clinton noted that, "if the government rewards inspectors for writing citations and levying fines more than ensuring safety, there's a chance you could get more citations, more fines, more hassle and no more safety."²

The President's recognition that this was the case with OSHA has been echoed repeatedly in testimony before the Committee. In March 1995, Ms. Dorothy Strunk, who served as both staff member to the Education and Labor Committee and Acting Assistant Secretary of Labor for Occupational Safety and Health, testified before the Subcommittee on Workforce Protections:³

Congress, for years, measured OSHA's effectiveness by the number of inspections completed, the number of serious citations issued, the number of criminal cases referred to the Justice Department for prosecution. Are these the appropriate measures to determine the effectiveness of the Act? Or should the question be: "Are hazards in the workplace being abated? Are injury rates being reduced?" That really is the crux of the issue: what is the most effective approach to achieving hazard abatement and injury reduction?

Again, we are talking about changing long-standing, systemic problems with the agency. Because the agency's success was measured for years by its punitive activity, it has become organized accordingly. If we want, as I think we must, to change the way we measure OSHA's success, we will also need to change the way OSHA is organized—to change the system.

Other individuals who have had experience with OSHA also have testified about the impact of the agency having had for too long the wrong goals.

In a hearing conducted in February 1995, the Subcommittee on Oversight and Investigations, conducting an oversight hearing on the need for regulatory reforms at OSHA, heard compelling testimony from the owner of a small bakery in Evanston, Illinois, Ms. Judy Hooper. Ms. Hooper described an OSHA inspection which her small business had suffered through, and the approach to workplace safety and health taken by the OSHA inspector:⁴

As the narrative report [of the inspection] indicates, there was no closing conference, no review of citations, and her departing words were "Well, if there are any problems, you'll hear from us, if not you won't." We received the citations on August 17th (nearly 40 days after the inspection. * * * Despite abatements, the proposed fines were \$5,450.00, with the stipulation that we spend the \$7,550.00 "reduction" on "safety net" programs. Faced with

²Remarks by the President on Reinventing Worker Safety Regulation, Stromberg Sheet Metal Works, Inc., Washington, DC, May 16, 1995.

³Testimony at a hearing held by the Subcommittee on Workforce Protections, March 8, 1995.

⁴Testimony at a hearing held by the Subcommittee on Oversight and Investigations, February 16, 1995.

a legal document that waived our future rights to contest we balked * * * I said, I don't mean to be impertinent, but could you explain to me why we are being fined at all? We've complied! I don't have that kind of money just laying around. I'll have to call my mom to see if I can borrow it, or I'll have to lay people off or raise my prices. * * * Mr. McCann [OSHA Area Director] said he was required to fine us by law. * * * My husband persisted, stating to Mr. McCann that these fines will jeopardize jobs. Mr. McCann responded, "I have a goal to meet, a quota, if you will, but I have made my quota for this fiscal year and would it help you in any way if I split up the fine so that you would pay half by October 1 and the other half by November 1." We agreed it would and thanked him for his effort.

Mr. Ian Moar, Counsel for Shaw, Pittman, Potts, and Trowbridge testified in July 1995 about how OSHA is perceived in the workplace:⁵

The current adversarial relationship, whether it is real or perceived, that exists between employers and OSHA seriously undermines efforts to improve workplace health and safety. An agency that measures its success based on its constituencies' failures—that is, number of citations—is an agency whose mission should be reexamined and redefined.

Mr. Carl B. Carruth, Attorney, South Carolina-based McNair Law Firm, testified in August 1995⁶ that—

Entirely too many dollars, man-hours and other resources have been wasted in an adversarial system which too often puts rigid enforcement of detailed and complex standards and the assessment of monetary penalties over what should be the real priority of achieving safety and health in the workplace. It has been my experience that employers are sufficiently motivated to achieve safety and health in the workplace without the threat of OSHA citations and fines. Many have the know-how to do so on their own.

Mr. Michael C. Nicholas, Vice President, Management Development/Human Resources, Sysco Corporation, testified in September 1997⁷ that—

We understand that OSHA cannot and should not approach all employers the same way. There are some employers who have a clear disregard for the safety and health of their employees. Yet, even recognizing these circumstances, a theme which remains common within our industry, is that OSHA field compliance personnel are ill-prepared to assess our facilities, offer prescriptive cures

⁵Testimony at a hearing held by the Subcommittee on Workforce Protections, July 28, 1995.

⁶Testimony at a hearing held by the Subcommittee on Workforce Protections, August 24, 1995.

⁷Testimony at a hearing held by the Subcommittee on Workforce Protections, September 11, 1997.

and abatement measures without adequate expertise, and they rely entirely upon threats of penalty and negative publicity to intimidate even the largest corporations.

Mr. Ronald D. Schaible, Director, Global Safety, AMP Inc., described to the Subcommittee how OSHA inspections affected his company:⁸

AMP has already had seven inspections this year. None of these inspections resulted in an effort to cooperate with AMP local-facility management on ways of improving safety and health. Instead, OSHA has held to the gotcha' mentality. This, and the fact that citations issued are almost always for minor code violations, has resulted in AMP's continued distrust of the Agency. AMP is disappointed that the attitudes of inspectors have not changed as Joe Dear and Greg Watchman promised they would.

A long-time labor law practitioner, Mr. James Gonzalez, testified that:⁹

OSHA seems to suffer an identity crisis. The Administration calls upon OSHA to reinvent itself. OSHA's response is long on rhetoric and short on substance. During its life, OSHA has accumulated the baggage of an enforcement agency preoccupied with quotas and citations and penalties. Despite hearing assurances to the contrary, OSHA often appears unwilling or unable to embrace fresh concepts and cost-effective measures to enhance workplace safety.

The Clinton Administration has acknowledged the problem of focusing on enforcement results, rather than improvements in safety and health. In March 1995, Mr. Joe Dear, then Assistant Secretary for Occupational Safety and Health, told the Subcommittee on Workforce Protections:¹⁰

Many employers have complained that OSHA inspectors care less about worker safety than they do about meeting perceived quotas for citations and penalties. While OSHA has not used quotas, it has used citations and penalties as performance measures. I have put a stop to this practice. OSHA's performance is now measured by its success in making safety and health improvements.

In his testimony before the Subcommittee on Workforce Protections in June 1997, the Acting Assistant Secretary for Occupational Safety and Health, Mr. Greg Watchman, reiterated the change in policy:¹¹

In fact, we [OSHA] have made significant changes to our performance measures for front line inspectors. For many years, OSHA judged the performance of its own staff and, in fact, was judged by Congress, based on the numbers of inspections we conducted, the numbers of citations we

⁸Testimony at a hearing held by the Subcommittee on Workforce Protections, July 23, 1997.

⁹Testimony at a hearing held by the Subcommittee on Workforce Protections, July 23, 1997.

¹⁰Testimony at a hearing held by the Subcommittee on Workforce Protections, March 8, 1997.

¹¹Testimony at a hearing held by the Subcommittee on Workforce Protections, June 24, 1997.

issued, and the amount of penalties we collected. Joe Dear dropped those performance measures so that inspectors were no longer judged on those criteria. Instead, we have begun to implement a new performance measurement system.

Despite the change in official policy, however, the testimony of Mr. Schaible, Mr. Nicholas, Mr. Gonzalez, and others from whom the Committee has heard continuing complaints about compliance officers who are concerned that they “will look bad” if they don’t issue some citations in the course of an inspection, suggests that the problem is not entirely cured. As Ms. Strunk observed in March 1995 in the testimony quoted above, the practice of judging the agency and its compliance officers based on enforcement numbers is long-standing and systemic. Amending the OSHAct, to make clear that compliance officers may not be evaluated on the basis of such enforcement measures as number of citations issued or penalties assessed will, as the current Assistant Secretary of Labor for Occupational Safety and Health said in endorsing H.R. 2877 on behalf of the Clinton Administration, “help make clear to everyone that OSHA’s current policy will not change.”¹²

The bill

H.R. 2877 simply prohibits the Secretary of Labor from using the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate its compliance personnel. The bill also prohibits the setting of goals or quotas with regard to enforcement activities by OSHA. The bill does not prohibit or interfere with other management prerogatives and requirements, such as is involved in ensuring that agency personnel conduct inspections, “give a day’s work for a day’s pay,” or carry out other agency priorities with regard to targeting of enforcement activities. Similarly, the bill does not preclude the Secretary or her subordinates from reviewing and taking appropriate action with regard to any specific violation, such as where an inspector initially improperly classifies a violation. The bill is directed at prohibiting the practice of evaluating personnel and the agency by enforcement numbers such that the perceived and real purpose of OSHA is punitive against employers rather than corrective and improving safety and health.

SECTION-BY-SECTION

Section 1. Inspections

Section 8 of the OSHAct is amended to prohibit OSHA from using the results of enforcement activities, such as the numbers of citations issued or penalties assessed, to evaluate OSHA enforcement officers.

EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is explained in the body of this report.

¹²Statement of Mr. Charles Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, March 11, 1998.

CONSTITUTIONAL AUTHORITY STATEMENT

H.R. 2877 amends the OSHAct and falls within the scope of Congressional powers under Article I, Section 8, Clause 3 of the Constitution of the United States. In addition, the Committee believes that this bill falls within the same scope of congressional authority as the OSHAct.

COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2877. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch. This bill prohibits the Occupational Safety and Health Administration from establishing performance measures based on the number of inspections or citations issued; the bill does not prevent legislative branch employees from receiving the benefits of this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates. This bill prohibits certain performance measures for employees of Occupational Safety and Health Administration, and as such does not contain any unfunded mandates.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 2(1)(3)(A) of rule XI and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

STATEMENT OF OVERSIGHT FINDINGS OF THE COMMITTEE ON
GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2877.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 2(1)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 2(1)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2877 from the Director of the Congressional Budget Act:

H.R. 2877—As ordered reported by the House Committee on Education and the Workforce

CBO estimates that enacting this bill would have no effect on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 2877 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not have an impact on the budgets of state, local, or tribal governments.

H.R. 2877 would conform the law to current practice. It would prohibit the Secretary of Labor from using the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate employees directly involved in enforcement under the Occupational Safety and Health Act. It would also prohibit the Secretary from imposing quotas or goals on employees that are based on the results of enforcement activities. The Occupational Safety and Health Administration discontinued using such performance measures and incentives in 1994.

The CBO staff contact for the impact on federal costs is Cyndi Dudzinski, who can be reached at 226-9010; the contact for the impact on state, local, and tribal governments is Marc Nicole and the contact for the impact on the private sector is Kathryn Rarick. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 16, 1998.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2877.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Cyndi Dudzinski.

Sincerely,

JAMES L. BLUM,
(For June E. O'Neill, Director).

Enclosure.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as re-

ported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

**SECTION 8 OF THE OCCUPATIONAL SAFETY AND
HEALTH ACT OF 1970**

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 8. (a) * * *

* * * * *

(h) The Secretary shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate employees directly involved in enforcement activities under this Act or to impose quotas or goals with regard to the results of such activities.