

105TH CONGRESS
1ST SESSION

S. 1265

To amend the Occupational Safety and Health Act of 1970 to expand the provisions to include construction safety requirements.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 1997

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Occupational Safety and Health Act of 1970 to expand the provisions to include construction safety requirements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Construction Safety,
5 Health, and Education Improvement Act of 1997”.

6 **SEC. 2. OFFICE OF CONSTRUCTION SAFETY, HEALTH, AND**
7 **EDUCATION.**

8 The Occupational Safety and Health Act of 1970 (29
9 U.S.C. 651 et seq.) is amended—

10 (1) by striking sections 30, 31, and 34;

1 (2) by redesignating sections 32 through 33 as
2 sections 34 and 35, respectively; and

3 (3) by inserting after section 29 the following:

4 **“SEC. 30. OFFICE OF CONSTRUCTION SAFETY, HEALTH,**
5 **AND EDUCATION.**

6 “(a) ESTABLISHMENT.—There is established in the
7 Occupational Safety and Health Administration an Office
8 of Construction Safety, Health, and Education (herein-
9 after in this section referred to as the ‘Office’) to ensure
10 safe and healthful working conditions in the performance
11 of construction work.

12 “(b) DUTIES.—The Secretary shall—

13 “(1) identify construction employers that have
14 high fatality rates or high lost workday injury or ill-
15 ness rates or who have demonstrated a pattern of
16 noncompliance with safety and health standards,
17 rules, and regulations;

18 “(2) develop a system for notification of em-
19 ployers identified under paragraph (1);

20 “(3) establish training courses and curriculum
21 for the training of inspectors and other persons with
22 duties related to construction safety and health who
23 are employed by the Occupational Safety and Health
24 Administration;

1 “(4) establish model compliance programs for
 2 construction safety and health standards and assist
 3 employers, employees, and organizations represent-
 4 ing employers and employees in establishing training
 5 programs appropriate to such standards; and

6 “(5) establish a toll-free line on which reports,
 7 complaints, and notifications required under this Act
 8 may be made.”.

9 **SEC. 3. CONSTRUCTION SAFETY AND HEALTH PLANS AND**
 10 **PROGRAMS.**

11 The Occupational Safety and Health Act of 1970 (29
 12 U.S.C. 651 et seq.) (as amended by section 2) is further
 13 amended by adding after section 30 the following:

14 **“SEC. 31. CONSTRUCTION SAFETY AND HEALTH PLANS AND**
 15 **PROGRAMS.**

16 “(a) PROJECT CONSTRUCTOR.—The Secretary shall,
 17 by regulation, require each construction project to have
 18 an individual or entity (hereinafter referred to as the
 19 ‘project constructor’) that is responsible for the establish-
 20 ment of the safety and health plan (as described in sub-
 21 section (b)) for such project and for ensuring that the plan
 22 is carried out. Such regulations shall require that—

23 “(1) if only one general or prime contractor ex-
 24 ists on a construction project, such contractor shall
 25 be the project constructor, unless such contractor

1 designates another entity with such entity's consent
 2 to be the project constructor; and

3 “(2) if a construction project has more than
 4 one general or prime contractor, the construction
 5 owner shall be the project constructor unless such
 6 construction owner designates another entity with
 7 such entity's consent to be the project constructor.

8 “(b) CONSTRUCTION SAFETY AND HEALTH PLAN.—

9 “(1) IN GENERAL.—The Secretary shall, by
 10 regulation, require that the project constructor for a
 11 construction project develop and implement a writ-
 12 ten construction safety and health plan for the con-
 13 struction project (hereinafter in this section referred
 14 to as the ‘plan’) to protect employees against haz-
 15 ards which may occur at such project.

16 “(2) PLAN ELEMENTS.—The plan shall—

17 “(A) include a hazard analysis and con-
 18 struction process protocol which shall apply to
 19 each worksite of the project;

20 “(B) include assurance that each construc-
 21 tion employer on the project has a safety and
 22 health program which complies and is coordi-
 23 nated with the plan and the requirements of
 24 subsection (c);

1 “(C) provide for regular inspections of the
2 worksite to monitor the implementation of the
3 plan;

4 “(D) include a method for notifying af-
5 fected construction employers of any hazardous
6 conditions at a construction worksite or of non-
7 compliance by an employer with the project
8 safety and health plan;

9 “(E) include a method for responding to
10 the request of any construction employer, em-
11 ployee, or employee representative, for an in-
12 spection of a construction worksite to determine
13 if an imminent danger exists and to stop work
14 at, or remove affected employees from, an area
15 in which such a danger exists;

16 “(F) provide assurance that a competent
17 person is on site at all times to oversee the im-
18 plementation of the safety plan and coordinate
19 activities among employers; and

20 “(G) provide assurance that the plan will
21 be reviewed and modified as the project ad-
22 dresses new safety concerns.

23 “(3) AVAILABILITY.—Copies of the plan shall
24 be made available to each construction employer

1 prior to commencement of construction work by that
2 employer.

3 “(c) APPLICATION.—

4 “(1) IN GENERAL.—The Secretary, by regula-
5 tion, may modify the requirements of this section, or
6 portions thereof, as such requirements apply to cer-
7 tain types of construction work or operations where
8 the Secretary determines that, in light of the nature
9 of the risks faced by employees engaged in such
10 work or operation, such a modification would not re-
11 duce the employees’ safety and health protection. In
12 making such modification, the Secretary shall take
13 into account the risk of death or serious injury or
14 illness, and the frequency of fatalities and the lost
15 work day injury rate attendant to such work or op-
16 erations.

17 “(2) EMERGENCY WORK.—If it is necessary to
18 perform construction work on a worksite imme-
19 diately in order to prevent injury to persons, or sub-
20 stantial damage to property, and such work must be
21 conducted before compliance with the requirements
22 of the regulations under subsections (a) and (b) can
23 be made, the Secretary shall be given notice as soon
24 as practicable of such work. Compliance with such

1 requirements shall then be made as soon as prac-
2 ticable thereafter.”.

3 **SEC. 4. STATE CONSTRUCTION SAFETY AND HEALTH**
4 **PLANS.**

5 Section 18 of the Occupational Safety and Health Act
6 of 1970 (29 U.S.C. 667) is amended by adding at the end
7 the following:

8 “(i) Any State plan that covers construction safety
9 and health shall contain requirements which, and the en-
10 forcement of which, are, and will be, at least as effective,
11 in providing safe and healthful employment and places of
12 employment in the construction industry as the require-
13 ments contained in subsection (c), and the requirements
14 imposed by, and enforced under, this Act and section 107
15 of the Contract Work Hours Standards Act (40 U.S.C.
16 333), including requirements relating to construction safe-
17 ty and health plans.”.

18 **SEC. 5. ENFORCEMENT.**

19 (a) CITATIONS.—Section 9(a) of the Occupational
20 Safety and Health Act of 1970 (29 U.S.C. 658(a)) is
21 amended by inserting “, 8, or 31” after “section 5”.

22 (b) PROJECT CONSTRUCTORS.—Section 9 of the Oc-
23 cupational Safety and Health Act of 1970 (29 U.S.C. 658)
24 is amended by adding at the end the following:

1 “(e) For purposes of this section and sections 8, 10,
2 11, and 17 a project constructor shall be considered an
3 employer.”.

4 **SEC. 6. REPORTS TO CONGRESS.**

5 The Occupational Safety and Health Act of 1970 (29
6 U.S.C. 651 et seq.) (as amended by section 3) is further
7 amended by adding after section 31 the following:

8 **“SEC. 32. REPORTS TO CONGRESS.**

9 “The Secretary shall include in the annual report
10 submitted to the President under section 26 additional in-
11 formation on the construction industry as such informa-
12 tion relates to the general subjects described in section 26,
13 including the operation of the Office of Construction Safe-
14 ty, Health, and Education.

15 **SEC. 7. FEDERAL CONSTRUCTION CONTRACTS.**

16 The Occupational Safety and Health Act of 1970 (29
17 U.S.C. 651 et seq.) (as amended by section 6) is further
18 amended by adding after section 32 the following:

19 **“SEC. 33. FEDERAL CONSTRUCTION CONTRACTS.**

20 “Not later than 90 days after the date of the enact-
21 ment of this section, the Secretary shall deliver to the
22 Committee on Education and the Workforce of the House
23 of Representatives and the Committee on Labor and
24 Human Resources of the Senate recommendations regard-
25 ing legislative changes required to make the safety records

1 (including records of compliance with Federal safety and
 2 health laws and regulations) of persons bidding for con-
 3 tracts subject to section 107 of the Contract Work Hours
 4 and Safety Standards Act (40 U.S.C. 333) a criterion to
 5 be considered in the awarding of such contracts.”.

6 **SEC. 8. DEFINITIONS.**

7 Section 3 of the Occupational Safety and Health Act
 8 of 1970 (29 U.S.C. 652) is amended by adding at the end
 9 thereof the following:

10 “(15) For purposes of sections 30 and 31, the
 11 following terms shall have the following meanings:

12 “(A) The term ‘construction employer’
 13 means an employer as defined in paragraph (5)
 14 (including an employer who has no employees)
 15 who is engaged primarily in the building and
 16 construction industry or who performs construc-
 17 tion work under a contract with a construction
 18 owner, except that a utility providing or receiv-
 19 ing mutual assistance in the case of a natural
 20 or man-made disaster shall not be considered a
 21 construction employer.

22 “(B) The term ‘construction owner’ means
 23 a person who owns, leases or has effective con-
 24 trol over property with or without improve-
 25 ments, a structure, or other improvement on

1 real property on which construction work is
2 being, or will be, performed.

3 “(C) The term ‘construction project’
4 means all construction work by one or more
5 construction employers which is performed for a
6 construction owner and which is described in
7 work orders, permits, requisitions, agreements,
8 and other project documents.

9 “(D) The term ‘construction work’ means
10 work for construction, alteration, demolition, or
11 repair, or any combination thereof, including
12 painting and decorating, but does not include
13 work performed under a contract between a
14 construction employer and a homeowner for
15 work on the homeowner’s own residence, or rou-
16 tine maintenance and upkeep performed at least
17 monthly, and such term shall include work per-
18 formed under a contract between a construction
19 employer and an agency of the United States or
20 any State or political subdivision of a State.

21 “(E) The term ‘construction worksite’
22 means a site within a construction project
23 where construction work is performed by one or
24 more construction employers.”.

1 **SEC. 9. RELATIONSHIP TO EXISTING LAW AND REGULA-**
2 **TIONS.**

3 (a) IN GENERAL.—Nothing contained in the amend-
4 ments made by this Act or the regulations issued to carry
5 out the amendments shall limit the application of, or less-
6 en, any of the requirements of the Occupational Safety
7 and Health Act of 1970 (29 U.S.C. 651 et seq.), the Con-
8 tract Work Hours Standards Act (40 U.S.C. 327 et seq.),
9 or the standards or regulations issued by the Secretary
10 of Labor to carry out either such Act.

11 (b) PROJECT CONSTRUCTORS.—The presence and
12 duties of a project constructor or a project safety coordi-
13 nator on a project shall not in any way diminish the re-
14 sponsibilities of construction employers under the Occupa-
15 tional Safety and Health Act of 1970 (29 U.S.C. 651 et
16 seq.) for the safety and health of their employees.

