

105TH CONGRESS
1ST SESSION

S. 551

To amend the Occupational Safety and Health Act of 1970 to make
modifications to certain provisions.

IN THE SENATE OF THE UNITED STATES

APRIL 10, 1997

Mr. GREGG 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 make modifications to certain provisions.

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; REFERENCE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “OSHA Modernization Act of 1997”.

6 (b) **REFERENCE.**—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment
8 to, or repeal of, a section or other provision, the reference
9 shall be considered to be made to a section or other provi-

1 sion of the Occupational Safety and Health Act of 1970
 2 (29 U.S.C. 651 et seq.).

3 **SEC. 2. EMPLOYEE PARTICIPATION.**

4 Section 4 (29 U.S.C. 653) is amended by adding at
 5 the end the following:

6 “(c) In order to carry out the purpose of this Act
 7 to encourage employers and employees in their efforts to
 8 reduce the number of occupational safety and health haz-
 9 ards, an employee participation program—

10 “(1) in which employees participate;

11 “(2) which exists for the purpose, in whole or
 12 in part, of dealing with employees concerning safe
 13 and healthful working conditions; and

14 “(3) which does not have, claim, or seek author-
 15 ity to negotiate or enter into collective bargaining
 16 agreements with the employer or to amend existing
 17 collective bargaining agreements between the em-
 18 ployer and any labor organization,

19 shall not constitute a labor organization for purposes of
 20 section 8(a)(2) of the National Labor Relations Act (29
 21 U.S.C. 158(a)(2)) or a representative for purposes of sec-
 22 tions 1 and 2 of the Railway Labor Act (45 U.S.C. 151
 23 and 151a). Nothing in this section shall be construed to
 24 affect employer obligations under section 8(a)(5) of the
 25 National Labor Relations Act (29 U.S.C. 158(a)(5)) to

1 deal with a certified or recognized employee representative
 2 with respect to health and safety matters to the extent
 3 otherwise required by law.”.

4 **SEC. 3. INSPECTIONS.**

5 (a) TRAINING AND AUTHORITY OF SECRETARY.—
 6 Section 8 (29 U.S.C. 657) is amended—

7 (1) by redesignating subsection (g) as sub-
 8 section (h); and

9 (2) by inserting after subsection (f) the follow-
 10 ing:

11 “(g)(1) Except as provided in paragraph (2), the Sec-
 12 retary shall not conduct routine inspections of, or enforce
 13 any standard, rule, regulation, or order under this Act
 14 with respect to—

15 “(A) any person who is engaged in a farming
 16 operation that does not maintain a temporary labor
 17 camp and that employs 10 or fewer employees; or

18 “(B) any employer of not more than 10 employ-
 19 ees if the employer is included within a category of
 20 employers having an occupational injury or a lost
 21 workday case rate (determined under the Standard
 22 Industrial Classification Code for which such data
 23 are published) that is less than the national average
 24 rate as most recently published by the Secretary act-

1 ing through the Bureau of Labor Statistics under
2 section 24.

3 “(2) In the case of persons who are not engaged in
4 farming operations, paragraph (1) shall not be construed
5 to prohibit the Secretary from—

6 “(A) providing consultations, technical assist-
7 ance, and educational and training services and con-
8 ducting surveys and studies under this Act;

9 “(B) conducting inspections or investigations in
10 response to complaints of employees, issuing cita-
11 tions for violations of this Act found during the in-
12 spections, and assessing a penalty for the violations
13 that are not corrected within a reasonable abatement
14 period;

15 “(C) taking any action authorized by this Act
16 with respect to imminent dangers;

17 “(D) taking any action authorized by this Act
18 with respect to a report of an employment accident
19 that is fatal to at least 1 employee or that results
20 in the hospitalization of at least 3 employees, and
21 taking any action pursuant to an investigation con-
22 ducted with respect to the report; and

23 “(E) taking any action authorized by this Act
24 with respect to complaints of discrimination against

1 employees for exercising the rights of the employees
2 under this Act.”.

3 (b) INSPECTIONS BASED ON EMPLOYEE COM-
4 PLAINTS.—Section 8(f) (29 U.S.C. 657(f)) is amended to
5 read as follows:

6 “(f)(1)(A) An employee or a representative of an em-
7 ployee who believes that a violation of a safety or health
8 standard exists that threatens physical harm, or that an
9 imminent danger exists, may request an inspection by pro-
10 viding notice of the violation or danger to the Secretary
11 or an authorized representative of the Secretary.

12 “(B) The notice under subparagraph (A) shall be re-
13 duced to writing, shall set forth with reasonable particu-
14 larity the grounds for the notice, and shall state whether
15 the alleged violation or danger described in subparagraph
16 (A) has been brought to the attention of the employer and
17 if so, whether the employer has refused to take any action
18 to correct the alleged violation or danger.

19 “(C)(i) The notice under subparagraph (A) shall be
20 signed by the employee or the representative of the em-
21 ployee and a copy shall be provided to the employer or
22 the agent of the employer not later than the time of arrival
23 of an occupational safety and health agency inspector to
24 conduct the inspection.

1 “(ii) Upon the request of the person providing the
2 notice under subparagraph (A), the name of the person
3 and the names of individual employees referred to in the
4 notice shall not appear in the copy of the notice or on
5 any record published, released, or made available pursuant
6 to subsection (i).

7 “(D)(i) If, upon receipt of the notice under subpara-
8 graph (A), the Secretary determines that there are reason-
9 able grounds to believe the violation or danger described
10 in subparagraph (A) exists, the Secretary may conduct an
11 inspection in accordance with this subsection as soon as
12 practicable. Except as provided in clause (ii), the inspec-
13 tion shall be conducted for the limited purpose of deter-
14 mining whether the violation or danger exists.

15 “(ii) During an inspection described in clause (i), the
16 Secretary may take appropriate actions with respect to
17 health and safety violations that are not within the scope
18 of the inspection and that are observed by the Secretary
19 or an authorized representative of the Secretary during
20 the inspection.

21 “(2) If the Secretary determines either before, or as
22 a result of, an inspection conducted under this subsection
23 that there are not reasonable grounds to believe a violation
24 or danger described in paragraph (1)(A) exists, the Sec-
25 retary shall notify the complaining employee or employee

1 representative of the determination and, upon request by
 2 the employee or employee representative, shall provide a
 3 written statement of the reasons for the determination of
 4 the Secretary.

5 “(3) The Secretary or an authorized representative
 6 of the Secretary may, as a method of investigating an al-
 7 leged violation or danger under this subsection, attempt,
 8 if feasible, to contact an employer by telephone, facsimile,
 9 or other appropriate methods to determine whether—

10 “(A) the employer has taken corrective actions
 11 with respect to the alleged violation or danger; or

12 “(B) there are reasonable grounds to believe
 13 that a hazard exists.

14 “(4) The Secretary is not required to conduct an in-
 15 spection under this subsection if the Secretary determines
 16 that a request for an inspection was made for reasons
 17 other than the safety and health of the employees of an
 18 employer or that the employees of an employer are not
 19 at risk.”.

20 **SEC. 4. WORKSITE-BASED INITIATIVES.**

21 (a) PROGRAM.—The Act (29 U.S.C. 651 et seq.) is
 22 amended by inserting after section 8 the following:

1 **“SEC. 8A. HEALTH AND SAFETY MODERNIZATION INITIA-**
 2 **TIVES.**

3 “(a) IN GENERAL.—The Secretary shall establish a
 4 program to encourage voluntary employer and employee
 5 efforts to provide safe and healthful working conditions.

6 “(b) EXEMPTION.—In establishing a program under
 7 subsection (a), the Secretary shall, in accordance with sub-
 8 section (c), provide an exemption from all safety and
 9 health inspections and investigations for a place of em-
 10 ployment maintained by an employer participating in the
 11 program, except that this subsection shall not apply to in-
 12 spections and investigations conducted for the purpose
 13 of—

14 “(1) determining the cause of a workplace acci-
 15 dent that resulted in the death of 1 or more employ-
 16 ees or the hospitalization of 3 or more employees; or
 17 “(2) responding to a request for an inspection
 18 pursuant to section 8(f)(1).

19 “(c) EXEMPTION REQUIREMENTS.—To qualify for an
 20 exemption under subsection (b), an employer shall provide
 21 to the Secretary evidence that, with respect to the em-
 22 ployer—

23 “(1) during the preceding year, the place of em-
 24 ployment or conditions of employment have been re-
 25 viewed or inspected under—

1 “(A) a consultation program provided by
2 recipients of grants under section 7(c)(1) or
3 23(g);

4 “(B) a certification or consultation pro-
5 gram provided by an insurance carrier or other
6 private business entity pursuant to a State pro-
7 gram, law, or regulation; or

8 “(C) a workplace consultation program
9 provided by a qualified person certified by the
10 Secretary, for purposes of providing workplace
11 consultations,

12 that includes a means of ensuring that serious haz-
13 ards identified in a consultation are corrected within
14 an appropriate time and that, where applicable, per-
15 mits an employee (of the employer) who is a rep-
16 resentative of a health and safety employee partici-
17 pation program to accompany a consultant during a
18 workplace inspection; or

19 “(2) the place of employment has an exemplary
20 safety and health record and the employer maintains
21 a safety and health program for the workplace that
22 includes—

23 “(A) procedures for assessing hazards to
24 the employees of the employer that are inherent
25 to the operations or business of the employer;

1 “(B) procedures for correcting or control-
2 ling the hazards in a timely manner based upon
3 the severity of the hazards; and

4 “(C) an employee participation program
5 that, at a minimum—

6 “(i) includes regular consultation be-
7 tween the employer and the nonsupervisory
8 employees of the employer regarding safety
9 and health issues;

10 “(ii) includes the opportunity for the
11 nonsupervisory employees of the employer
12 to make recommendations regarding haz-
13 ards in the workplace and to receive re-
14 sponses or to implement improvements in
15 response to the recommendations; and

16 “(iii) ensures that the participating
17 nonsupervisory employees of the employer
18 have training or expertise on safety and
19 health issues consistent with the respon-
20 sibilities of the employees.

21 “A person that conducts a review or inspection under
22 paragraph (1)(B) shall meet standards established by the
23 Secretary and shall be certified by the Secretary.

24 “(d) MODEL PROGRAM.—The Secretary shall publish
25 and make available to employers a model safety and health

1 program that if completed by the employer shall be consid-
2 ered to meet the requirements for an exemption under this
3 section.

4 “(e) CERTIFICATION.—The Secretary may require
5 that, to claim the exemption under subsection (b), an em-
6 ployer provides certification to the Secretary and notice
7 to the employees of the employer of the eligibility of the
8 employer for the exemption. The Secretary may conduct
9 random audits of the records of employers to ensure
10 against falsification of the records by the employers.

11 “(f) RECORDS.—Records of a safety and health in-
12 spection, audit, or review that is conducted by an employer
13 and that is not conducted under a program described in
14 subsection (a) shall not be required to be disclosed to the
15 Secretary unless—

16 “(1) the Secretary is conducting an investiga-
17 tion involving a fatality or a serious injury of an em-
18 ployee of the employer; or

19 “(2) the employer has not taken measures to
20 address serious hazards in the workplace of the em-
21 ployer identified during the inspection, audit, or re-
22 view.”.

23 (b) DEFINITION.—Section 3 (29 U.S.C. 652) is
24 amended by adding at the end the following:

1 “(15) The term ‘exemplary safety and health
2 record’ means a record that the Secretary shall es-
3 tablish annually for each industry that identifies the
4 employers in the industry that provide safe and
5 healthful working conditions for the employees of the
6 employers. The record shall include employers that
7 have had, in the most recent reporting period, no
8 employee death caused by occupational injury and
9 fewer lost workdays due to occupational injury and
10 illness than the average for the industry of which
11 the employer is a part.”.

12 **SEC. 5. EMPLOYER DEFENSES.**

13 Section 9 (29 U.S.C. 658) is amended by adding at
14 the end the following:

15 “(d) No citation may be issued under subsection (a)
16 to an employer unless the employer knew, or with the exer-
17 cise of reasonable diligence, would have known, of the
18 presence of an alleged violation. No citation shall be issued
19 under subsection (a) to an employer for an alleged viola-
20 tion of section 5, any standard, rule, or order promulgated
21 pursuant to section 6, any other regulation promulgated
22 under this Act, or any other occupational safety and
23 health standard, if the employer demonstrates that—

1 “(1) the employees of the employer have been
2 provided with the proper training and equipment to
3 prevent such a violation;

4 “(2) work rules designed to prevent such a vio-
5 lation have been established and adequately commu-
6 nicated to the employees by the employer and the
7 employer has taken reasonable measures to dis-
8 cipline employees when violations of the work rules
9 have been discovered;

10 “(3) the failure of employees to observe work
11 rules led to the violation; and

12 “(4) reasonable measures have been taken by
13 the employer to discover any such violation.

14 “(e) A citation issued under subsection (a) to an em-
15 ployer who violates the requirements of section 5, of any
16 standard, rule, or order promulgated pursuant to section
17 6, or any other regulation promulgated under this Act
18 shall be vacated if the employer demonstrates that employ-
19 ees of the employer were protected by alternative methods
20 that were equally or more protective of the safety and
21 health of the employees than the methods required by the
22 standard, rule, order, or regulation in the factual cir-
23 cumstances underlying the citation.

1 “(f) Subsections (d) and (e) shall not be construed
2 to eliminate or modify other defenses that may exist to
3 any citation.”.

4 **SEC. 6. INSPECTION QUOTAS.**

5 Section 9 (29 U.S.C. 658), as amended by section
6 5, is further amended by adding at the end the following:

7 “(g) The Secretary shall not establish any quota for
8 any subordinate within the Occupational Safety and
9 Health Administration (including any regional director,
10 area director, supervisor, or inspector) with respect to the
11 number of inspections conducted, citations issued, or pen-
12 alties collected.”.

13 **SEC. 7. WARNINGS IN LIEU OF CITATIONS.**

14 Subsection (a) of section 9 (29 U.S.C. 658(a)) is
15 amended to read as follows:

16 “(a)(1) Except as provided in paragraph (2), if, upon
17 an inspection or investigation, the Secretary or an author-
18 ized representative of the Secretary believes that an em-
19 ployer has violated a requirement of section 5, of any regu-
20 lation, rule, or order promulgated pursuant to section 6,
21 or of any regulations prescribed pursuant to this Act, the
22 Secretary may with reasonable promptness issue a citation
23 to the employer. Each citation shall be in writing and shall
24 describe with particularity the nature of an violation, in-
25 cluding a reference to the provision of the Act, regulation,

1 rule, or order alleged to have been violated. The citation
 2 shall fix a reasonable time for the abatement of the viola-
 3 tion.

4 “(2) The Secretary or the authorized representative
 5 of the Secretary—

6 “(A) may issue a warning in lieu of a citation
 7 with respect to a violation that has no significant re-
 8 lationship to employee safety or health; and

9 “(B) may issue a warning in lieu of a citation
 10 in cases in which an employer in good faith acts
 11 promptly to abate a violation if the violation is not
 12 a willful or repeated violation.

13 “(3) Nothing in this Act shall be construed as prohib-
 14 iting the Secretary or the authorized representative of the
 15 Secretary from providing technical or compliance assist-
 16 ance to an employer in correcting a violation discovered
 17 during an inspection or investigation under this Act with-
 18 out issuing a citation.”.

19 **SEC. 8. REDUCED PENALTIES FOR NONSERIOUS VIOLA-**
 20 **TIONS AND MITIGATING CIRCUMSTANCES.**

21 Section 17 (29 U.S.C. 666) is amended—

22 (1) in subsection (c), by striking “up to
 23 \$7,000” and inserting “not more than \$100”;

24 (2) by striking subsection (i) and inserting the
 25 following:

1 “(i) Any employer who violates any of the posting or
 2 paperwork requirements, other than serious or fraudulent
 3 reporting requirement deficiencies, prescribed under this
 4 Act shall not be assessed a civil penalty for such a viola-
 5 tion unless the Secretary determines that the employer has
 6 violated subsection (a) or (d) with respect to the posting
 7 or paperwork requirements.”; and

8 (3) by striking subsection (j) and inserting the
 9 following:

10 “(j)(1) The Commission shall have authority to as-
 11 sess all civil penalties under this section. In assessing a
 12 penalty under this section for a violation, the Commission
 13 shall give due consideration to the appropriateness of the
 14 penalty with respect to—

15 “(A) the size of an employer;

16 “(B) the number of employees exposed to the
 17 violation;

18 “(C) the likely severity of any injuries directly
 19 resulting from the violation;

20 “(D) the probability that the violation could re-
 21 sult in injury or illness;

22 “(E) the good faith of the employer in correct-
 23 ing the violation after the violation has been identi-
 24 fied;

1 “(F) the extent to which employee misconduct
2 was responsible for the violation;

3 “(G) the effect of the penalty on the ability of
4 an employer to stay in business;

5 “(H) the history of previous violations by an
6 employer; and

7 “(I) whether the violation is the sole result of
8 the failure of an employer to meet a requirement
9 under this Act, or prescribed by regulation, with re-
10 spect to the posting of notices, the preparation or
11 maintenance of occupational safety and health
12 records, or the preparation, maintenance, or submis-
13 sion of any written information.

14 “(2)(A) A penalty assessed under this section shall
15 be reduced by not less than 25 percent in any case in
16 which the employer—

17 “(i) maintains a safety and health program de-
18 scribed in section 8A(a) for the worksite where the
19 violation, for which the penalty was assessed, oc-
20 curred; or

21 “(ii) demonstrates that the worksite where the
22 violation, for which the penalty was assessed, oc-
23 curred has an exemplary safety and health record.

1 If the employer maintains a program described in clause
 2 (i) and has the record described in clause (ii), the penalty
 3 shall be reduced by not less than 50 percent.

4 “(B) A penalty assessed against an employer for a
 5 violation other than a violation that—

6 “(i) has been previously cited by the Secretary;

7 “(ii) creates an imminent danger;

8 “(iii) has caused death; or

9 “(iv) has caused a serious incident,

10 shall be reduced by not less than 75 percent if the worksite
 11 where the violation occurred has been reviewed or in-
 12 spected under a program described in section 8A(c)(1)
 13 during the 1-year period before the date of the citation
 14 for the violation, and the employer has complied with rec-
 15 ommendations by the Secretary to bring the employer into
 16 compliance within a reasonable period of time.”.

17 **SEC. 9. CONSULTATION SERVICES.**

18 Section 21(c) (29 U.S.C. 670(c)) is amended—

19 (1) by striking “(c) The” and inserting “(c)(1)
 20 The”; and

21 (2) by adding at the end the following:

22 “(2)(A) The Secretary shall, through the authority
 23 granted under section 7(c) and paragraph (1), enter into
 24 cooperative agreements with States for the provision of
 25 consultation services by such States to employers concern-

1 ing the provision of safe and healthful working conditions.
 2 A State that has a plan approved under section 18 shall
 3 be eligible to enter into a cooperative agreement under this
 4 paragraph only if the plan does not include provisions for
 5 federally funded consultation to employers.

6 “(B)(i) Except as provided in clause (ii), the Sec-
 7 retary shall reimburse a State that enters into a coopera-
 8 tive agreement under subparagraph (A) in an amount that
 9 equals 90 percent of the costs incurred by the State for
 10 the provision of consultation services under such agree-
 11 ment.

12 “(ii) A State shall be fully reimbursed by the Sec-
 13 retary for—

14 “(I) training approved by the Secretary for
 15 State staff operating under a cooperative agreement;
 16 and

17 “(II) specified out-of-State travel expenses in-
 18 curred by the staff.

19 “(iii) A reimbursement paid to a State under this
 20 subparagraph shall be limited to costs incurred by such
 21 State for the provision of consultation services under this
 22 paragraph and the costs described in clause (ii).

23 “(C) Notwithstanding any other provision of law, not
 24 less than 15 percent of the total amount of funds appro-
 25 priated for the Occupational Safety and Health Adminis-

1 tration for a fiscal year shall be used for education, con-
 2 sultation, and outreach efforts.”.

3 **SEC. 10. VOLUNTARY PROTECTION PROGRAMS.**

4 (a) COOPERATIVE AGREEMENTS.—The Secretary of
 5 Labor shall establish cooperative agreements with employ-
 6 ers to encourage the establishment of comprehensive safe-
 7 ty and health management systems that include—

8 (1) requirements for systematic assessment of
 9 hazards in the workplace;

10 (2) comprehensive hazard prevention, mitiga-
 11 tion, and control programs;

12 (3) active and meaningful management and em-
 13 ployee participation in the voluntary program de-
 14 scribed in subsection (b); and

15 (4) employee safety and health training.

16 (b) VOLUNTARY PROTECTION PROGRAM.—The Sec-
 17 retary of Labor shall establish a voluntary protection pro-
 18 gram to encourage the achievement of excellence in both
 19 the technical and managerial protection of employees from
 20 occupational hazards as follows:

21 (1) APPLICATION.—Volunteers for the program
 22 shall be required to submit an application to the
 23 Secretary of Labor demonstrating that the worksite
 24 with respect to which the application is made meets

1 such qualifications as the Secretary of Labor may
2 prescribe for participation in the program.

3 (2) ONSITE EVALUATIONS.—The representa-
4 tives of the Secretary of Labor shall conduct onsite
5 evaluations of the worksite of the participants in the
6 program to ensure a high level of protection of em-
7 ployees of the participants. The onsite evaluations
8 shall not result in enforcement citations under the
9 Occupational Safety and Health Act of 1970 (29
10 U.S.C. 651 et seq.), unless representatives of the
11 Secretary of Labor observe hazards for which no
12 agreement can be made to abate the hazards within
13 a reasonable time period.

14 (3) INFORMATION.—Volunteers who are ap-
15 proved by the Secretary of Labor for participation in
16 the program shall assure the Secretary of Labor
17 that information about the safety and health pro-
18 gram of the volunteers shall be made readily avail-
19 able to the Secretary of Labor to share with employ-
20 ers.

21 (4) REEVALUATIONS.—Periodic reevaluations
22 by the Secretary of Labor of the volunteers shall be
23 required for continued participation in the program.

24 (5) EXEMPTIONS.—A site with respect to which
25 a program has been approved shall, during partici-

1 pation of a volunteer in the program, be exempt
2 from inspections and certain paperwork require-
3 ments to be determined by the Secretary of Labor,
4 except that this paragraph shall not apply to inspec-
5 tions arising from employee complaints, fatalities,
6 catastrophes, or significant toxic releases.

7 (c) ANNUAL FEE.—The Secretary of Labor may
8 charge an annual fee to participants in a voluntary protec-
9 tion program described in subsection (b). The fee shall be
10 in an amount determined by the Secretary of Labor, and
11 amounts collected shall be deposited in the general treas-
12 ury of the United States.

○