

111TH CONGRESS
2D SESSION

H. R. 4864

To require a heightened review process by the Secretary of Labor of State occupational safety and health plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2010

Ms. TITUS (for herself and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To require a heightened review process by the Secretary of Labor of State occupational safety and health plans, and for other purposes.

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 “Ensuring Worker Safe-
5 ty Act”.

6 **SEC. 2. REVIEW OF STATE OCCUPATIONAL SAFETY AND**
7 **HEALTH PLANS.**

8 Section 18 of the Occupational Safety and Health Act
9 (29 U.S.C. 668) is amended—

1 (1) by amending subsection (f) to read as fol-
2 lows:

3 “(f)(1) The Secretary shall, on the basis of reports
4 submitted by the State agency and the Secretary’s own
5 inspections, make a continuing evaluation of the manner
6 in which each State that has a plan approved under this
7 section is carrying out such plan. Such evaluation shall
8 include an assessment of whether the State continues to
9 meet the requirements of subsection (c) of this section and
10 any other criteria or indices of effectiveness specified by
11 the Secretary in regulations. Whenever the Secretary
12 finds, on the basis of such evaluation, that in the adminis-
13 tration of the State plan there is a failure to comply sub-
14 stantially with any provision of the State plan (or any as-
15 surance contained therein), the Secretary shall make an
16 initial determination of whether the failure is of such a
17 nature that the plan should be withdrawn or whether the
18 failure is of such a nature that the State should be given
19 the opportunity to remedy the deficiencies, and provide no-
20 tice of the Secretary’s findings and initial determination.

21 “(2) If the Secretary makes an initial determination
22 to reassert and exercise concurrent enforcement authority
23 while the State is given an opportunity to remedy the defi-
24 ciencies, the Secretary shall afford the State an oppor-
25 tunity for a public hearing within 15 days of such request,

1 provided that such request is made not later than 10 days
2 after Secretary's notice to the State. The Secretary shall
3 review and consider the testimony, evidence, or written
4 comments, and not later than 30 days following such hear-
5 ing, make a determination to affirm, reverse, or modify
6 the Secretary's initial determination to reassert and exer-
7 cise concurrent enforcement authority under sections 8, 9,
8 10, 13, and 17 with respect to standards promulgated
9 under section 6 and obligations under section 5(a). Fol-
10 lowing such a determination by the Secretary, or in the
11 event that the State does not request a hearing within the
12 time frame set forth in this paragraph, the Secretary may
13 reassert and exercise such concurrent enforcement author-
14 ity, while a final determination is pending under para-
15 graph (3) or until the Secretary has determined that the
16 State has remedied the deficiencies as provided under
17 paragraph (4). Such determination shall be published in
18 the Federal Register. The procedures set forth in section
19 18(g) shall not apply to a determination by the Secretary
20 to reassert and exercise such concurrent enforcement au-
21 thority.

22 “(3) If the Secretary makes an initial determination
23 that the plan should be withdrawn, the Secretary shall
24 provide due notice and the opportunity for a hearing. If
25 based on the evaluation, comments, and evidence, the Sec-

1 retary makes a final determination that there is a failure
2 to comply substantially with any provision of the State
3 plan (or any assurance contained therein), he shall notify
4 the State agency of the withdrawal of approval of such
5 plan and upon receipt of such notice such plan shall cease
6 to be in effect, but the State may retain jurisdiction in
7 any case commenced before the withdrawal of the plan in
8 order to enforce standards under the plan whenever the
9 issues involved do not relate to the reasons for the with-
10 drawal of the plan.

11 “(4) If the Secretary makes a determination that the
12 State should be provided the opportunity to remedy the
13 deficiencies, the Secretary shall provide the State an op-
14 portunity to respond to the Secretary’s findings and the
15 opportunity to remedy such deficiencies within a time pe-
16 riod established by the Secretary, not to exceed 1 year.
17 The Secretary may extend and revise the time period to
18 remedy such deficiencies, if the State’s legislature is not
19 in session during this 1 year time period, or if the State
20 demonstrates that it is not feasible to correct the defi-
21 ciencies in the time period set by the Secretary, and the
22 State has a plan to correct the deficiencies within a rea-
23 sonable time period. If the Secretary finds that the State
24 agency has failed to remedy such deficiencies within the
25 time period specified by the Secretary and that the State

1 plan continues to fail to comply substantially with a provi-
2 sion of the State plan, the Secretary shall withdraw the
3 State plan as provided for in paragraph (3).’; and

4 (2) by adding at the end the following new sub-
5 section:

6 “(i) Not later than 18 months after the date of enact-
7 ment of this subsection, and every 5 years thereafter, the
8 Comptroller General shall complete and issue a review of
9 the effectiveness of State plans to develop and enforce
10 safety and health standards to determine if they are at
11 least as effective as the Federal program and to evaluate
12 whether the Secretary’s oversight of State plans is effec-
13 tive. The Comptroller General’s evaluation shall assess—

14 “(1) the effectiveness of the Secretary’s over-
15 sight of State plans, including the indices of effec-
16 tiveness used by the Secretary;

17 “(2) whether the Secretary’s investigations in
18 response to Complaints About State Plan Adminis-
19 tration (CASPA) are adequate, whether significant
20 policy issues have been identified by headquarters
21 and corrective actions are fully implemented by each
22 State;

23 “(3) whether the formula for the distribution of
24 funds described in section 23(g) to State programs
25 is fair and adequate;

1 “(4) whether State plans are as effective as the
2 Federal program in preventing occupational injuries,
3 illnesses and deaths, and investigating discrimina-
4 tion complaints, through an evaluation of at least 20
5 percent of approved State plans, and which shall
6 cover—

7 “(A) enforcement effectiveness, including
8 handling of fatalities, serious incidents and
9 complaints, compliance with inspection proce-
10 dures, hazard recognition, verification of abate-
11 ment, violation classification, citation and pen-
12 alty issuance, including appropriate use of will-
13 ful and repeat citations, and employee involve-
14 ment;

15 “(B) inspections, the number of pro-
16 grammed health and safety inspections at pri-
17 vate and public sector establishments, and
18 whether the State targets the highest hazard
19 private sector work sites and facilities in that
20 State;

21 “(C) budget and staffing, including wheth-
22 er the State is providing adequate budget re-
23 sources to hire, train and retain sufficient num-
24 bers of qualified staff, including timely filling of
25 vacancies;

1 “(D) administrative review, including the
2 quality of decisions, consistency with Federal
3 precedence, transparency of proceedings, deci-
4 sions and records are available to the public,
5 adequacy of State defense, and whether the
6 State appropriately appeals adverse decisions;

7 “(E) antidiscrimination, including whether
8 discrimination complaints are processed in a
9 timely manner, whether supervisors and inves-
10 tigators are properly trained to investigate dis-
11 crimination complaints, whether a case file re-
12 view indicates merit cases are properly identi-
13 fied consistent with Federal policy and proce-
14 dure, whether employees are notified of their
15 rights, and whether there is an effective process
16 for employees to appeal the dismissal of a com-
17 plaint;

18 “(F) program administration, including
19 whether the State’s standards and policies are
20 at least as effective as the Federal program and
21 are updated in a timely manner, and whether
22 National Emphasis Programs that are applica-
23 ble in such States are adopted and implemented
24 in a manner that is at least as effective as the
25 Federal program;

1 “(G) whether the State plan satisfies the
2 requirements for approval set forth in this sec-
3 tion and its implementing regulations; and

4 “(H) other such factors identified by the
5 Comptroller General, or as requested by the
6 Committee on Education and Labor of the
7 House of Representatives or the Committee on
8 Health, Education, Labor, and Pensions of the
9 Senate.”.

○