

34:5A-43

LEGISLATIVE HISTORY CHECKLIST
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(Asbestos--application, storage, removal)

NJSA: 34:5A-43

LAWS OF: 1994 CHAPTER: 21

BILL NO: S480

SPONSOR(S): Adler and Sinagra

DATE INTRODUCED: January 31, 1994

COMMITTEE: ASSEMBLY: ---
SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: March 10, 1994
SENATE: March 3, 1994

DATE OF APPROVAL: April 15, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes

FISCAL NOTE: ~~No~~ Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

P.L.1994, CHAPTER 21, *approved April 15, 1994*
1994 Senate No. 480

1 **AN ACT** concerning the management of asbestos hazards and
2 amending and supplementing P.L.1984, c.173.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the
5 *State of New Jersey*:

6 1. Section 1 of P.L.1984, c.173 (C.34:5A-32) is amended to
7 read as follows:

8 1. The Legislature finds that the application, enclosure,
9 removal and encapsulation of asbestos when improperly
10 performed creates unnecessary health and safety hazards which
11 are detrimental to the State's interest, [and that of its citizens.
12 in terms of wage loss, insurance, medical expenses, disability
13 compensation payments, family life, preservation of human
14 resources and unfair competition to craftspersons, their unions
15 and their employers] in protecting the health, safety, and welfare
16 of all citizens thereby exposed to such asbestos hazards.

17 (cf: P.L.1984, c.173 s.1)

18 2. Section 2 of P.L.1984, c.173 (C.34:5A-33) is amended to
19 read as follows:

20 2. The Legislature declares it to be its purpose and policy to
21 reduce asbestos-related hazards by:

22 a. Encouraging contracting parties, citizens and insurance
23 companies in their efforts to reduce disabling asbestos hazards
24 and to stimulate initiation of new and to perfect existing
25 programs for controlling the application, use and removal of
26 asbestos, an extremely dangerous substance;

27 b. Creating a climate for developing innovative methods,
28 techniques and approaches for dealing with life-destroying
29 asbestos materials;

30 c. Encouraging competence[,] and knowledge [and reduced
31 exposure to asbestos through the licensing of contractors and
32 workers] in the field of asbestos application, enclosure, repair,
33 removal, and encapsulation by the licensing of employers,
34 including contractors, and the permitting of employees in an
35 effort to ensure that incompetent work will not pose a health and
36 safety threat to the public-at-large through subsequent exposure
37 to asbestos;

38 d. Providing for the adoption of standards for the application,
39 enclosure, removal, encapsulation, storage, sale, disposal and use
40 of asbestos and asbestos-containing material; and

41 e. Establishing an enforcement program for these standards,
42 which shall include reporting procedures.

43 (cf: P.L.1984, c.173, s.2)

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 3. Section 3 of P.L.1984, c.173 (C.34:5A-34) is amended to
2 read as follows:

3 3. As used in this act:

4 a. "Asbestos" means the asbestiform varieties of chrysotile
5 (serpentine); crocidolite (riebeckite); amosite
6 (cummingtonitegrunerite); anthophyllite; termolite; and
7 actinolite;

8 b. "Asbestos-containing material" means any material which
9 contains more than 1% asbestos by weight;

10 c. "Employee" means any person suffered or permitted to
11 work by an employer;

12 d. "Employer" means a body, board, person, corporation,
13 partnership, proprietorship, joint venture, fund, authority or
14 similar entity employing, permitting or suffering another to
15 work. In the case of a corporation, the officers of the
16 corporation and any agents having the management of the
17 corporation shall be deemed to be employers of the employees of
18 the corporation for the purposes of this act. This term shall
19 apply to private employers and to the State, its political
20 subdivisions, and any boards commissions, schools, institutions, or
21 authorities created or recognized thereby;

22 e. "Friable" means asbestos-containing material that when dry
23 may be crumbled, pulverised or reduced to powder by hand
24 pressure, and includes previously nonfriable asbestos-containing
25 material after that material becomes damaged to the extent that
26 when dry it may be crumbled, pulverized or reduced to powder by
27 hand pressure.

28 (cf: P.L.1984, c.173, s.3)

29 4. Section 4 of P.L.1984, c.173 (C.34:5A-35) is amended to
30 read as follows:

31 4. Any private or public agency letting contracts for any
32 activity involving the application, enclosure, repair, removal or
33 encapsulation of asbestos in any structure for which a license is
34 required shall include in these contracts specifications that these
35 contracts are to be performed by contractors and subcontractors
36 licensed by the Commissioner of Labor.

37 (cf: P.L.1984, c.173, s.4)

38 5. Section 5 of P.L.1984, c.173 (C.34:5A-36) is amended to
39 read as follows:

40 5. No employer shall either directly or indirectly perform any
41 of the functions of application, enclosure, removal, or
42 encapsulation of asbestos in any structure, nor enter into any
43 contract with the owner or the owner's representative for the
44 employer to perform such work or services, without first
45 obtaining a nontransferable license from the Commissioner of
46 Labor, except private employers subject to the federal
47 Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et
48 seq.) who use their own employees to apply, enclose, remove,
49 repair, or encapsulate asbestos in their own facility, or as
50 otherwise exempted pursuant to section 7 of P.L. , c. (C.)
51 (pending in the Legislature as this bill).

52 This license shall be in writing, shall be dated when issued,
53 shall contain an expiration date, and shall be signed by the
54 commissioner. [It] The commissioner may issue employer licenses

1 with such conditions as the commissioner deems necessary, and as
2 adopted by regulation, specifying the scope of work authorized by
3 such license. No license shall be issued by the commissioner
4 unless the employer has completed a course of training certified
5 by, and satisfactorily has completed an examination approved by,
6 the Department of Health. The license shall give the name and
7 address of the employer to whom it is issued. Licensed employers
8 shall post a sign indicating, in letters more than four inches in
9 height, "LICENSED BY THE STATE OF NEW JERSEY FOR
10 ASBESTOS WORK," readily visible outdoors at the work site.
11 The actual license shall be readily available at the work site for
12 inspection by representatives of the Commissioners of Labor and
13 Health and the contracting agency.

14 (cf: P.L.1984, c.173, s.5)

15 6. Section 6 of P.L.1984, c.173 (C.34:5A-37) is amended to
16 read as follows:

17 6. Every employee performing functions of application,
18 enclosure, repair, removal, or encapsulation of asbestos, with the
19 exception of employees of an employer subject to the federal
20 Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et
21 seq.) applying, enclosing, repairing, removing, or encapsulating
22 asbestos at the employer's own facility, or as otherwise
23 exempted pursuant to section 7 of P.L. _____, c. _____
24 (pending in the Legislature as this bill), shall first procure from
25 the Commissioner of Labor a performance permit. No permit
26 shall be issued unless the employee has taken a course of training
27 in asbestos control and removal, passed an examination thereon,
28 and demonstrated the ability to perform asbestos control and
29 removal safely, in accordance with the current state-of-the-art
30 technology. The Commissioner of Health shall certify the course
31 of training and approve the examination necessary for a permit.
32 This permit shall be in writing, shall be dated when issued, shall
33 contain an expiration date, and shall be signed by the
34 Commissioner of Labor. It shall give the name and address of the
35 employee to whom it is issued. The permit shall be carried upon
36 the worker's person and be readily available for inspection by
37 representatives of the Commissioners of Labor and Health and
38 the contracting agency. The Commissioner of Labor may place
39 reasonable conditions on employee permits which specify the
40 scope of work authorized by such permit.

41 (cf: P.L.1984, c.173, s.6)

42 7. (New section) a. The Commissioner of Health shall, by
43 regulation, adopt standards and other requirements for the
44 certification of training programs and for approving examinations
45 for the issuance of license or permits pursuant to P.L.1984, c.173
46 (C.34:5A-32 et seq.).

47 b. The Commissioner of Health may, by regulation, exempt
48 from the license or permit requirements of P.L.1984, c.173
49 (C.34:5A-32 et seq.) designated asbestos-related activities should
50 sufficient data indicate that no significant asbestos exposure
51 exists. These exempted activities shall involve non-friable
52 asbestos-containing material that is not rendered friable by the
53 activity.

54 c. The Department of Health shall, in accordance with fee

1 schedules adopted by regulation, establish, charge, and collect
2 reasonable annual fees for the certification of all training
3 agencies administering training courses and for approving all
4 examinations required by this act. There shall annually be
5 appropriated an amount equivalent to the amount anticipated to
6 be collected by the Department of Health for the administration
7 of the training and examination programs certified or approved
8 by the department.

9 8. Section 7 of P.L.1984, c.173 (C.34:5A-38) is amended to
10 read as follows:

11 7. Beginning not later than one year following the effective
12 date of this act, licenses and permits shall be issued by the
13 Commissioner of Labor, or his designee, and shall be valid for [at
14 least] 12 months, in accordance with regulations promulgated
15 under provisions of the "Administrative Procedure Act,"
16 P.L.1968, c.410 (C.52:14B-1 et seq.). [Fees for these licenses
17 shall not exceed, for a 12-month period, \$100.00 for a license and
18 \$25.00 for a permit, in accordance with a fee schedule contained
19 in the regulations.] The Commissioner of Labor shall, in
20 accordance with fee schedules adopted by regulation, establish,
21 charge, and collect reasonable annual fees for licenses and
22 permits. There shall annually be appropriated an amount
23 equivalent to the amount anticipated to be collected by the
24 Department of Labor pursuant to the provisions of this act and
25 that amount shall be applied to enforcement and administration
26 costs of the Division of Workplace Standards in the Department
27 of Labor. The Commissioner of Health shall, in accordance with
28 fee schedules adopted by regulation, establish, charge, and
29 collect reasonable annual fees for the certification of all training
30 agencies administering training courses and for the
31 administration of all examinations required by this act. There
32 shall annually be appropriated an amount equivalent to the
33 amount anticipated to be collected by the Department of Health
34 for the administration of the training and examination programs
35 certified or approved by the department.

36 (cf: P.L.1984, c.173, s.7)

37 9. Section 8 of P.L.1984, c.173 (C.34:5A-39) is amended to
38 read as follows:

39 8. Not later than six months after the effective date of this
40 act, the Commissioners of Labor and Health jointly shall, in
41 consultation with the Commissioner of Environmental Protection,
42 adopt all standards and regulations which they deem necessary
43 for the proper administration and enforcement of this act. These
44 standards and regulations shall include, but shall not be limited
45 to, protective equipment specifications; application, enclosure,
46 removal, and encapsulation procedures; administrative penalties;
47 waste disposal; self-monitoring; cleanup; health checkup; license
48 and permit issuance, suspension, renewal and revocation; fee
49 charges; experience necessary for license or permit qualification;
50 general subject matter of qualifying examinations; and continuing
51 education. [License and permit qualification standards shall
52 include provision for experienced asbestos workers to apply for
53 and receive a permit without examination.] Any suspension,
54 revocation, or refusal to renew any permit or license pursuant to

1 this act shall be effectuated as follows: the department that is
2 responsible for the issuance of the permit or license may suspend,
3 revoke, or refuse to renew any license or permit because of a
4 violation of any provision of this act. Prior to that suspension,
5 revocation, or failure to renew, the department shall afford the
6 applicant, licensee, or permit holder an opportunity for a hearing
7 in accordance with the provisions of the "Administrative
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), except
9 that, if the department has reason to believe that a condition
10 exists at a job site which poses an imminent threat to the public
11 health, safety or welfare, it may order the immediate suspension
12 of the license, permit, or certification pending the outcome of
13 the hearing.

14 (cf: P.L.1985, c.523, s.1)

15 10. Section 9 of P.L.1984, c.173 (C.34:5A-40) is amended to
16 read as follows:

17 9. This act, and its standards and regulations, shall be enforced
18 by the Commissioners of Labor and Health, who have the
19 right-of-entry to all pertinent premises and records for purposes
20 of inspection and information. [In the event that either
21 commissioner believes that an imminent hazard exists, he is
22 empowered to apply to a court of competent jurisdiction to
23 restrain and cause to cease the activity which is the cause of the
24 hazard.] Both commissioners may employ the following powers
25 and remedies in enforcing their respective responsibilities under
26 this act:

27 a. Whenever either commissioner finds that a person has
28 violated any provision of this act for which that commissioner has
29 the responsibility of enforcement, that commissioner may issue
30 an administrative order specifying the provision or provisions of
31 the act which the person has violated, ordering abatement of the
32 violation and giving notice of the person's right to a hearing on
33 the matters contained in the order. The person shall have 10
34 calendar days from receipt of the order within which to deliver to
35 the commissioner a written request for a hearing. After the
36 hearing, and upon finding that a violation has occurred, the
37 commissioner may issue a final order. If no hearing is requested,
38 the order shall become final upon expiration of the 10-day
39 period. A request for a hearing shall not automatically stay the
40 effect of an administrative order. A stay of an administrative
41 order may only be granted by the commissioner upon a written
42 request and a factual basis clearly supporting the appropriateness
43 of the stay.

44 b. Either commissioner may institute an action or proceeding
45 in the Superior Court for injunctive or other relief for any
46 violation of this act for which that commissioner has the
47 responsibility of enforcement and the court may proceed in the
48 action in a summary manner. In the proceeding, the relief may
49 restrain any violation or compel the taking of any action required
50 pursuant to this act, and the court may grant temporary or
51 interlocutory relief. The relief may include, singularly or in
52 combination:

53 [1] A temporary or permanent restraining order or injunctive
54 relief;

1 (2) Assessment of the violator for the costs of any
2 investigation or inspection leading to the establishment of the
3 violation and for the reasonable costs of preparing and litigating
4 the case; and

5 (3) Assessment of the violator for the costs incurred by the
6 State in correcting or terminating any adverse health and
7 environmental effects resulting from the violation.

8 c. Either commissioner may assess a civil administrative
9 penalty for any violation of this act for which that commissioner
10 has the responsibility of enforcement not to exceed \$25,000 for
11 each violation. Each day during which the violation continues
12 shall constitute an additional, separate and distinct offense. No
13 assessment shall be levied pursuant to this section until after the
14 violator has been notified by certified mail or personal service.
15 The notice shall include a reference to the section of the statute
16 violated, a concise statement of the facts alleged to constitute a
17 violation, a statement of the amount of civil administrative
18 penalties to be imposed, and a statement of the violator's right
19 to a hearing. The violator shall have 10 calendar days from
20 receipt of the notice within which to deliver to the commissioner
21 a written request for a hearing. After the hearing, and upon
22 finding that a violation has occurred, the commissioner may issue
23 a final order after assessing the amount of the fine specified in
24 the notice. If no hearing is requested, the notice shall become a
25 final order after the expiration of the 10-day period. Payment of
26 the assessment is due when a final order is issued or the notice
27 becomes a final order. The authority to levy a civil
28 administrative penalty is in addition to all other enforcement
29 provisions and the payment of any assessment shall not be
30 deemed to affect the availability of any other enforcement
31 provisions in connection with the violation for which the
32 assessment is levied. The department may compromise any civil
33 administrative penalty assessed under this section in an amount
34 the department determines appropriate. Any penalty imposed
35 pursuant to this section may be recovered with costs in a
36 summary proceeding commenced by the commissioner pursuant to
37 "the penalty enforcement law," N.J.S. 2A:58-1 et seq.

38 d. A person who violates an administrative order issued
39 pursuant to subsection a. of this section, or a court order issued
40 pursuant to subsection b. of this section, or who fails to pay in
41 full an administrative assessment pursuant to subsection c. of this
42 section is subject, upon order of a court of competent
43 jurisdiction, to a civil penalty not to exceed \$50,000 per day for
44 such violation.

45 The pursuit of any of the remedies specified in this section
46 shall not preclude the commissioner from seeking any other
47 remedy.

48 (cf: P.L.1984, c.173, s.9)

49 11. Section 10 of P.L.1984, c.173 (C.34:5A-41) is amended to
50 read as follows:

51 10. Any person who knowingly hinders or delays the
52 Commissioner of Labor or Health or the authorized
53 representative thereof, in the performance of the duty to enforce

1 this act, or knowingly submits false or misleading information on
2 any license or permit application required by this act, or fails to
3 obtain licenses or permits required by the provisions of this act,
4 or refuses to make these licenses or permits accessible to either
5 commissioner, or the authorized representative thereof, or
6 otherwise violates any provision of this act or any regulation
7 adopted under this act, [is guilty of a disorderly persons offense
8 and liable to a fine of \$1,000.00 or imprisonment not in excess of
9 six months, or both. As an alternative, or in addition to, the fines
10 and imprisonment specified by this section, either commissioner,
11 or the designee thereof may impose, after granting an
12 opportunity to be heard, an administrative penalty, not to exceed
13 \$1,000.00 for each offense, in accordance with a schedule
14 promulgated by regulation] shall, upon conviction, be guilty of a
15 crime of the third degree and, notwithstanding the provisions of
16 N.J.S.2C:43-3, shall be subject to a fine of not more than \$25,000
17 in addition to any other appropriate disposition authorized by
18 subsection b. of N.J.S.2C:43-2. Notwithstanding N.J.S.2C:1-6,
19 any prosecution for a violation of this section shall be
20 commenced within five years of the date of discovery of the
21 violation

22 (cf: P.L.1984, c.173, s.10)

23 12. (New section) Any person who believes that a violation of
24 this act has occurred may petition the Commissioner of Health or
25 the Commissioner of Labor to bring an enforcement action
26 pursuant to this section. Any citizen complaint filed pursuant to
27 this section shall specify the provision alleged to have been
28 violated, the facts which constitute the alleged violation and the
29 name and address of the citizen lodging the complaint. Upon
30 receipt of a citizen's complaint pursuant to this section, the
31 commissioner who is responsible for enforcement action
32 regarding the violation shall:

33 a. Give notice of the complaint within 10 calendar days to the
34 person alleged to be in violation;

35 b. Give notice to the citizen who filed the complaint of the
36 scheduling of an enforcement investigation inspection to
37 investigate the complaint within 30 calendar days of its having
38 been filed;

39 c. Afford the complaining citizen or his or her representative
40 an opportunity to be present during the enforcement investigation
41 inspection. Public employees who bring complaints shall have the
42 right to accompany the commissioner on an enforcement
43 investigation inspection and shall receive payment of normal
44 wages for time spent during normal working hours on the
45 inspection;

46 d. Afford the complaining citizen access to all public records
47 regarding the commissioner's investigation; and

48 e. Render a final decision within 90 calendar days of receipt of
49 a citizen complaint on the appropriate disposition, after
50 investigation, of the citizen's complaint. The decision shall
51 either reference the initiation of an enforcement action or state
52 the factual and legal basis of the decision not to bring an
53 enforcement action.

54 Public employees bringing a complaint pursuant to this section

1 shall have all protections and rights set forth in section 21 of
2 P.L.1983, c.516 (C.34:6A-45).

3 13. This act shall take effect immediately.
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6 STATEMENT
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8 This bill amends what is commonly referred to as the Asbestos
9 Control and Licensing Act of 1984 (N.J.S.A.34:5A-32), which
10 provides for the adoption of standards for the application,
11 enclosure, removal, encapsulation, storage, sale, disposal and use
12 of asbestos and asbestos containing materials. The bill serves to
13 codify the existing policy of the Departments of Labor and
14 Health regarding the licensing of employers involved in this type
15 of work and the issuance of permits authorizing the work to be
16 performed. In addition, the bill excludes from the licensing and
17 permit requirements those employees and employers subject to
18 the federal Occupational Safety and Health Act of 1970. The bill
19 also provides that the Commissioner of Labor is authorized to
20 charge annual fees for licenses and permits.

21 The Department of Health is authorized to exempt activities
22 involving nonfriable asbestos-containing materials presenting
23 low-level risks. The bill also provides that a person who
24 knowingly interferes with the administration of the act or who
25 knowingly submits false information on any application for a
26 license or permit is guilty of a crime of the third degree and
27 subject to a fine of \$25,000.
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32 Codifies existing policy concerning licensing and permits for
33 asbestos work.

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SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 480

STATE OF NEW JERSEY

DATED: FEBRUARY 10, 1994

The Senate Commerce Committee reports favorably Senate Bill No. 480.

This bill amends and supplements P.L.1984, c.173 (C.34:5A-32 et seq.), commonly known as the Asbestos Control and Licensing Act of 1984, which provides for the adoption of standards for the application, enclosure, repair, removal, encapsulation, storage, sale, disposal and use of asbestos and asbestos containing materials. The bill codifies the existing policy of the Departments of Labor and Health regarding the licensing of employers involved in this type of work and the issuance of permits to employees performing the work. In addition, the bill excludes from the licensing and permit requirements those private employers and employees who are subject to the federal Occupational Safety and Health Act of 1970 (OSHA) and doing asbestos work in their own facilities. The bill also permits the Department of Health to adopt regulations exempting activities involving nonfriable asbestos-containing materials presenting low-level risks.

The bill authorizes the charging of reasonable annual fees for licenses and permits, in the case of the Commissioner of Labor, and for the certification of training agencies and administration of examinations, in the case of the Commissioner of Health, and the use of the fees collected to pay departmental administrative costs.

The bill authorizes the Departments of Health and Labor, in carrying out their respective responsibilities under the bill, to issue administrative orders, seek injunctive or other relief in court or impose administrative penalties, not to exceed \$25,000 for each violation, on violators of the provisions of the act. The bill provides that a person who violates such an administrative order or court order or fails to pay an administrative penalty is subject to a civil penalty not to exceed \$50,000 per day for such violation. The bill also provides that a person who knowingly interferes with the administration of the act or who knowingly submits false information on any application for a license or permit is guilty of a crime of the third degree and subject to a fine of not more than \$25,000.

Finally, the bill provides that the Commissioner of Labor or Health, when responsible for enforcement, must make an enforcement investigation inspection if a citizen makes a specific and documented complaint of a violation of this act.

LEGISLATIVE FISCAL ESTIMATE TO
SENATE, No. 480

STATE OF NEW JERSEY

DATED: March 29, 1994

Senate Bill No. 480 of 1994 amends the "Asbestos Control and Licensing Act" which provides standards for the application, enclosure, removal, encapsulation, storage, sale, disposal and use of asbestos and asbestos containing materials. Specifically, the bill codifies existing policies of the Departments of Labor (DOL) and Health (DOH) regarding the licensing of employers involved in this type of work and the issuance of permits authorizing the work to be performed. It also excludes from the licensing and permit requirements those employees and employers subject to the federal Occupational Safety and Health Act of 1970 (OSHA); expands enforcement and penalty provisions; authorizes the DOL to increase existing fees for licenses and permits to support program costs; and allows the DOH to support program costs by establishing fees for training agency certification and examination administration.

Due to the department's failure to provide pertinent fiscal information on the bill, the Office of Legislative Services (OLS) cannot estimate the level of increased fee revenues that could be generated under the bill for the DOL. It contends, however, that revenue levels could conceivably be increased to a level to support all or most of the DOL's program costs in this regard. Currently, State funds are used to support this function because only revenues in excess of those anticipated in the budget are appropriated to the department. As a result of budget cutbacks in recent years, program staff levels have been severely reduced in this area. Hence, higher fee levels, plus the fact that all fees would be dedicated to the DOL for this purpose, would not only increase program activity but allow for greater enforcement and penalty revenue collection.

The OLS estimates that the bill will also affect the DOH in a similar fashion in that it allows fees to be established to pay for program costs heretofore supported wholly by State funds. Again, the OLS is precluded from estimating program revenues or costs because of the department's failure to supply pertinent fiscal information.

Last, the exclusion of licensing and permit requirements for employers subject to federal OSHA standards would not likely affect net program costs or revenues because both the workload level and the fee revenue level would be reduced or offset in direct relation to each other.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.