

34:6A-25 to 34:6A-49

LEGISLATIVE HISTORY CHECKLIST

NJSA: 34:6A-25 to 34:6A-49 (Public Employees Occupational Safety & Health Act)

LAWS OF: 1983

CHAPTER: 516

Bill No: A1430

Sponsor(s): Schwartz and others

Date Introduced: May 17, 1982

Committee: Assembly: Revenue, Finance & Appropriations

Senate: State Government, Federal & Interstate Rel.

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly: April 11, 1983

Senate: December 12, 1983

Date of Approval: January 17, 1984

Following statements are attached if available:

Sponsor statement:		Yes	
Committee statement:	Assembly	Yes	10-4-83 & 10-18-82
	Senate	Yes	12-1-83 & 5-25-83
Fiscal Note:		Yes	3-10-83 & 1-28-83
Veto Message:		No	
Message on Signing:		Yes	
Following were printed:			
Reports:		No	
Hearings:		No	

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See item from CCH Occupational, Health and Safety Reports Paragraph 5610 (New Jersey summary) -- attached

1-17-84

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## ASSEMBLY, No. 1430

## STATE OF NEW JERSEY

INTRODUCED MAY 17, 1982

By Assemblyman SCHWARTZ, Assemblywoman PERUN, Assemblymen PATERO, BOCCHINI, KARCHER, PELLY, JACKMAN, COWAN, T. GALLO, PATERNITI, MATTHEWS, WATSON, NAPLES, MAZUR and PELLECCCHIA

AN ACT concerning occupational safety and health for public employees \*\*\*\*\*[and]\*\*\*\*\* ,\*\*\*\*\* supplementing Title 34 of the Revised Statutes \*\*\*\*\*and making an appropriation.\*\*\*\*\*

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "New Jersey  
2 Public Employees Occupational Safety and Health Act."

1 2. The Legislature finds that the safety and health of public  
2 employees in the workplace is of primary public concern. Personal  
3 injuries and illnesses arising out of work situations result not only  
4 in wage loss and increased medical expenses for employees, but  
5 also in decreased productivity and increased workers' compensa-  
6 tion expenses for employers. The Legislature therefore declares:  
7 a. that it is the policy of this State to ensure that all public em-  
8 ployees be provided with safe and healthful work environments  
9 free from recognized hazards, b. that it is the responsibility of the  
10 State to promulgate standards for the protection of the health and  
11 safety of its public workforce, and c. that it is in the public interest  
12 for public employers and public employees to join in a cooperative  
13 effort to enforce these standards.

1 3. As used in this act:

**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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Assembly committee amendments adopted October 18, 1982.

\*\*—Assembly committee amendments adopted November 15, 1982.

\*\*\*—Assembly amendments adopted December 6, 1982.

\*\*\*\*—Assembly amendments adopted January 27, 1983.

\*\*\*\*\*—Senate committee amendments adopted May 23, 1983.

\*\*\*\*\*—Senate committee amendments adopted December 8, 1983.

2 a. "Advisory board" means the Public Employees Occupational  
3 Safety and Health Advisory Board created by section 4 of this act.

4 b. "Commissioner" means the Commissioner of Labor or his  
5 designee.

6 c. "Employer" means public employer and shall include any per-  
7 son acting\*\*\*\*[.]\*\*\*\* directly \*\*\*\*[or indirectly,]\*\*\*\* on behalf  
8 of, or with the knowledge and ratification of\*\*\*\*\*[.]\*\*\*\*\*  
9 \*\*\*\*\*: (1)\*\*\*\*\* the State, or any \*\*\*\*\*[county or municipality  
10 thereof or any other political subdivision of the State, or a school  
11 district, or any special district, or any authority, commission, board,  
11A branch or agency of the public service, except bi-state agen-  
11B cies]\*\*\*\*\* \*\*\*\*\*department, division, bureau, board, council,  
11C agency or authority of the State, except any bi-state agency; or  
11D (2) any county, municipality, or any department, division, bureau,  
11E board, council, agency or authority of any county or municipality,  
11F or of any school district or special purposes district created pursu-  
11G ant to law\*\*\*\*\*.

12 d. "Employee" means any public employee, any person holding  
13 a position by appointment \*\*\*\*[or contract,]\*\*\*\* or employment  
14 in the service of \*\*\*\*\*[a]\*\*\*\*\* \*\*\*\*\*an\*\*\*\*\* "\*\*\*\*\*[pub-  
15 lic]\*\*\*\*\* employer" as that term is used in this act and shall  
15A include any individual whose work has ceased as a conse-  
16 quence of, or in connection with, any administrative or judicial  
17 action instituted under this act; provided, however, that elected  
18 officials, members of boards and commissions and managerial  
19 executives as defined in the "New Jersey Employer-Employee  
20 Relations Act," P. L. 1941, c. 100, C. 34:13A-1 et seq. shall be ex-  
21 cluded from the coverage of this act;

22 e. "Employee representative" means a "representative" as that  
23 term is defined in the "New Jersey Employer-Employee Relations  
24 Act," P. L. 1941, c. 100, C. 34:13A-1 et seq.;

25 f. "Review commission" means the Occupational Safety and  
26 Health Review Commission created by section 18 of this act;

27 g. "Secretary" means the Secretary of the United States Depart-  
28 ment of Labor;

29 h. "Workplace" means a place \*[of public employment under  
30 the control of an employer]\* \*where public employees are assigned  
31 to work\*.

1 4. There is created a Public Employees Occupational Safety and  
2 Health Advisory Board to assist the commissioner in establishing  
3 standards for the occupational safety and health of public em-  
4 ployees. The board shall make itself available to receive informa-  
5 tion regarding matters of concern to public employees in the areas

6 of occupational safety and health. The advisory board\*\*\*\*, *under*  
 7 *the chairmanship of the commissioner,*\*\*\*\* shall consist of the  
 8 Commissioner of the Department of Health, the Commissioner of  
 9 the Department of Environmental Protection, \*\*\*\*\**the Com-*  
 9A *missioner of the Department of Community Affairs and the State*  
 9B *Treasurer*\*\*\*\*\* and \***[18]**\* \*\*\*\*\***[\*19\*]**\*\*\*\*\* \*\*\*\*\*18\*\*\*\*\*  
 9C members to be appointed by the Governor, as follows:

10 \*\*\*\*\***[Two members]**\*\*\*\*\* \*\*\*\*\**One member*\*\*\*\*\* repre-  
 11 senting the fire service, one member representing munici-  
 12 palities, one member representing municipal employees, one  
 12A member representing county government, one member repre-  
 13 senting employees of county government, one member repre-  
 14 senting State employees, one member representing public health  
 15 care facilities, one member representing employees of public health  
 16 care facilities, one member representing correctional institutions,  
 17 one member representing employees of correctional institutions,  
 18 one member representing law enforcement employees, one member  
 19 representing local school boards, one member representing local  
 20 school board employees, one member representing Rutgers, The  
 21 State University, one member representing employees in institu-  
 22 tions of higher education, and three members representing the  
 23 public. The members selected by the Governor shall be selected on  
 24 the basis of their experience and competence in the field of occu-  
 25 pational safety and health. No more than nine members appointed  
 26 by the Governor shall be from the same political party. Each mem-  
 27 ber shall serve for a term of 3 years and until his successor is  
 28 appointed and qualified. A vacancy shall be filled by appointment  
 29 by the Governor to the unexpired term. The members of the ad-  
 30 visory board shall serve without compensation but shall be entitled  
 31 to reimbursement for their actual traveling expenses and other  
 32 expenses incurred in the performance of their duties.

1 5. The commissioner shall, in consultation with \*\*\**the Commis-*  
 2 *sioner of Health and*\*\*\* the advisory board, promulgate a plan for  
 3 the development and enforcement of occupational safety and health  
 4 standards with respect to public employers and public employees,  
 5 in accordance with section 18 (e) of the "Occupational Safety and  
 6 Health Act of 1970," Pub. L. 91-596 \*\*\*\*\***[(29 U. S. C. 9651 et**  
 6A **seq.)]**\*\*\*\*\* \*\*\*\*\**(29 U.S.C. 651 et seq.)*\*\*\*\*\*. \*\*\*\*\**The Department*  
 6B *of Labor shall be the primary agency responsible for administering*  
 6C *and enforcing this plan throughout the State.*\*\*\*\* The plan shall:

7 \*\*\*\*\***[a. Designate the Department of Labor as the primary**  
 8 **agency responsible for administering and enforcing the plan**  
 9 **throughout the State;]**\*\*\*\*\*

10 \*\*\*\*[b.]\*\*\*\* \*\*\*\*a.\*\*\*\* Provide for the development and en-  
 11 forcement of safety and health standards\*\*\*\*\*, *provided, how-*  
 11A *ever, that the standards for building and structural safety shall*  
 11B *not exceed those established by the Commissioner of Community*  
 11C *Affairs pursuant to the "State Uniform Construction Code Act,"*  
 11D *P. L. 1975, c. 217 (C. 52:27D-119 et seq.) nor shall they exceed*  
 11E *the standards for fire safety established by the Commissioner of*  
 11F *Community Affairs pursuant to the "Uniform Fire Safety Act,"*  
 11G *P. L. 1983, c. 383 (C. 52:27D-192 et al.)\*\*\*\*\*;*

12 \*\*\*\*[c.]\*\*\*\* \*\*\*\*b.\*\*\*\* Provide for the right of entry and in-  
 13 spection of safety standards in all work places by the commissioner;

14 \*\*\*\*[d.]\*\*\*\* \*\*\*\*c.\*\*\*\* Provide for the right of entry and in-  
 15 spection of health standards in all workplaces by the Commissioner  
 15A of Health;

16 \*\*\*\*[e.]\*\*\*\* \*\*\*\*d.\*\*\*\* Prohibit advance notice of inspections;

17 \*\*\*\*[f.]\*\*\*\* \*\*\*\*e.\*\*\*\* Contain satisfactory assurances that the  
 18 Department of Labor has the legal authority and qualified person-  
 19 nel necessary for the enforcement of the standards;

20 \*\*\*\*[g.]\*\*\*\* \*\*\*\*f.\*\*\*\* Give satisfactory assurances that the  
 21 State will devote adequate funds to the administration and enforce-  
 22 ment of the standards;

23 \*\*\*\*[h.]\*\*\*\* \*\*\*\*g.\*\*\*\* Contain satisfactory assurances that  
 24 the State will, to the extent permitted by law, establish and main-  
 25 tain an effective and comprehensive occupational safety and health  
 26 program applicable to all employees of public agencies of the State  
 27 and its political subdivisions, which program is as effective as the  
 28 standards contained in the approved plan; and

29 \*\*\*\*[i.]\*\*\*\* \*\*\*\*h.\*\*\*\* Provide that the Department of Labor  
 30 shall make such reports to the secretary in the form and containing  
 31 the information that the secretary from time to time requires.

1 6. \*\*\*\*\*[The]\*\*\*\*\* \*\*\*\*No sooner than 180 days after the ef-  
 2 fective date of this act, the\*\*\*\* commissioner shall provide\*, *at*  
 3 *the minimum,\** for the adoption of all \*\*\*\*applicable\*\*\*\* occupa-  
 4 tional health and safety standards, amendments or changes adopted  
 5 or recognized by the secretary under the authority of the "Occu-  
 6 pational Safety and Health Act of 1970." Where no federal stan-  
 7 dards are applicable *\*or where standards more stringent than the*  
 8 *federal standards are deemed advisable,\** the commissioner shall,  
 9 *\*\*\*in consultation with the Commissioner of Health and\*\*\**  
 9A *\*\*\*\*\*the Commissioner of Community Affairs and,\*\*\*\*\** with  
 10 the advice and consent of the advisory board, provide for the de-  
 11 velopment of State standards as may be necessary in special cir-  
 12 cumstances. The commissioner shall meet with the advisory board  
 13 at least four times a year for these purposes.

1 7. The commissioner, *\*\*\*in consultation with the Commissioner*  
 2 *of Health and\*\*\* \*\*\*\*\*the Commissioner of Community Affairs*  
 2A *and\*\*\*\*\** with the advice and consent of the advisory board, shall  
 2B by regulation:

- 3 a. Provide for a method of encouraging employers and employees  
 4 in their efforts to reduce the number of safety and health hazards  
 5 arising from undesirable, inappropriate, or unnecessarily hazard-  
 6 ous or unhealthful working conditions at the workplace and of  
 7 stimulating employers and employees to institute new, and to  
 8 perfect existing, programs for providing safe and healthful work-  
 9 ing conditions;
- 10 b. Provide for the publication and dissemination to employers,  
 11 employees, and labor organizations, and the posting, where appro-  
 12 priate, by employers of informational, educational and training  
 13 materials calculated to aid and assist in achieving the objectives of  
 14 this act;
- 15 c. Provide for the establishment of new, and for the perfection  
 16 and expansion of existing, programs for occupational safety and  
 17 health education for employers and employees and institute  
 18 methods and procedures for the establishment of a program for  
 19 voluntary compliance by employers and employees with the stan-  
 20 dards established pursuant to this act.

1 8. The commissioner shall, *\*in consultation with the Commis-*  
 2 *sioner of Health and\* \*\*\*\*\*the Commissioner of Community*  
 2A *Affairs and\*\*\*\*\** with the advice and consent of the advisory  
 3 board, promulgate all regulations which he deems necessary for  
 4 the proper administration and enforcement of this act. *\*\*\*\*With*  
 5 *respect to any regulations governing standards \*\*\*\*\*[of]\*\*\*\*\**  
 6 *\*\*\*\*\*for either\*\*\*\*\* design \*\*\*\*\*[and]\*\*\*\*\* \*\*\*\*\*or\*\*\*\*\* con-*  
 7 *struction for structures \*\*\*\*\*or for equipment in laboratories of*  
 8 *higher education institutions\*\*\*\*\* constituting \*\*\*\*\*[or]\*\*\*\*\**  
 9 *\*\*\*\*\*,\* \*\*\*\*\* comprising \*\*\*\*\*or part of\*\*\*\*\* a workplace, the*  
 10 *regulations may distinguish between structures completed \*\*\*\*\*or*  
 11 *equipment in laboratories of higher education institutions pur-*  
 12 *chased\*\*\*\*\* prior to the issuance of the regulations and those to*  
 13 *be completed \*\*\*\*\*or purchased\*\*\*\*\* thereafter. Insofar as de-*  
 14 *sign and structural features of \*\*\*\*\*[the former]\*\*\*\*\* \*\*\*\*\*work-*  
 15 *places or equipment\*\*\*\*\* may, in the commissioner's judgment,*  
 16 *be determined to comply with the requirements for a permanent*  
 17 *variance as set forth in subsection c. of section 15 of this act with-*  
 18 *out the need for further inquiry into the particular practices, means,*  
 19 *methods, operations or process used or to be used in any such*  
 20 *workplace, the regulations may provide for the approval of those*

21 features, although they do not meet standards promulgated for  
 22 new construction, without the necessity for a variance pro-  
 23 cedure.\*\*\*\* \*\*\*\*\*This exemption for obtaining a variance shall  
 24 not apply to those areas specified in subsection a. of section 13 of  
 25 this act which are under the jurisdiction of the Commissioner of  
 26 Health \*\*\*\*\*nor to any work for which a construction permit is  
 27 required pursuant to the "State Uniform Construction Code Act,  
 28 P. L. 1975, c. 217 (C. 52:27D-119 et seq.) and the regulations  
 29 adopted thereunder, nor to any equipment, device or procedure  
 30 required pursuant to the "Uniform Fire Safety Act," P. L. 1983,  
 31 c. 383 (C. 52:27D-192 et al.), and the regulations adopted  
 32 thereunder.

33 Absent a clear and present danger to the employees' health or  
 34 safety, nothing in this act shall be construed to require landlords  
 35 of space leased by a public employer to physically upgrade said  
 36 premises beyond the level of health or safety rules and regulations  
 37 in effect at the time the lease was executed. Deficiencies resulting  
 38 either from occupant use or deferred maintenance by the lessor  
 39 shall be subject to correction in accordance with the governing  
 40 rules and regulations at the time the lease went into effect. How-  
 41 ever, a lease may not be entered into after the promulgation  
 42 of safety rules and regulations pursuant to this act unless the  
 43 leased property is in conformance with such rules and regula-  
 44 tions\*\*\*\*\*.

1 9. Every employer shall:

2 a. Provide each of his employees with employment and a place of  
 3 employment which are free from recognized hazards which may  
 4 cause serious injury or death to his employees; \*\*\*[and]\*\*\*

5 b. Comply with occupational safety and health standards prom-  
 6 ulgated under this act\*\*\*[.]\*\*\*; and\*\*\*

7 \*\*\*c. In the absence of existing standards take all \*\*\*\*\*[neces-  
 8 sary]\*\*\*\*\* prudent\*\*\*\*\* measures to comply with \*\*\*\*\*[rea-  
 9 sonable]\*\*\*\*\* written\*\*\*\*\* recommendations made by the  
 10 commissioner\*\*\*\*\*, the Commissioner of Community Af-  
 10A fairs\*\*\*\*\* or the Commissioner of Health to \*\*\*\*\*[alleviate  
 11 recognized hazards which may]\*\*\*\*\* reduce the risk of ex-  
 12 posure to unsafe or unhealthy conditions which have been shown  
 13 to\*\*\*\*\* be detrimental to employee health or safety.\*\*\* \*\*\*\*\*A  
 14 written rationale including the scientific basis for each recommen-  
 15 dation shall be presented to the affected employer. \*\*\*\*\*[The  
 16 employer shall have the right to appeal recommendation to the  
 17 advisory board before the recommendation is enforced, unless the  
 18 commissioner or Commissioner of Health believes continued ex-  
 19 posure would cause imminent danger.]\*\*\*\*\*

1 10. Every public employee shall comply with occupational safety  
2 and health standards and all regulations promulgated under this  
3 act which are applicable to his own actions and conduct.

1 11. a. The commissioner shall be charged with making  
2 inspections in \*\*\*\*[the following]\*\*\*\* \*\*\*\*all regulated\*\*\*\*  
2A areas\*\*\*\*[:]\*\*\*\* \*\*\*\*, except as may be provided pursuant to  
2B subsection a. of section 13 of this act.\*\*\*\*

3 \*\*\*\*[(1) Walking—working surfaces

4 (2) Means of egress

5 (3) Powered platforms, manlifts and vehicle-mounted work  
6 platforms

7 (4) Flammable and explosive materials

8 (5) Personal protective equipment, exclusive of respiratory  
9 protection

10 (6) General environmental controls

11 (7) Fire protection

12 (8) Compressed gas and compressed air equipment

13 (9) Materials handling and storage

14 (10) Machinery and machine guarding

15 (11) Hand and portable power tools and other hand held  
16 equipment

17 (12) The safety aspects of welding, cutting and brazing

18 (13) Electrical

19 (14) Diving operations

20 (15) The safety aspects of construction work.]\*\*\*\*

21 b. The commissioner shall have the right of entry at reasonable  
22 hours into any work place when he has reason to believe that a  
23 violation of safety standards exists and to conduct such investi-  
24 gations as he may deem necessary. The commissioner shall main-  
25 tain records of the results of any such investigation\*, *which shall*  
25A *be made available to the public upon request\**. The authority  
26 of the commissioner to inspect any premises for purposes of inves-  
27 tigating an alleged violation of safety standards shall not be  
28 limited to the alleged violation but shall extend to any other area  
29 of the premises in which he has reason to believe that a violation  
30 of the safety standards promulgated under this act exists.

31 c. If the commissioner concludes that conditions or practices in  
32 violation of the prescribed safety standards exist in any workplace,  
33 he shall inform the affected employees and employers of the  
34 danger.

1 12. a. Any employee, group of employees or employee repre-  
2 sentative who believes that a violation of a safety standard exists,  
3 or that an imminent danger exists, may request an inspection by



4 giving notice to the commissioner of the violation or danger. The  
 5 notice and request shall be in writing, shall set forth the grounds  
 6 for the notice and shall be signed by the employee, a group of  
 7 employees or an employee representative. The commissioner shall  
 8 \*\*\*\*\*[provide a copy of the notice to the employer no later than  
 9 the time of the inspection]\*\*\*\*\* \*\*\*\*\**give affected public em-*  
 10 *ployers notice that a complaint has been filed within five working*  
 11 *days from receipt of the complaint*\*\*\*\*\* , except that on the re-  
 11A quest of the person giving the notice, his name or the name of  
 11B any employee representative giving the notice shall be withheld.  
 11C The commissioner shall conduct an \*\*\*\*\**appropriate*\*\*\*\*\* inspec-  
 11D tion at the earliest time possible.

12 \*\*\*\*\**The commissioner shall so interpret and administer this*  
 12A *section so as to encourage any employee, group of employees or*  
 12B *employee representative who believes that a violation of a safety*  
 12C *standard exists, or that an imminent danger exists, to report that*  
 12D *violation or danger in the first instance to the employer's safety*  
 12E *officer. \*\*\*\*\*[The commissioner shall give affected public em-*  
 12F *ployers notice that a complaint has been filed within five working*  
 12G *days from receipt of the complaint.]\*\*\*\*\* \*\*\*\*\**

13 b. A representative of the employer, the employee or employees  
 14 giving the notice and an employee representative shall be given  
 15 the opportunity to accompany the commissioner during an inspec-  
 16 tion for the purpose of aiding in such inspection. Where there is  
 17 no authorized employee representative, the commissioner shall  
 18 consult with a reasonable number of employees concerning matters  
 19 of safety in the workplace.

20 c. Any employee who accompanies the commissioner on an in-  
 21 spection shall receive payment of normal wages for the time spent  
 22 during the inspection.

23 d. The information obtained by the commissioner under this  
 24 section shall be obtained with a minimum burden upon the  
 25 employer.

1 13. a. The Commissioner of the Department of Health shall be  
 2 charged with making \*\*\*\*\*[\*\*\*\*\**these*\*\*\*\*\*]\*\*\*\*\* inspections  
 2A \*\*\*\*\*[in the following areas:]\*\*\*\*\* \*\*\*\*\*[\*\*\*\*\**as may be provided*  
 2B *in the regulations adopted pursuant to section 8 of this*  
 2C *act.*\*\*\*\*\*]\*\*\*\*\*

3 \*\*\*\*\*[(1) Occupational health and environmental control;  
 4 (2) Medical and first aid;  
 5 (3) Toxic and hazardous substances;  
 6 (4) Respiratory protective equipment.]\*\*\*\*\* \*\*\*\*\**in the follow-*  
 6A *ing areas:*

- 6B (1) *Occupational health and environmental control;*  
 6C (2) *Medical and first aid;*  
 6D (3) *Toxic and hazardous substances; and*  
 6E (4) *Respiratory protective equipment.\*\*\*\*\**

7 b. The Commissioner of Health or his designee shall have the  
 8 right of entry at reasonable hours into any workplace when he has  
 9 reason to believe that a violation of health standards exists and  
 10 to conduct such investigations as he may deem necessary. The  
 11 Commissioner of Health shall maintain records of the results of  
 12 any such investigation \***[and]**\* \*, *which shall be made available to*  
 13 *the public upon request. The Commissioner of Health\** shall make  
 14 the records available to the commissioner for purposes of enforce-  
 15 ment and for the purpose of reporting to the secretary. The au-  
 16 thority of the Commissioner of Health to inspect any premises for  
 17 purpose of investigating an alleged violation of health standards  
 18 shall not be limited to the alleged violation but shall extend to any  
 19 other area of the premises in which he has reason to believe that a  
 20 violation of the health standards promulgated under this act exists.

20A c. If the Commissioner of Health concludes that conditions or  
 21 practices in violation of the prescribed health standards exist in  
 22 any workplace, he shall inform the affected employees and em-  
 23 ployers of the danger.

1 14. a. Any employee, group of employees or employee repre-  
 2 sentative who believes that a violation of a health standard  
 3 \*\*\*\*\**or of a building, fire safety or structural standard*\*\*\*\*\*  
 4 exists, or that an imminent danger exists, may request an inspection  
 4A by giving notice to the Commissioner of Health \*\*\*\*\**or to the*  
 4B *Commissioner of Community Affairs, as the case may be,*\*\*\*\*\* of  
 5 the violation or danger. The notice and request shall be in writing,  
 6 shall set forth the grounds for the notice and shall be signed by the  
 7 employee, a group of employees or employee representative. The  
 7A Commissioner of Health \*\*\*\*\***[shall provide a copy of the notice**  
 8 **to the employer no later than the time of the inspection]**\*\*\*\*\*  
 9 \*\*\*\*\**or the Commissioner of Community Affairs, as the case may*  
 10 *be, shall give affected public employers notice that a complaint*  
 11 *has been filed within five working days from receipt of the com-*  
 11A *plaint*\*\*\*\*\*, except that on the request of the person giving the  
 11B notice, his name or any employee representative giving the notice  
 11C shall be withheld. The Commissioner of Health \*\*\*\*\**or the Com-*  
 11D *missioner of Community Affairs, as the case may be,*\*\*\*\*\* shall  
 11E conduct an \*\*\*\*\**appropriate*\*\*\*\*\* inspection at the earliest time  
 11F possible.

12 \*\*\*\*\**The commissioner shall so interpret and administer this*

12A section so as to encourage any employee, group of employees or  
 12B employee representative who believes that a violation of a safety  
 12C standard exists, or that an imminent danger exists, to report that  
 12D violation or danger in the first instance to the employer's safety  
 12E officer. \*\*\*\*\*[The commissioner shall give affected public em-  
 12F ployers notice that a complaint has been filed within five working  
 12G days from receipt of the complaint.\*\*\*\*]\*\*\*\*\*\*

13 b. A representative of the employer, an employee giving the  
 14 notice and an employee representative shall be given the oppor-  
 15 tunity to accompany the Commissioner of Health \*\*\*\*\*or the  
 16 Commissioner of Community Affairs\*\*\*\*\* during an inspection  
 16A for the purpose of aiding in such inspection. Where there is  
 17 no authorized employee representative, the Commissioner of  
 18 Health shall consult with a reasonable number of employees con-  
 19 cerning matters of health in the workplace \*\*\*\*\*and the Com-  
 19A missioner of Community Affairs shall consult with a reasonable  
 19B number of employees concerning matters of building, structural  
 19C and fire safety in the workplace\*\*\*\*\*.

20 c. Any employee who accompanies the Commissioner of Health  
 21 \*\*\*\*\*or the Commissioner of Community Affairs\*\*\*\*\* on an  
 22 inspection shall receive payment of normal wages for the time  
 23 spent during the inspection.

24 d. The information obtained by the Commissioner of Health  
 25 \*\*\*\*\*or the Commissioner of Community Affairs\*\*\*\*\* under  
 26 this section shall be obtained with a minimum burden upon the  
 27 employer.

1 15. a. Any employer may apply to the commissioner for a tempor-  
 2 ary order granting a variance from a standard or any provision  
 3 thereof promulgated under this act. A temporary order shall be  
 4 granted only if the employer files an application with the commis-  
 5 sioner which meets the requirements of this section and establishes  
 6 in a hearing conducted \*\*\*[by the commissioner]\*\*\* \*\*\*pursuant  
 6A to the "Administrative Procedure Act," P. L. 1968, c. 410 (C.  
 6B 52:14B-1 et seq.) and P. L. 1978, c. 67 (C. 52:14F-1 et seq.)\*\*\*  
 6C that:

7 (1) he is unable to comply with the standard by its effective date  
 8 because of the unavailability of professional or technical personnel  
 9 or of materials and equipment needed to comply with the standard  
 10 or because necessary construction or alteration of facilities cannot  
 11 be completed by the effective date;

12 (2) he is taking all available steps to safeguard employees  
 13 against the hazards covered by the standards; and

14 (3) he has an effective program for complying with the standard  
 15 as quickly as practicable.

16 Any temporary order issued under this section shall prescribe  
 17 the practices, means, methods, operations and processes which the  
 18 employer shall adopt and use while the order is in effect and the  
 19 order shall state in detail what the employer's program shall be  
 20 for complying with the standard.

21 A temporary order may be granted only if notice to the em-  
 22 ployees is given; provided, however, that the commissioner may  
 23 issue an interim order to be effective until a decision is made on the  
 24 basis of the hearing. An employee representative or, where one  
 25 does not exist, the affected employees, may appear at the hearing,  
 26 with or without counsel, and submit testimony concerning the  
 27 employer's application for the variance. No temporary order may  
 28 be in effect for longer than the period needed by the employer to  
 29 achieve compliance with the standard or \*\*\*\*\*[1]\*\*\*\*\*  
 30 \*\*\*\*\*one\*\*\*\*\* year, whichever is shorter, except that such an  
 31 order may be renewed no more than twice so long as the require-  
 32 ments of this section are met and if an application for renewal is  
 33 filed at least 90 days prior to the expiration date of the order.  
 34 No interim renewal of an order may remain in effect longer than  
 34A 180 days.

35 b. An application for temporary variance shall contain:

36 (1) a specification of the standard or portion thereof from  
 37 which the employer seeks a variance;

38 (2) a representation by the employer, supported by representa-  
 39 tions from qualified persons who have first hand knowledge of the  
 40 facts represented, that he is unable to comply with the standard or  
 41 portion thereof and a detailed statement of the reasons therefor;

42 (3) a statement of the steps he has taken and will take, with  
 43 specific dates, to protect employees against the hazard covered by  
 44 the standard;

45 (4) a statement of when he expects to be able to comply with the  
 46 standard and what steps he has taken and what steps he will  
 47 take, with dates specified, to comply with the standard;

48 (5) a certification that he has informed his employees of the  
 49 application by giving a copy thereof to their employee representa-  
 50 tive where one exists, and posting a statement at the place where  
 51 notices to employees are normally posted, giving a summary of  
 52 the application and specifying where a copy may be examined.

53 A description of the notification procedure used by the employer  
 54 shall be contained in the certification. The information to the  
 55 employees shall also inform them of their right to \*\*\*[petition the  
 56 commissioner for a]\*\*\* \*\*\*appear and be heard, as set forth in  
 56A subsection a. of this section, at the\*\*\* hearing on the variance  
 56B application; and

57 (6) a statement, if appropriate, that such a variance is neces-  
 58 sary to permit an employer to participate in an experiment ap-  
 59 proved by him designed to demonstrate or validate new and im-  
 60 proved techniques to safeguard the health or safety of workers.

61 c. Any affected employer may apply to the commissioner for a  
 62 rule or order for a permanent variance from a standard pronul-  
 63 gated under this act. An employee representative or, where one  
 64 does not exist, the affected employees, shall be given notice of each  
 65 such application and shall be afforded an opportunity to partici-  
 66 pate in a hearing \*\*\*pursuant to the "Administrative Procedure  
 66A Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) and P. L. 1978, c. 67  
 66B (C. 52:14F-1 et seq.)\*\*\* on the merits of the application, with or  
 67 without counsel, and to submit testimony. The commissioner shall  
 68 issue such rule or order if he determines on the record, after an  
 69 opportunity for an inspection, where appropriate, that the pro-  
 70 ponent of the variance has demonstrated, by a preponderance of  
 71 the evidence, that the conditions, practices, means, methods, opera-  
 72 tions or processes used or proposed to be used by an employer  
 73 will provide \*\*\*\*\*[employment and places of employment]\*\*\*\*\*  
 74 \*\*\*\*\*workplaces\*\*\*\*\* which are as safe and healthful as  
 75 \*\*\*\*\*[those which would prevail if he complied with the stan-  
 76 dard]\*\*\*\*\* \*\*\*\*\*possible under the circumstances justifying the  
 76A variance\*\*\*\*\*. The rule or order so issued shall prescribe the  
 76B conditions the employer shall maintain and the practices, means,  
 77 methods, operations and processes which he shall adopt and utilize  
 78 to the extent they differ from any standard adopted pursuant to  
 79 this act. Such a rule or order may be modified or revoked upon  
 80 application by an employer, any employee, group of employees or  
 81 employees representative, or by the commissioner on his own mo-  
 82 tion, in the manner prescribed for its issuance under this section at  
 83 any time after \*\*\*\*\*[6]\*\*\*\*\* \*\*\*\*\*six\*\*\*\*\* months from its  
 83A issuance.

84 d. In determining whether to grant a variance from a health  
 85 standard, the commissioner shall consult with the Commissioner  
 86 of Health. \*\*\*\*\*In determining whether to grant a variance from  
 87 a building, fire safety or structural safety standard, the commis-  
 88 sioner shall consult with the Commissioner of Community Af-  
 89 fairs.\*\*\*\*\*

1 16. In accordance with the commissioner's regulations, each  
 2 employer shall make available for up to \*\*\*\*\*[5]\*\*\*\*\*  
 3 \*\*\*\*\*five\*\*\*\*\* years the following records to the commissioner  
 3A and the Commissioner of Health:

4 a. Records regarding the employer's activities relating to this

5 act as the commissioner deems necessary or appropriate for de-  
6 veloping information regarding the causes and prevention of oc-  
7 cupational accidents and illness.

8 b. Such records, which shall be available for public inspection,  
9 regarding periodic reports of work-related deaths, and injuries and  
10 illnesses which involve lost time from work, medical treatment, loss  
11 of consciousness, restriction of work or of motion, or which necessi-  
12 tate transfer to another job or function.

13 c. Such records regarding employee exposure to potentially toxic  
14 materials or other harmful physical agents which the regulations  
15 require to be monitored or measured. Each employee or former  
16 employee shall be informed of all records which will indicate his  
17 own exposure to toxic materials or harmful physical agents and  
18 the properties, characteristics and effects thereof. Each employer  
19 shall promptly notify any employee who has been or is being ex-  
20 posed to toxic materials of harmful physical agents in concentra-  
21 tions or at levels which exceed those prescribed by any safety and  
22 health standard promulgated under this act, and shall inform any  
23 employee who is being exposed of the corrective action being taken  
24 and the time limit for compliance pursuant to subsection a. of  
25 section 17 of this act.

1 17. a. If the commissioner determines that an employer has vio-  
2 lated a provision of this act, or a safety or health standard or  
3 regulation promulgated under this act, he shall with reasonable  
4 promptness issue to the employer a written order to comply which  
5 shall describe the nature of the violation, including a reference to  
6 the provision of this section, standard, regulation or order alleged  
7 to have been violated, the sanction therefor, where appropriate,  
8 and shall fix a reasonable time for compliance. *\*Determinations*  
8A *regarding health standards, and written orders issued pursuant*  
8B *thereto, shall be made in consultation with the Commissioner of*  
8C *Health.\**

9 b. Where the commissioner issues to an employer an order to  
10 comply, the employer shall post such order or a copy thereof at or  
11 near each location of the violation cited in the order so that it is  
12 clearly visible to affected employees. The commissioner shall make  
13 such order available to employee representatives and affected em-  
14 ployees.

15 c. If the time for compliance with an order of the commissioner  
16 issued pursuant to this section elapses, and the employer has not  
17 made a good faith effort to comply, within its powers and financial  
18 resources, the employer shall be liable to a penalty of not more  
19 than \$1,000.00 per day to be collected in a civil action commenced

20 by the commissioner by a summary proceeding under "the penalty  
 21 enforcement law" (N. J. S. 2A:58-1 et seq.) in the Superior Court,  
 22 county district court, or a municipal court, all of which shall have  
 23 jurisdiction to enforce "the penalty enforcement law" in connection  
 24 with this act. If the violation is of a continuing nature, each day  
 25 during which it continues after the date given for compliance in  
 26 accordance with the order of the department shall constitute an  
 27 additional separate and distinct offense.

28 d. The commissioner is authorized to compromise and settle any  
 29 claim for a penalty under this section in such amount as, in the  
 30 discretion of the commissioner, may appear appropriate and equit-  
 31 able under all of the circumstances, including a rebate of any such  
 32 penalty paid up to 90% thereof where such person satisfies the  
 33 commissioner within \*\*\*\*\*[1]\*\*\*\*\* \*\*\*\*\*one\*\*\*\*\* year or  
 33A such other period as the commissioner may deem reasonable  
 34 that such violation had been eliminated or removed or that  
 35 such order or injunction has been met or satisfied, as the  
 36 case may be. *\*In any claim involving investigations conducted by*  
 37 *the Department of Health, the commissioner shall make the*  
 38 *determination as to the compromise or settlement of the claim*  
 39 *in consultation with the Commissioner of Health.\**

1 18. a. There is established an Occupational Safety and Health  
 2 Review Commission within the Department of Labor to hear ap-  
 3 peals from citations, notifications and penalties issued under this  
 4 act. The commission shall consist of three members appointed by  
 5 the Governor from among persons who by reason of training, edu-  
 6 cation or experience are qualified to carry out the functions of the  
 7 commission. The Governor shall designate one of the members of  
 8 the commission to serve as chairman.

9 b. Members of the review commission shall serve terms of  
 10 \*\*\*\*\*[4]\*\*\*\*\* \*\*\*\*\*four\*\*\*\*\* years and until their suc-  
 11 cessors are appointed. The salaries, compensation and wages of  
 12 the members of the commission shall be established by the com-  
 13 missioner. The Department of Labor shall provide the review  
 14 commission with the support staff necessary for the review com-  
 15 mission to perform its duties. The members and the support staff  
 16 shall be reimbursed for necessary expenses incurred in the per-  
 16A formance of their duties.

17 c. The review commission shall meet as often as is necessary to  
 18 hear and rule in appeals from citations, notifications and penalties  
 19 issued under this act. The review commission shall adopt rules  
 20 with respect to the procedural aspects of its hearings.

21 d. The review commission shall hear and make a determination

22 upon any proceeding instituted before it, and shall make a report  
 23 of the determination which shall constitute its final disposition of  
 24 the proceedings. The report shall become the final order of the  
 25 commission within 30 days of the issuance of the report.

26 e. In the conduct of hearings the review commission may sub-  
 27 pena and examine witnesses, require the production of evidence,  
 28 administer oaths and take testimony and depositions.

29 f. After hearing an appeal the review commission may sustain,  
 30 modify or dismiss a citation or penalty.

1 19. Any appeal from a decision of the review commission shall  
 2 be to the Appellate Division of the Superior Court.

1 20. The Attorney General, *\*\*\*\*\*at the request of and\*\*\*\*\** on  
 2 behalf of the commissioner, may bring an action in the Superior  
 3 Court to restrain any conditions or practices in any workplace which  
 4 *\*\*\*\*\*the commissioner determines\*\*\*\*\*;\*\*\*\*\* in accordance with*  
 5 *section 17 of this act,\*\*\*\*\** are such that a danger exists which could  
 6 reasonably be expected to cause death or serious physical harm.  
 7 Any order issued under this act may require such steps to be taken  
 8 as may be necessary to avoid, correct or remove such imminent  
 9 danger and prohibit the employment or presence of any individual  
 10 in locations or under conditions where such imminent danger exists.

1 21. a. No person shall discharge, or otherwise discipline, or in  
 2 any manner discriminate against any employee because such em-  
 3 ployee has filed any complaint or instituted or caused to be insti-  
 4 tuted any proceeding under or related to this section or has testi-  
 5 fied or is about to testify in any such proceeding, or because of the  
 6 exercise by such employee on behalf of himself or others of any  
 7 right afforded by this section.

8 b. Any employee who believes that he has been discharged, dis-  
 9 ciplined or otherwise discriminated against by any person in vio-  
 10 lation of this section may, within 180 days after the employee first  
 11 has knowledge such violation did occur, bring an action in the  
 12 Superior Court against the person alleged to have violated the  
 13 provisions of this section. In any such action, the Superior Court  
 14 shall have jurisdiction, for cause shown, to restrain violations of  
 15 this section and order all appropriate relief, including rehiring or  
 16 reinstatement of the employee to his former position with back pay.

17 c. Nothing in this section shall be deemed to diminish the rights  
 18 of any employee under any law, rule or regulation or under any  
 19 collective negotiations agreement.

20 d. Any waiver by an employee or applicant for employment of  
 21 the benefits or requirements of this act shall be against public policy  
 22 and be void and any employer's request or requirement that an



23 employee waive any rights under this act as a condition of employ-  
 24 ment or continued employment shall constitute an act of discrimi-  
 25 nation.

1 22. **\*\*[In addition to the exceptions to the budget limitations au-**  
 2 **thorized pursuant to section 3 of P. L. 1976, c. 68 (C. 40A :4-45.3)]\*\***  
 3 **\*\*The provisions of any law to the contrary notwithstanding\*\***, any  
 4 expenditures required to meet the standards established by this  
 5 act shall be exempt **\*\*from any expenditure or appropriation in-**  
 6 **crease limitation imposed under any law\*\***.

1 23. The Commissioner of Labor<sup>\*\*\*\*\*</sup>, the Commissioner of  
 2 Community Affairs<sup>\*\*\*\*\*</sup> and the Commissioner of Health shall  
 2A serve in an advisory capacity to the New Jersey Commission  
 3 of Capital Budgeting and Planning on matters of workplace safety  
 4 and health, to ensure that new construction meets the standards  
 5 established by this act.

1 24. Nothing in this act shall be deemed to give public employees  
 2 the right to strike over occupational safety and health issues.

1 <sup>\*\*\*\*\*</sup>25. *Nothing in this act shall be deemed to conflict with or*  
 2 *supersede any provision of the "State Uniform Construction Code*  
 3 *Act," P. L. 1975, c. 217 (C. 52:27D-119 et seq.) or the code promul-*  
 4 *gated thereunder or to affect or limit the powers, duties, authorities*  
 5 *and responsibilities of the Commissioner of Community Affairs*  
 6 *or any enforcing agency thereunder. Nothing in this act shall be*  
 7 *deemed to conflict with or supersede any provision of the "Uniform*  
 8 *Fire Safety Act," P. L. 1983, c. 383 (C. 52:27D-192 et al.), or the*  
 9 *code promulgated thereunder, nor affect or limit the powers, duties,*  
 10 *authorities and responsibilities of the Commissioner of Community*  
 11 *Affairs or any enforcing agency thereunder.\*\*\*\*\**

1 <sup>\*\*\*\*\*</sup>[25.]<sup>\*\*\*\*\*</sup> <sup>\*\*\*\*\*</sup>26.<sup>\*\*\*\*\*</sup> There is appropriated  
 2 <sup>\*\*\*\*\*</sup>[to the Department of Labor \$350,000.00 and to the De-  
 3 partment of Health \$275,000.00]<sup>\*\*\*\*\*</sup> <sup>\*\*\*\*\*</sup>the sum of \$100,000.00  
 4 from the General Fund<sup>\*\*\*\*\*</sup> to effectuate the purposes of this  
 5 act<sup>\*\*</sup>[, which]<sup>\*\*</sup> <sup>\*\*</sup>. <sup>\*\*\*\*\*</sup>[Notwithstanding the provisions of  
 5A *any law to the contrary, these\*\** sums shall be paid out of the  
 5B Unclaimed Bank Deposits Escheat Fund, created pursuant to P. L.  
 6 1945, c. 199 (C. 17:9-18 et seq.), the Unclaimed Domestic Life In-  
 7 surance Escheat Reserve Fund, created pursuant to P. L. 1946, c.  
 8 154 (C. 17:34-49 et seq.), and the Unclaimed Personal Property  
 9 Trust Fund, created pursuant to P. L. 1951, c. 304 (C. 2:53-18 et  
 10 seq.)]<sup>\*\*\*\*\*</sup> <sup>\*\*\*\*\*</sup>The sum appropriated herein shall be allo-  
 11 cated by the Director of the Division of Budget and Accounting to  
 12 the Departments of Labor and Health upon his approval of an  
 13 application therefor.<sup>\*\*\*\*\*</sup>

1       \*\*\*\*\*[26.]\*\*\*\*\* \*\*\*\*\*27.\*\*\*\*\* This act shall take effect  
2 immediately\*\*\*\*\*, *except that the standards adopted pursuant to*  
3 *section 6 of this act shall not become operative with regard to any*  
4 *employer as defined in subsection (1) of paragraph c. of section 3*  
5 *of this act until the first day immediately following the first year*  
6 *after the standards otherwise take effect, and further, that the*  
7 *standards adopted pursuant to section 6 of this act shall not be-*  
8 *come operative with regard to any employer as defined in sub-*  
9 *section (2) of paragraph c. of section 3 of this act until the first*  
10 *day immediately following the second year after the standards*  
11 *otherwise take effect\*\*\*\*\*.*

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## STATEMENT

This bill provides for the establishment of occupational safety and health standards for public employees. The Commissioner of Labor, with the advice and consent of the Public Employees Occupational Safety and Health Advisory Board created by the bill, is authorized to promulgate a State plan for occupational safety and health, in accordance with federal OSHA guidelines, which will make New Jersey eligible for 50% federal funding of the plan.

The Public Employees Occupational Safety and Health Advisory Board would consist of the Commissioner of the Department of Health, the Commissioner of the Department of Environmental Protection, public employers, public employees and public members. The advisory board would assist the Commissioner of Labor in the promulgation of standards for the occupational safety and health of public employees. The Commissioner of Labor would be authorized by the bill to inspect work places for safety standards; the Commissioner of Health would be authorized to inspect work places for health standards. Enforcement of the standards would be carried out by the Commissioner of Labor.

The Commissioner of the Department of Labor, in consultation with the advisory board, is empowered to encourage voluntary compliance with the occupational safety and health standards established under the plan, through such means as conducting training, consultation, and education programs, and encouraging self-inspection programs.

An employer could apply to the Commissioner of Labor for a temporary or permanent variance from a health or safety standard under guidelines established by the bill. If the Commissioner of Labor determined that an employer was in violation of a health or safety standard, he could issue an order to the employer to comply, establishing a time for compliance. If the employer did not make a good faith effort to comply, within its powers and financial resources, the employer would be liable to a penalty of up to \$1,000.00 per day. The Commissioner of Labor could compromise and settle any claim for a penalty, including the rebate of 90% of the penalty if the violation was removed or eliminated within 1 year.

An Occupational Safety and Health Review Commission is established by the bill to hear appeals from citations, notifications or penalties issued to employers who are deemed to be out of compliance with the occupational safety and health standards.

Expenditures by municipalities which are necessary to bring the

A 1430 (1983)

municipalities into compliance with the occupational safety and health standards would be exempt from budget caps.

The Commissioner of Labor and the Commissioner of Health would be authorized by the bill to serve in an advisory capacity to the New Jersey Commission on Capital Budgeting and Planning, to ensure that new construction meets the occupational safety and health standards established under the bill.

\$625,000.00 is appropriated to the Department of Labor to effectuate the purposes of the bill.

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ASSEMBLY REVENUE, FINANCE AND APPROPRIATIONS  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1430**

[OFFICIAL COPY REPRINT]

with committee amendments

**STATE OF NEW JERSEY**

DATED: NOVEMBER 4, 1982

The Assembly Revenue, Finance and Appropriations Committee finds the Assembly Labor Committee statement to this bill an adequate and concise explanation of the provisions and intent of this bill and concurs with that statement except to comment for the record on the cost implications of this bill.

A fiscal note on this bill was not available to the committee, such being requested on October 19, 1982 after report of this bill by the Assembly Labor Committee by the chairman of that committee. It is possible to identify the potential cost implications of this bill to be of two types—administrative, with regard to promulgation and enforcement of workplace standards, and other costs associated with the compliance with workplace standards. There are cost implications for all public employers at both the State and local level.

The administrative costs are primarily State government costs, with the Department of Labor to be the primary agency responsible for administering and enforcing the act Statewide. The compliance costs will fall on any public employer, meaning the State, any county or municipality or other political subdivision of the State, any school district, special district, or any authority, commission, or board.

The bill appropriates to the Department of Labor, \$350,000.00, and to the Department of Health, \$275,000.00 for the purposes of the act. This appropriation is not from the General Fund, but rather from three escheat funds identified in section 25. This appropriation will establish the maximum administrative costs of this bill for the fiscal year 1982-83. Administrative costs and compliance costs to the State, for ensuing fiscal years will have to be provided by the Legislature.

There is the possibility of up to 50% federal funding of this program, as noted in the sponsor's introductory statement, most likely for administrative and enforcement costs, although the exact nature, availability, and extent of federal funding has not been specifically identified.

It is the recommendation of this committee that this bill not advance for a vote in the Assembly until such time as a fiscal note is made available. The committee concurs with the observation of the Association of Counties that compliance costs could be significant and that some identification of the potential magnitude of these costs is necessary to an informed decision on this bill by the Legislature. The committee makes this recommendation with the concurrence of the sponsor and has made this recommendation directly to the Speaker of the General Assembly under separate cover.

#### COMMITTEE AMENDMENTS

Committee amendments provide that any costs associated with this bill are exempt from any expenditure restrictions provided in any other law. It is intended that this will include such restrictions currently imposed on the State, county and municipal governments, and school districts.

A further committee amendment sets aside any restrictions in the escheat law which prohibit the use of escheat funds as a source of funding.

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ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1430

# STATE OF NEW JERSEY

DATED: OCTOBER 18, 1982

This bill establishes an Occupational Safety and Health program for public employees. The bill creates an Advisory Board to assist the Commissioner of Labor in establishing the safety standards required by the act. Members of the board would be drawn from representative sectors of public employment.

The bill requires the commissioner, in consultation with the board, to promulgate a plan for the development and enforcement of occupational safety and health standards for places of public employment. The standards would be required to be consonant with those required by federal law. Where there are no federal standards, the commissioner would be required to develop State standards.

The commissioner would be required to make inspections in certain areas to see that the standards which he has promulgated have been carried out. Employees who believe that safety standards are not being enforced may request an inspection by the commissioner.

Other areas, notably those dealing with health and environmental control, medical and first aid, toxic and hazardous substances, and respiratory and protective equipment, are to be inspected by the Commissioner of Health.

Any public employer coming under the provisions of the act would be permitted to apply to the commissioner for a temporary order granting a variance from any standard promulgated under the act. No such temporary order could be in effect for a period longer than one year, with two additional half-year extensions permitted. Permanent variances would also be permitted to be granted under certain circumstances. If variances are to be granted from health standards, the Commissioner of Labor would be required to consult with the Commissioner of Health.

Refusal of an employer to comply with an order of the commissioner to comply would make the employer liable to a fine of not more than \$1,000.00 a day, to be collected in a civil action under the "penalty enforcement law." Under certain circumstances the penalties could be rebated, up to 90% of the original penalty levied.

The bill also establishes an Occupational Safety and Health Review Commission within the Department of Labor, which is charged with hearing appeals from citations, notifications, and penalties issued under this act. The review commission, appointed by the Governor, consists of three members who are qualified to decide the issues which are brought before it. Support staff for the commission would come from the Department of Labor. The commission would have the ultimate authority to sustain, modify, or dismiss a citation or penalty.

The bill gives the Attorney General the authority to bring an action on behalf of the commissioner if a danger is deemed to exist which could reasonably be expected to cause death or serious physical harm.

No employee who reports a violation of the act could be discriminated against or discharged as a result of such reporting. No employee could waive his rights under the act.

Any expenditures required to meet the standards required by the act would be exempted from the provisions of the caps law. The law clarifies the fact that public employees would not be permitted to strike over occupational safety and health issues. The bill appropriates \$350,000.00 to the Department of Labor and \$250,000.00 to the Department of Health.

This bill is designed to establish a program for public employees which is similar to that provided under the Federal Occupational Safety and Health Act of 1970. The federal act extends to all employers and their employees in the private sector, and to employees of the Federal Government. The program does not apply to those who are self-employed or to employees of State or local governments.

The Federal Occupational Safety and Health Administration promulgates workplace standards and enforces the provisions of the act. The agency often works with specialists to establish the standards and there are Standing Advisory Committees which work on a regular basis with the agency. The agency's purpose is to identify workplace hazards which cause danger to the health and/or safety of the employees who work there. The purpose of this bill is to extend the same protection to public employees in New Jersey.

The Assembly Labor Committee has amended the bill to permit the commissioner to adopt standards more stringent than federal standards if he deems it necessary. The amendments also provide that regulations would be promulgated after consultation with the Commissioner of Health. Certain records regarding the results of investigations would be required to be made available to the public on request.

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SENATE REVENUE, FINANCE AND APPROPRIATIONS  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1430**

[FOURTH OFFICIAL COPY REPRINT]

[SENATE REPRINT]

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 1, 1983

This bill establishes an Occupational Safety and Health program for public employees. The bill creates a 24 member Advisory Board to assist the Commissioner of Labor in establishing the safety standards required by the act. Members of the board would be drawn from representative sectors of public employment. The Commissioner of Labor would serve as the board chairman.

The bill requires the commissioner, in consultation with the board, to promulgate a plan no sooner than 270 days from the effective date of the act for the development and enforcement of occupational safety and health standards for places of public employment. The standards would be required to be consonant with applicable federal standards. Where there are no federal standards, the commissioner would be required to develop State standards. Building, structural and fire safety standards, however, are not to exceed those required pursuant to the State Uniform Construction Code Act or the Uniform Fire Safety Act.

The commissioner would be required to make inspections to see that the safety standards which he has promulgated have been carried out. Employees who believe that safety standards are not being enforced may request an inspection by the commissioner.

Other areas dealing with health and environmental control, medical and first aid, toxic and hazardous substances, and respiratory and protective equipment, are to be inspected by the Commissioner of Health. Building, structural and fire safety standards are to be inspected by the Commissioner of Community Affairs.

Any public employer coming under the provisions of the act would be permitted to apply to the commissioner for a temporary order granting

a variance from any standard promulgated under the act. No such temporary order could be in effect for a period longer than one year, with two extensions permitted. Permanent variances would also be permitted to be granted under certain circumstances. If variances are to be granted from health standards, the Commissioner of Labor would be required to consult with the Commissioner of Health. If variances are to be granted from building, structural or fire safety standards, the Commissioner of Labor is to consult with the Commissioner of Community Affairs.

Refusal of an employer to comply with an order of the commissioner to comply would make the employer liable to a fine of not more than \$1,000.00 a day, to be collected in a civil action under the "penalty enforcement law." Under certain circumstances the penalties could be related, up to 90% of the original penalty levied.

The bill also establishes an Occupational Safety and Health Review Commission within the Department of Labor, which is charged with hearing appeals from citations, notifications, and penalties issued under this act.

The review commission, appointed by the Governor, consists of three members who are qualified to decide the issues which are brought before it. Support staff for the commission would come from the Department of Labor. The commission would have authority to sustain, modify, or dismiss a citation or penalty. Further appeals, if made, shall be made to the Appellate Division of Superior Court.

The bill gives the Attorney General the authority to bring an action on behalf of the commissioner at the commissioner's request if a danger is deemed to exist which could reasonably be expected to cause death or serious physical harm.

No employee who reports a violation of the act could be discriminated against or discharged as a result of such reporting. No employee could waive his rights under the act.

Any expenditures required to meet the standards required by the act would be exempted from the provisions of the caps law. The law clarifies the fact that public employees would not be permitted to strike over occupational safety and health issues.

#### COMMITTEE AMENDMENTS

The Commissioner of Community Affairs and the State Treasurer were added to the membership of the Advisory Board. The Commissioner of Community Affairs will investigate complaints regarding building, structural or fire safety standards.

The amendments also provide, absent a clear and present danger, landlords will not be required to physically upgrade the leased space

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beyond the health and safety requirements in effect at the time the lease was executed. Property leased subsequent to the promulgation of the standards contemplated by this bill will have to be in compliance with those standards.

The standards will not be applicable to the State until the first day immediately following the first year the standards otherwise take effect and will not be applicable to municipalities, counties and school districts until the first day immediately following the second year the standards otherwise take effect.

The amendments also eliminate the \$625,000.00 appropriation from the three named funds and provide a \$100,000.00 appropriation from the general fund.

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SENATE STATE GOVERNMENT, FEDERAL AND  
INTERSTATE RELATIONS AND VETERANS AFFAIRS  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 1430**

[FOURTH OFFICIAL COPY REPRINT]

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 25, 1983

This bill provides for the establishment and enforcement of occupational health and safety standards for public employees.

REVISED FISCAL NOTE TO  
**ASSEMBLY, No. 1430**  
[FOURTH OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

DATED: MARCH 10, 1983

Assembly Bill No. 1430, Fourth OCR of 1982, entitled the "New Jersey Public Employees Occupational Safety and Health Act" creates an advisory board to be authorized to promulgate a State plan for occupational safety and health and be eligible for partial federal funding.

The Commissioner of Labor would be authorized to inspect work places for safety standards while the Commissioner of Health would be authorized to inspect work places for health standards. The advisory board would assist in the promulgation of these standards. Those employers found not in compliance of standards, or fail to comply within a reasonable timeframe would be liable for a penalty of up to \$1,000.00 a day. A rebate of up to 90% of the penalty would be available within one year if said violation is eliminated or removed. A review commission is established to hear and rule in appeals from citations issued under this act. Expenditures for compliance of standards by municipalities would be exempt from the expenditure "cap" limitation. There is to be appropriated \$350,000.00 to the Department of Labor and \$275,000.00 to the Department of Health.

The Department of Labor estimates its costs at \$155,676.00 for the remainder of FY '83; at \$342,805.00 for FY '84; and \$377,086.00 for FY '85. These costs amount to personnel costs for salaries, fringe benefits for a staff of approximately 13 and nonpersonal services for supplies, rent and equipment.

The Department of Labor's cost estimate, as a comparable to the said appropriated amount, would presume cost estimate for the Department of Health to be as comparable to the said appropriated amount.

Costs to local political subdivisions based on recently received data are estimated for one-time structural changes for compliance with OSHA standards:

Estimated average cost for any one municipality ..... \$3,277.00  
Estimated average cost for any one county ..... \$6,319.00  
Estimated average cost for any one town ..... \$2,787.00  
Estimated average cost for medium or large city ..... \$4,321.00

The Office of Legislative Services concurs with the cost estimate as supplied by the Department of Labor in addition to local cost information.

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In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1980, c. 67.

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FISCAL NOTE TO  
**ASSEMBLY, No. 1430**

[THIRD OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

DATED: JANUARY 28, 1983

Assembly Bill No. 1430, Third OCR of 1982, entitled the "New Jersey Public Employees Occupational Safety and Health Act" creates an advisory board to be authorized to promulgate a State plan for occupational safety and health and be eligible for partial federal funding.

The Commissioner of Labor would be authorized to inspect work places for safety standards while the Commissioner of Health would be authorized to inspect work places for health standards. The advisory board would assist in the promulgation of these standards. Those employers found not in compliance of standards, or fail to comply within a reasonable timeframe would be liable for a penalty of up to \$1,000.00 a day. A rebate of up to 90% of the penalty would be available within one year if said violation is eliminated or removed. A review commission is established to hear and rule in appeals from citations issued under this act. Expenditures for compliance of standards by municipalities would be exempt from the expenditure "cap" limitation. There is to be appropriated \$350,000.00 to the Department of Labor and \$275,000.00 to the Department of Health.

The Department of Labor estimates its costs at \$155,676.00 for the remainder of FY '83; at \$342,805.00 for FY '84; and \$377,086.00 for FY '85. These costs amount to personnel costs for salaries, fringe benefits for a staff of approximately 13 and nonpersonal services for supplies, rent and equipment.

The Department of Labor's cost estimate, as a comparable to the said appropriated amount, would presume cost estimate for the Department of Health to be as comparable to the said appropriated amount.

The Office of Legislative Services concurs with the cost estimate as supplied by the Department of Labor.

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In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1980, c. 67.

A-3468 SIGNED, ET AL.

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JANUARY 17, 1984

"The drunk driver has become a menace of increasing dimensions," Kean said. "With this new package in place and with stricter enforcement and penalties, New Jersey can lead the nation in sweeping its roads and highways of the drunken driver."

Kean also signed A-1430, sponsored by Assemblyman David Schwartz, D-Middlesex, which creates an 18-member Public Employees Occupational Safety and Health Advisory Board to develop safety and health standards to be applied to public employers and employees.

State and local governments are exempt from Federal OSHA requirements and this legislation is a step toward assuring the health and safety of those employed in government buildings.

The bill is effective immediately, although the OSHA board has 180 days to promulgate its rules for the State. Counties, municipalities and school districts are not affected for two years from the date of enactment.

The Governor also signed A-3463, sponsored by Assemblyman David Schwartz, D-Middlesex, to merge the Housing Finance Agency and the Mortgage Finance Agency into a new panel with expanded powers to promote the financing of low and moderate income housing.

The bill, a Kean Administration initiative, empowers the new Agency to make loans for operating, maintaining, constructing, acquiring, rehabilitating or improving housing property. Its powers extend to all types of housing, including single family, multi-family, congregate housing, single room occupancy housing and mobile homes.

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## ¶ 5610

**NEW JERSEY**

There is no approved plan in effect for New Jersey. The Occupational Safety and Health Administration (OSHA) administers and enforces the federal job safety and health law, regulations, and standards in the state.

Originally, OSHA published notices of the state's submission of its developmental plan on August 26, 1972, in the *Federal Register* (37 F.R. 17447) and announced approval of the plan on January 26, 1973 (38 F.R. 2426; notice amended 38 F.R. 6177). The state notified OSHA by letter dated January 14, 1975, of its intention to withdraw its approved plan, and OSHA made a formal announcement of the withdrawal on March 11, 1975 (40 F.R. 11351).

On January 17, 1984, the New Jersey Public Employees Occupational Safety and Health Act covering public employees of the state was enacted by the state legislature with an immediate effective date (Chapter 516, Laws 1983). The plan requires adoption of all federal occupational safety and health standards not less than 180 days after the effective date. The standards become operative the first day following the first year after their effective date, for any department, division, bureau, board, council, agency, or authority of the state, with the exception of any bistate agency. The standards become operative the first day following the second year after their effective date for any county, municipality, or any department, division, bureau, board, council, agency, or authority of any county or municipality or of any school district or special purposes district created pursuant to law.

Every public employer is required under the plan to provide a place of employment free from recognized hazards that may cause serious injury or death and to comply with safety and health standards unless it can qualify for a variance. Safety and health inspections, as well as imminent danger and complaint-initiated inspections, may take place at a reasonable time and manner. Employees are given walkaround rights and compensations. A three-member Review Commission is created and employers have the right to appeal its decisions to the superior court.

Records of work-related deaths and of injuries and illnesses involving lost time, medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job or function must be available to the Commissioner and retained by the employer for up to five years. This retention rule also applies to monitoring and measurement records of employee exposure to potentially toxic materials or other harmful physical agents. Employees who believe that they have been discriminated against for exercising rights under the Act may file an action for relief, which includes rehiring or reinstatement with back pay, in superior court within 180 days of knowledge of the discriminatory action.

The primary administrative and enforcement agency is the Department of Labor, but the Commissioners for Health and for Community Affairs are charged with inspection duties in the instance of alleged health or building standard, fire safety or structural standard violations respectively. The Public Employees Occupational Safety and Health Advisory Board assists the Commissioner of Labor in establishing occupational safety and health standards. The Board consists of the Commissioner of the Department of Health, the Commissioner of the Department of Environmental Protection, the Commissioner of the Department of Community Affairs, the State Treasurer and 18 gubernatorial appointees representing various governmental institutions and the general public; the Board is chaired by the Commissioner of Labor.

**Right-to-Know Law.** Effective August 29, 1984, the Worker and Community Right to Know Act requires employers to identify and make available information on

hazardous substances in the workplace to their employees and to the community through county health departments. Using a workplace hazardous substance list developed by the Department of Health, employers are required to complete a workplace survey, hazardous substance fact sheets and, in some cases, an environmental survey, all to be kept in a central file accessible to employees and updated annually or biannually. Copies of the surveys must be sent to the originating department of health or Environmental Protection Agency, the local county health department and local fire and police authorities. Employees requesting copies of the information may refuse to work with the substance queried without loss of pay, if five days have elapsed since the request; employees are further protected from discrimination for any exercise of their rights under the Act.

Employers are required to establish an education and training program within six months of the Act's effective date. The program must be both oral and written, and must be repeated annually except in the case of a new employee who must receive it within a month of employment. Also required within six months of the act's effective date is the labeling of every hazardous substance container with the contents' chemical name and Chemical Abstract Service Number, a requirement to be extended to every container within two years of the Act's effective date. Exceptions to the labeling requirements are provided for research laboratories that may use code systems; for certain common names to be used in place of chemical names; for certain containers to be exempted by the Department of Health because of the fixed and durable characteristics of their contents; and for trade secret information. Despite provisions for maintaining the confidentiality of trade secret information, such information may not be withheld from a physician or osteopath needing it for medical treatment. Employers will be barred from making a trade secret claim for certain substances identified on a special Department of Health health hazard list as posing special health and safety hazards due to their known carcinogenicity, mutagenicity, teratogenicity, flammability, explosiveness, corrosivity, or reactivity.

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