

34:6A-69

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LAWS OF: 1995 CHAPTER: 186

BILL NO: A2064

SPONSOR(S): Roma and Foley

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COMMITTEE: ASSEMBLY: Labor
SENATE: ---

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

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COMMITTEE STATEMENT: ASSEMBLY: Yes
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P.L.1995, CHAPTER 186, *approved July 25, 1995*
Assembly Substitute for
1994 Assembly No. 2064

1 AN ACT to amend and supplement the "New Jersey Public
2 Employees' Occupational Safety and Health Act," approved
3 January 17, 1984 (P.L.1983, c.516, C.34:6A-25 et seq.).
4

5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. Section 5 of P.L.1983, c.516 (C.34:6A-29) is amended to
8 read as follows:

9 5. The commissioner shall, in consultation with the
10 Commissioner of Health, the Commissioner of Community
11 Affairs and the advisory board, promulgate a plan for the
12 development and enforcement of occupational safety and health
13 standards with respect to public employers and public employees,
14 in accordance with section 18(c) of the "Occupational Safety and
15 Health Act of 1970," Pub.L.91-596 (29 U.S.C. §651 et seq.). The
16 Department of Labor shall be the [primary] sole agency
17 responsible for administering and enforcing this plan throughout
18 the State. The plan shall:

19 a. Provide for the development and enforcement of safety and
20 health standards [, provided, however, that the standards for
21 building and structural safety shall not exceed those established
22 by the Commissioner of Community Affairs pursuant to the
23 "State Uniform Construction Code Act," P.L.1975, c.217
24 (C.52:27D-119 et seq.) nor shall they exceed the standards for
25 fire safety established by the Commissioner of Community
26 Affairs pursuant to the "Uniform Fire Safety Act," P.L.1983,
27 c.383 (C.52:27D-192 et al.)];

28 b. Provide for the right of entry and inspection [of safety
29 standards] in all workplaces by the commissioner;

30 c. Provide for the right of entry and inspection [of health
31 standards] in all workplaces by the Commissioner of Health;

32 d. Prohibit advance notice of inspections;

33 e. Contain satisfactory assurances that the Department of
34 Labor [has] and the Department of Health have the legal
35 authority and qualified personnel necessary [for the enforcement
36 of the standards] to carry out their responsibilities under this act;

37 f. Give satisfactory assurances that the State will devote
38 adequate funds to the administration and enforcement of the
39 standards;

40 g. Contain satisfactory assurances that the State will, to the
41 extent permitted by law, establish and maintain an effective and
42 comprehensive occupational safety and health program applicable

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 to all employees of public agencies of the State and its political
2 subdivisions, which program is as effective as the [standards
3 contained in the approved plan] corresponding provisions of the
4 "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29
5 U.S.C. §651 et seq.); [and]

6 h. Provide that the Department of Labor shall make such
7 reports to the secretary in the form and containing the
8 information that the secretary from time to time requires; and

9 i. Provide for such cooperation with the Department of
10 Community Affairs in implementing the plan as is consistent with
11 the provisions of P.L.1983, c.516 (C.34:6A-25 et seq.) and the
12 "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29
13 U.S.C. §651 et seq.).

14 (cf: P.L.1983, c.516, s.5)

15 2. Section 6 of P.L.1983, c.516 (C.34:6A-30) is amended to
16 read as follows:

17 6. a. [No sooner than 180 days after the effective date of this
18 act, the] The commissioner shall provide [, at the minimum,] for
19 the adoption of all applicable occupational health and safety
20 standards, amendments or changes adopted or recognized by the
21 secretary under the authority of the "Occupational Safety and
22 Health Act of 1970." Whenever the United States Secretary of
23 Labor adopts a standard pursuant to the provisions of the
24 "Occupational Safety and Health Act of 1970" (29 U.S.C. §651 et
25 seq.), the commissioner shall publish that federal standard in the
26 New Jersey Register in accordance with the provisions of section
27 5 of P.L.1968, c.410 (C.52:14B-5) and, notwithstanding the
28 provisions of section 4 of P.L.1968, c.410 (C.52:14B-4), that
29 federal standard shall be deemed to be duly adopted as a State
30 regulation upon its publication by the commissioner.

31 b. The commissioner shall not adopt any standard within the
32 scope of the State uniform construction code adopted pursuant to
33 P.L.1975, c.217 (C.52:27D-119 et seq.) or the uniform fire safety
34 code adopted pursuant to P.L.1983, c.383 (C.52:27D-192 et al.),
35 unless the standard is a standard adopted pursuant to subsection
36 a. of this section. If the Commissioner of Community Affairs
37 determines that a standard for building or structural safety
38 adopted by the commissioner pursuant to subsection a. of this
39 section is more stringent than the applicable standards adopted
40 into code pursuant to the State uniform construction code or the
41 uniform fire safety code, he shall adopt a rule incorporating the
42 more stringent standard into the relevant code. If the
43 Commissioner of Community Affairs determines that there is a
44 difference between a provision of any new or existing standard
45 adopted pursuant to subsection a. of this section and a provision
46 of the uniform construction code or the uniform fire safety code,
47 and he determines that the provision of the code is as effective
48 as the provision of the standard, he shall prepare and submit to
49 the commissioner an application for submission to the Secretary
50 of Labor seeking (1) the approval of that provision of the uniform
51 construction code or the uniform fire safety code as being as
52 effective as the provision of the standard and (2) the approval of
53 the incorporation of the code provision into the State plan.

54 c. Where no federal standards are applicable or where

1 standards more stringent than the federal standards are deemed
2 advisable, the commissioner shall, in consultation with the
3 Commissioner of Health and the Commissioner of Community
4 Affairs and, with the advice [and consent] of the advisory board,
5 provide for the development of State standards as may be
6 necessary in special circumstances.

7 d. The commissioner and the Commissioner of Health, or their
8 designees, shall meet with the advisory board at [least four times
9 a year] each scheduled meeting for these purposes. The advisory
10 board shall meet not less than four times each year.

11 e. The Commissioner of Health shall not adopt standards or
12 issue orders to comply in any area but shall be charged with
13 inspection, investigation and related activities in the following
14 areas:

15 (1) Occupational health and environmental control;

16 (2) Medical and first aid;

17 (3) Toxic and hazardous substances;

18 (4) Respiratory protective equipment; and

19 (5) Sanitation.

20 The Commissioner of Labor shall be charged with inspection,
21 investigation and related activities for all other regulated areas
22 and with adopting of standards and issuing orders to comply in all
23 regulated areas.

24 (cf: P.L.1983, c.516, s.6)

25 3. Section 7 of P.L.1983, c.516 (C.34:6A-31) is amended to
26 read as follows:

27 7. The commissioner, in consultation with the Commissioner of
28 Health and the Commissioner of Community Affairs and with the
29 advice [and consent] of the advisory board, shall [by regulation]:

30 a. Provide for a method of encouraging employers and
31 employees in their efforts to reduce the number of safety and
32 health hazards arising from undesirable, inappropriate, or
33 unnecessarily hazardous or unhealthful working conditions at the
34 workplace and of stimulating employers and employees to
35 institute new, and to perfect existing, programs for providing
36 safe and healthful working conditions;

37 b. Provide for the publication and dissemination to employers,
38 employees, and labor organizations, and the posting, where
39 appropriate, by employers of informational, educational and
40 training materials calculated to aid and assist in achieving the
41 objectives of this act;

42 c. Provide for the establishment of new, and for the perfection
43 and expansion of existing, programs for occupational safety and
44 health education for employers and employees and institute
45 methods and procedures for the establishment of a program for
46 voluntary compliance by employers and employees with the
47 standards established pursuant to this act.

48 (cf: P.L.1983, c.516, s.7)

49 4. Section 8 of P.L.1983, c.516 (C.34:6A-32) is amended to
50 read as follows:

51 8. The commissioner shall, in consultation with the
52 Commissioner of Health and the Commissioner of Community
53 Affairs and with the advice [and consent] of the advisory board,
54 promulgate all regulations which he deems necessary for the

1 proper administration and enforcement of this act. [With respect
2 to any regulations governing standards for either design or
3 construction for structures or for equipment in laboratories of
4 higher education institutions constituting, comprising or part of a
5 workplace, the regulations may distinguish between structures
6 completed or equipment in laboratories of higher education
7 institutions purchased prior to the issuance of the regulations and
8 those to be completed or purchased thereafter. Insofar as design
9 and structural features of workplaces or equipment may, in the
10 commissioner's judgment, be determined to comply] A variance
11 may be granted if the commissioner determines that the
12 applicant is in compliance with the requirements for a permanent
13 variance as set forth in subsection c. of section 15 of this act
14 [without the need for further inquiry into the particular
15 practices, means, methods, operations or process used or to be
16 used in any such workplace, the regulations may provide for the
17 approval of those features, although they do not meet standards
18 promulgated for new construction, without the necessity for a
19 variance procedure. This exemption for obtaining a variance
20 shall not apply to those areas specified in subsection a. of section
21 13 of this act which are under the jurisdiction of the
22 Commissioner of Health nor to any work for which a construction
23 permit is required pursuant to the "State Uniform Construction
24 Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and the
25 regulations adopted thereunder, nor to any equipment, device or
26 procedure required pursuant to the "Uniform Fire Safety Act,"
27 P.L.1983, c.383 (C.52:27D-192 et al.), and the regulations
28 adopted thereunder]. The variance shall not be deemed to be a
29 variation approved pursuant to the "State Uniform Construction
30 Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the
31 "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et al.)
32 or any other building or fire safety standard or code.

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] Space leased by a public employer [to physically
36 upgrade said premises beyond the level of] shall be subject to
37 current health or safety rules and regulations [in effect at the
38 time the lease was executed]. [Deficiencies] Any deficiency,
39 including a deficiency resulting either from occupant use or
40 deferred maintenance by the lessor, shall be subject to correction
41 in accordance with the governing rules and regulations at the
42 time that the [lease went into effect] deficiency is cited by the
43 commissioner or the Commissioner of Health. However, a lease
44 of any duration may not be entered into [after the promulgation
45 of safety rules and regulations pursuant to this act] unless the
46 leased property is in conformance with such rules and regulations
47 as are in effect at the time the lease is executed.

48 (cf: P.L.1983, c. 516, s.8)

49 5. Section 9 of P.L.1983, c.516 (C.34:6A-33) is amended to
50 read as follows:

51 9. Every employer shall:

52 a. Provide each of his employees with employment and a place
53 of employment which are free from recognized hazards which
54 may cause serious injury, physical harm or death to his

1 employees; and

2 b. Comply with occupational safety and health standards
3 promulgated under this act [; and

4 c. In the absence of existing standards take all prudent
5 measures to comply with written recommendations made by the
6 commissioner, the Commissioner of Community Affairs or the
7 Commissioner of Health to reduce the risk of exposure to unsafe
8 or unhealthy conditions which have been shown to be detrimental
9 to employee health or safety. A written rationale including the
10 scientific basis for each recommendation shall be presented to
11 the affected employer].

12 (cf: P.L.1983, c.516, s.9)

13 6. Section 11 of P.L.1983, c.516 (C.34:6A-35) is amended to
14 read as follows:

15 11. a. The commissioner and the Commissioner of Health shall
16 be charged with making inspections in [all regulated] their
17 jurisdictional areas [, except as may be provided pursuant to
18 subsection a. of section 13 of this act.] as specified in section 6
19 of P.L.1983, c.516 (C.34:6A-30). The commissioner may call on
20 the professional staff of other departments whenever he deems
21 their assistance necessary.

22 b. [The] Each commissioner shall have the right of immediate
23 entry at reasonable hours and without advance notice into any
24 workplace [when he has reason to believe that a violation of
25 safety standards exists and] to conduct such investigations as he
26 may deem necessary. [The] Each commissioner shall maintain
27 records of the results of any [such] investigation under his
28 jurisdiction, which, after a final agency or judicial action is taken
29 regarding any order to comply which results from the inspection,
30 shall be made available to the public upon request, except that
31 any information which identifies an individual employee shall be
32 confidential. The authority of [the] each commissioner to inspect
33 any premises for purposes of investigating an alleged violation [of
34 safety standards] under his jurisdiction shall not be limited to the
35 alleged violation but shall extend to any other area of the
36 premises in which he has reason to believe that a violation of [the
37 safety standards promulgated under] any provision of this act
38 under his jurisdiction exists. The Commissioner of Health shall
39 make his inspection records available to the commissioner for
40 purposes of enforcement.

41 c. If [the] either commissioner concludes that conditions or
42 practices in violation of [the prescribed safety standards] any
43 provision of this act under his jurisdiction exist in any workplace,
44 he shall inform the affected employees and employers of the
45 danger.

46 d. Each order to comply issued under this section, or a copy or
47 copies thereof, shall be prominently posted at or near each place
48 where a violation referred to in the order to comply occurred and
49 the commissioner shall make the order available to employee
50 representatives, affected employees and, upon request, to the
51 public.

52 e. Any employee who accompanies either commissioner on an
53 inspection shall receive payment of normal wages for the time
54 spent during the inspection.

1 f. Where there is no authorized employee representative, each
2 commissioner or his authorized representative shall consult with
3 a reasonable number of employees concerning matters of health
4 and safety in the workplace.

5 g. Any person who gives advance notice of any inspection to be
6 conducted under this act, without authority from the
7 commissioner, the Commissioner of Health or their designees,
8 shall, upon conviction, be punished by a fine of not more than
9 \$1,000 or by imprisonment for not more than six months, or by
10 both.

11 (cf: P.L.1983, c.516, s.11)

12 7. Section 12 of P.L.1983, c.516 (C.34:6A-36) is amended to
13 read as follows:

14 12. a. Any employee, group of employees or employee
15 representative who believes that a violation of a safety standard
16 exists, or that an imminent danger exists, may request an
17 inspection by giving notice to the commissioner of the violation
18 or danger. The notice and request shall be in writing, shall set
19 forth the grounds for the notice and shall be signed by the
20 employee, a group of employees or an employee representative.
21 [The commissioner shall give affected public employers notice
22 that a complaint has been filed within five working days from
23 receipt of the complaint, except that on] Upon the request of the
24 person giving the notice, his name or the name of any employee
25 representative giving the notice shall be withheld. The
26 commissioner shall conduct an appropriate inspection at the
27 earliest time possible.

28 The commissioner shall so interpret and administer this section
29 so as to encourage any employee, group of employees or
30 employee representative who believes that a violation of a safety
31 standard exists, or that an imminent danger exists, to report that
32 violation or danger in the first instance to the employer's safety
33 officer.

34 b. A representative of the employer, the employee or
35 employees giving the notice and an employee representative shall
36 be given the opportunity to accompany the commissioner during
37 an inspection for the purpose of aiding in such inspection. Where
38 there is no authorized employee representative, the commissioner
39 shall consult with a reasonable number of employees concerning
40 matters of safety in the workplace.

41 c. Any employee who accompanies the commissioner on an
42 inspection shall receive payment of normal wages for the time
43 spent during the inspection.

44 d. The information obtained by the commissioner under this
45 section shall be obtained with a minimum burden upon the
46 employer.

47 (cf: P.L.1983, c.516, s.12)

48 8. Section 14 of P.L.1983, c.516 (C.34:6A-38) is amended to
49 read as follows:

50 14. a. Any employee, group of employees or employee
51 representative who believes that a violation of a health standard
52 [or of a building, fire safety or structural standard] exists, or
53 that an imminent danger exists, may request an inspection by
54 giving notice to the Commissioner of Health [or to the

1 Commissioner of Community Affairs, as the case may be,) of the
2 violation or danger. The notice and request shall be in writing,
3 shall set forth the grounds for the notice and shall be signed by
4 the employee, a group of employees or employee representative.
5 [The Commissioner of Health or the Commissioner of Community
6 Affairs, as the case may be, shall give affected public employers
7 notice that a complaint has been filed within five working days
8 from receipt of the complaint, except that on] Upon the request
9 of the person giving the notice, his name or the name of any
10 employee representative giving the notice shall be withheld. The
11 Commissioner of Health [or the Commissioner of Community
12 Affairs, as the case may be,] shall conduct an appropriate
13 inspection at the earliest time possible. In any case of a possible
14 imminent hazard, the commissioner may request the assistance of
15 other State agencies having appropriate expertise.

16 The [commissioner] Commissioner of Health shall so interpret
17 and administer this section so as to encourage any employee,
18 group of employees or employee representative who believes that
19 a violation of a [safety] health standard exists, or that an
20 imminent danger exists, to report that violation or danger in the
21 first instance to the employer's safety officer.

22 b. A representative of the employer, an employee giving the
23 notice and an employee representative shall be given the
24 opportunity to accompany the Commissioner of Health [or the
25 Commissioner of Community Affairs] during an inspection for the
26 purpose of aiding in such inspection. Where there is no
27 authorized employee representative, the Commissioner of Health
28 shall consult with a reasonable number of employees concerning
29 matters of health in the workplace [and the Commissioner of
30 Community Affairs shall consult with a reasonable number of
31 employees concerning matters of building, structural and fire
32 safety in the workplace].

33 c. Any employee who accompanies the Commissioner of
34 Health or the Commissioner of Community Affairs on an
35 inspection shall receive payment of normal wages for the time
36 spent during the inspection.

37 d. The information obtained by the Commissioner of Health [or
38 the Commissioner of Community Affairs] under this section shall
39 be obtained with a minimum burden upon the employer.

40 (cf: P.L.1983, c.516, s.14)

41 9. Section 15 of P.L.1983, c.516 (C.34:6A-39) is amended to
42 read as follows:

43 15. a. Any employer may apply to the commissioner for a
44 temporary order granting a variance from a standard or any
45 provision thereof promulgated under this act. A temporary order
46 shall be granted only if the employer files an application with the
47 commissioner which meets the requirements of this section and
48 establishes in a hearing conducted pursuant to the
49 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
50 seq.) and P.L.1978, c.67 (C.52:14F-1 et seq.) that:

51 (1) he is unable to comply with the standard by its effective
52 date because of the unavailability of professional or technical
53 personnel or of materials and equipment needed to comply with
54 the standard or because necessary construction or alteration of

1 facilities cannot be completed by the effective date;

2 (2) he is taking all available steps to safeguard employees
3 against the hazards covered by the standard; and

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

6 Any temporary order issued under this section shall prescribe
7 the practices, means, methods, operations and processes which
8 the employer shall adopt and use while the order is in effect and
9 the order shall state in detail what the employer's program shall
10 be for complying with the standard.

11 A temporary order may be granted only if notice to the
12 employees is given; provided, however, that the commissioner
13 may issue [an] one interim order to be effective until a decision is
14 made on the basis of the hearing. An employee representative or,
15 where one does not exist, the affected employees, may appear at
16 the hearing, with or without counsel, and submit testimony
17 concerning the employer's application for the variance. No
18 temporary order may be in effect for longer than the period
19 needed by the employer to achieve compliance with the standard
20 or one year, whichever is shorter, except that such an order may
21 be renewed no more than twice so long as the requirements of
22 this section are met and if an application for renewal is filed at
23 least 90 days prior to the expiration date of the order. No
24 interim renewal of an order may remain in effect longer than 180
25 days.

26 b. An application for temporary variance shall contain:

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

29 (2) a representation by the employer, supported by
30 representations from qualified persons who have first hand
31 knowledge of the facts represented, that he is unable to comply
32 with the standard or portion thereof and a detailed statement of
33 the reasons therefor;

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

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

40 (5) a certification that he has informed his employees of the
41 application by giving a copy thereof to their employee
42 representative where one exists, and posting a statement at the
43 place where notices to employees are normally posted, giving a
44 summary of the application and specifying where a copy may be
45 examined. A description of the notification procedure used by
46 the employer shall be contained in the certification. The
47 information to the employees shall also inform them of their
48 right to appear and be heard, as set forth in subsection a. of this
49 section, at the hearing on the variance application; and

50 (6) a statement, if appropriate, that such a variance is
51 necessary to permit an employer to participate in an experiment
52 approved by him designed to demonstrate or validate new and
53 improved techniques to safeguard the health or safety of workers.

54 c. Any affected employer may apply to the commissioner for a

1 rule or order for a permanent variance from a standard
2 promulgated under this act. An employee representative or,
3 where one does not exist, the affected employees, shall be given
4 notice of each such application and shall be afforded an
5 opportunity to participate in a hearing pursuant to the
6 "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1 et
7 seq.) and P.L.1978, c.67 (C.52:14F-1 et seq.) on the merits of the
8 application, with or without counsel, and to submit testimony.
9 The commissioner shall issue such rule or order if he determines
10 on the record, after an opportunity for an inspection, where
11 appropriate, that the proponent of the variance has
12 demonstrated, by a preponderance of the evidence, that the
13 conditions, practices, means, methods, operations or processes
14 used or proposed to be used by an employer will provide
15 workplaces which are as safe and healthful [as possible under the
16 circumstances justifying the variance] as those which would
17 prevail if he complied with the standard. The rule or order so
18 issued shall prescribe the conditions the employer shall maintain
19 and the practices, means, methods, operations and processes
20 which he shall adopt and utilize to the extent they differ from
21 any standard adopted pursuant to this act. Such a rule or order
22 may be modified or revoked upon application by an employer, any
23 employee, group of employees or employees representative, or by
24 the commissioner on his own motion, in the manner prescribed for
25 its issuance under this section at any time after six months from
26 its issuance.

27 d. In determining whether to grant a variance from a health
28 standard, the commissioner shall consult with the Commissioner
29 of Health. [In determining whether to grant a variance from a
30 building, fire safety or structural safety standard, the
31 commissioner shall consult with the Commissioner of Community
32 Affairs.]

33 (cf: P.L.1983, c.516, s.15)

34 10. Section 16 of P.L.1983, c.516 (C.34:6A-40) is amended to
35 read as follows:

36 16. In accordance with the [commissioner's] regulations which
37 shall be adopted by the commissioner, each employer shall make,
38 keep, preserve and make available [for up to five years] the
39 following records to the commissioner and the Commissioner of
40 Health:

41 a. Records regarding the employer's activities relating to this
42 act as the commissioner deems necessary or appropriate for the
43 enforcement of this act or for developing information regarding
44 the causes and prevention of occupational accidents and illness.

45 b. [Such records, which shall be available for public
46 inspection,] Records regarding [periodic reports of] work-related
47 deaths, [and] injuries and illnesses other than minor injuries which
48 require only first aid treatment and which do not involve [lost
49 time from work.] medical treatment, loss of consciousness,
50 restriction of work or of motion, or [which necessitate] transfer
51 to another job [or function].

52 c. [Such records] Records regarding employee exposure to
53 potentially toxic materials or other harmful physical agents
54 which the regulations require to be monitored or measured. The

1 regulations shall provide employees or their representatives with
2 an opportunity to observe the monitoring or measurement and
3 access to the records of the monitoring or measurement. Each
4 employee or former employee shall be informed of and have
5 access to all records which will indicate his own exposure to toxic
6 materials or harmful physical agents and the properties,
7 characteristics and effects thereof. Each employer shall
8 promptly notify any employee who has been or is being exposed to
9 toxic materials of harmful physical agents in concentrations or at
10 levels which exceed those prescribed by any safety and health
11 standard promulgated under this act, and shall inform any
12 employee who is being exposed of the corrective action being
13 taken and the time limit for compliance pursuant to subsection a.
14 of section 17 of this act.

15 Each employer shall, in accordance with regulations which shall
16 be adopted by the commissioner, file with the commissioner
17 periodic reports based on the records kept pursuant to this
18 section. The commissioner shall develop and maintain an
19 effective program of collection, compilation, analysis and
20 reporting to the public of statistics on work-related deaths,
21 injuries and illnesses other than minor injuries which require only
22 first aid treatment and which do not involve medical treatment,
23 loss of consciousness, restriction of work or of motion, or
24 transfer to another job, except that any information which
25 identifies an individual employee shall be confidential. The
26 commissioner shall promote, encourage or directly engage in
27 programs of studies, information and communication concerning
28 occupational safety and health statistics.

29 (cf: P.L.1983, c.516, s.16)

30 11. Section 17 of P.L.1983, c.516 (C.34:6A-41) is amended to
31 read as follows:

32 17. a. If the commissioner determines that an employer has
33 violated a provision of this act, or a safety [or health] standard or
34 regulation promulgated under this act, if the commissioner
35 receives a certification from the Commissioner of Health that an
36 employer violation has been determined to exist within the
37 Commissioner of Health's jurisdiction, or if [he has received] the
38 commissioner receives a report from [the Bureau of Fire Safety
39 of the Department of Community Affairs,] the Department of
40 Labor or the Department of Health, prepared as a result of the
41 investigation of the death or serious injury of one or more
42 firefighters, which indicates the existence of a violation of this
43 act or of a safety standard promulgated under this act, he shall
44 with reasonable promptness, and in no case more than six months
45 after his determination or the receipt of the certificate or
46 report, issue to the employer a written order to comply which
47 shall describe the nature of the violation, including a reference to
48 the provision of the section, standard, regulation or order alleged
49 to have been violated, the sanction therefor, where appropriate,
50 and shall fix a reasonable time for compliance. [Determinations
51 regarding health standards, and written orders issued pursuant
52 thereto, shall be made in consultation with the Commissioner of
53 Health.]

54 b. [Where] if the commissioner issues to an employer an order

1 to comply, the employer shall post such order or a copy thereof
2 at or near each location of the violation cited in the order so that
3 it is clearly visible to affected employees. The commissioner
4 shall make such order available to employee representatives and
5 affected employees, and shall make the order available to the
6 public upon request.

7 c. If no notice of intent to contest any provision of the order is
8 filed with the commissioner by an employer, employee or
9 employee representative within fifteen working days of the
10 issuance of an order to comply, the order shall be deemed final
11 and not subject to review by any court or agency. If, within
12 fifteen working days of the issuance of an order to comply, any
13 employer, employee or employee representative files a notice
14 with the commissioner of intent to contest any provision of the
15 order, the commissioner shall immediately advise the
16 Occupational Safety and Health Review Commission of the
17 notification, and the commission shall afford an opportunity for a
18 hearing. The review commission shall thereafter issue an order,
19 based on a finding of fact, affirming, modifying, or vacating the
20 commissioner's order to comply or the proposed penalty, or
21 directing other appropriate relief, and the order shall become
22 final 45 days after its issuance. The rules of procedure
23 prescribed by the review commission shall provide affected
24 employers, employees, or representatives of affected employees
25 an opportunity to participate as parties to hearings under this
26 subsection.

27 d. If the time for compliance with an order of the
28 commissioner issued pursuant to this section elapses, and the
29 employer has not made a good faith effort to comply, [within its
30 powers and financial resources, the employer shall be liable to a
31 penalty of not more than \$1,000.00 per day to be collected] the
32 commissioner shall impose a civil administrative penalty of up to
33 \$7,000 per day for each violation of a provision of P.L.1983, c.516
34 (C.34:6A-25 et seq.), or of a standard or regulation promulgated
35 under that act, or of an order to comply. Any employer who
36 willfully or repeatedly violates the requirements of this section
37 or any standard, rule, order or regulation promulgated under that
38 act shall be assessed a civil administrative penalty of up to
39 \$70,000 for each violation. Penalties imposed under this section
40 may be recovered with costs in a civil action commenced by the
41 commissioner by a summary proceeding under "the penalty
42 enforcement law" (N.J.S.2A:58-1 et seq.) in the Superior Court or
43 a municipal court, either of which shall have jurisdiction to
44 enforce "the penalty enforcement law" in connection with this
45 act. If the violation is of a continuing nature, each day during
46 which it continues after the date given for compliance in
47 accordance with the order of the [department] commissioner shall
48 constitute an additional separate and distinct offense.

49 [d.] e. The commissioner is authorized to compromise and
50 settle any claim for a penalty under this section in such amount
51 as, in the discretion of the commissioner, may appear appropriate
52 and equitable under all of the circumstances[, including a rebate
53 of any such penalty paid up to 90% thereof where such person
54 satisfies the commissioner within one year or such other period as

1 the commissioner may deem reasonable that such violation had
2 been eliminated or removed or that such order or injunction has
3 been met or satisfied, as the case may be]. In any claim involving
4 investigations conducted by the Department of Health, the
5 commissioner shall make the determination as to the compromise
6 or settlement of the claim in consultation with the Commissioner
7 of Health.

8 (cf: P.L.1991, c.186, s.2)

9 12. Section 18 of P.L.1983, c.516 (C.34:6A-42) is amended to
10 read as follows:

11 18. a. There is established an Occupational Safety and Health
12 Review Commission within the Department of Labor to hear
13 appeals [from citations, notifications] regarding orders to comply
14 and penalties issued under this act. The commission shall consist
15 of three members appointed by the Governor from among persons
16 who by reason of training, education or experience are qualified
17 to carry out the functions of the commission. The Governor shall
18 designate one of the members of the commission to serve as
19 chairman.

20 b. Members of the review commission shall serve terms of four
21 years and until their successors are appointed. The salaries,
22 compensation and wages of the members of the commission shall
23 be established by the commissioner. The Department of Labor
24 shall provide the review commission with the support staff
25 necessary for the review commission to perform its duties. The
26 members and the support staff shall be reimbursed for necessary
27 expenses incurred in the performance of their duties.

28 c. The review commission shall meet as often as is necessary
29 to hear and rule in appeals [from citations, notifications]
30 regarding orders to comply and penalties issued under this act.
31 The review commission shall adopt rules with respect to the
32 procedural aspects of its hearings.

33 d. An employee or employee representative may participate as
34 parties to any proceeding regarding the employees' employer
35 before the review commission.

36 e. The review commission shall hear and make a determination
37 upon any proceeding instituted before it, and shall make a report
38 of the determination which shall constitute its final disposition of
39 the proceedings. The report shall become the final order of the
40 commission [within 30] 45 days [of] after the issuance of the
41 report.

42 [e.] f. In the conduct of hearings the review commission may
43 subpoena and examine witnesses, require the production of
44 evidence, administer oaths and take testimony and depositions.

45 [f.] g. After hearing an appeal the review commission may
46 sustain, modify or dismiss a citation or penalty.

47 (cf: P.L.1983, c.516, s.18)

48 13. Section 21 of P.L.1983, c.516 (C.34:6A-45) is amended to
49 read as follows:

50 21. a. No person shall discharge, or otherwise discipline, or in
51 any manner discriminate against any employee because such
52 employee has filed any complaint or instituted or caused to be
53 instituted any proceeding under or related to this section or has
54 testified or is about to testify in any such proceeding, or because

1 of the exercise by such employee on behalf of himself or others
2 of any right afforded by this section.

3 b. Any employee who believes that he has been discharged,
4 disciplined or otherwise discriminated against by any person in
5 violation of this section may, within 180 days after the employee
6 first has knowledge such violation did occur, [bring an action in
7 the Superior Court against the person alleged to have violated the
8 provisions of this section. In any such action, the Superior Court
9 shall have jurisdiction, for cause shown, to restrain violations of
10 this section and] file a complaint with the commissioner alleging
11 that discrimination. Upon receipt of the complaint, the
12 commissioner shall cause an investigation to be made as he deems
13 appropriate. If, upon that investigation, the commissioner or his
14 designee determines that the provisions of this section have been
15 violated, he shall, not more than 90 days after the receipt of the
16 complaint, notify the employer and the employee of his
17 determination, which shall include an order for all appropriate
18 relief, including rehiring or reinstatement of the employee to his
19 former position with back pay and reasonable legal costs. The
20 notice shall become the commissioner's final determination,
21 unless, within 15 days of receipt of the notice, the employer or
22 employee requests a hearing before the commissioner or his
23 designee, in which case the commissioner shall issue his final
24 determination not more than 45 days after the hearing report is
25 issued.

26 c. Nothing in this section shall be deemed to diminish the
27 rights of any employee under any law, rule or regulation or under
28 any collective negotiation agreement.

29 d. Any waiver by an employee or applicant for employment of
30 the benefits or requirements of this act shall be against public
31 policy and be void and any employer's request or requirement
32 that an employee waive any rights under this act as a condition of
33 employment or continued employment shall constitute an act of
34 discrimination.

35 (cf: P.L.1983, c.516, s.21)

36 14. Section 25 of P.L.1983, c.516 (C.34:6A-49) is amended to
37 read as follows:

38 25. [Nothing] Except as provided in section 6 of P.L.1983,
39 c.516 (C.34:6A-30), nothing in this act shall be deemed to
40 conflict with or supersede any provision of the "State Uniform
41 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.)
42 or the code promulgated thereunder or to affect or limit the
43 powers, duties, authorities and responsibilities of the
44 Commissioner of Community Affairs or any enforcing agency
45 thereunder. [Nothing] Except as provided in section 6 of P.L.1983,
46 c.516 (C.34:6A-30), nothing in this act shall be deemed to
47 conflict with or supersede any provision of the "Uniform Fire
48 Safety Act," P.L.1983, c.383 (C.52:27D-192 et al.), or the code
49 promulgated thereunder, nor affect or limit the powers, duties,
50 authorities and responsibilities of the Commissioner of
51 Community Affairs or any enforcing agency thereunder.

52 Whenever an action taken to comply with the provisions of this
53 act makes it necessary for a property owner or employer to
54 obtain a permit pursuant to the State uniform construction code,

1 the owner or employer shall obtain the permit from the enforcing
2 agency having jurisdiction. The commissioner shall inform any
3 owner or employer who is required to take an action to be in
4 compliance that it is the responsibility of the owner or employer
5 to contact the agency having jurisdiction to determine whether a
6 permit is required and to obtain any required permit.

7 (cf: P.L.1983, c.516, s.25)

8 15. Section 27 of P.L.1983, c.516 (C.34:6A-51) is amended to
9 read as follows:

10 27. This act shall take effect immediately [, except that the
11 standards adopted pursuant to section 6 of this act shall not
12 become operative with regard to any employer as defined in
13 subsection (1) of paragraph c. of section 3 of this act until the
14 first day immediately following the first year after the standards
15 otherwise take effect, and further, that the standards adopted
16 pursuant to section 6 of this act shall not become operative with
17 regard to any employer as defined in subsection (2) of paragraph
18 c. of section 3 of this act until the first day immediately
19 following the second year after the standards otherwise take
20 effect].

21 16. (New section) a. Not later than December 31 of the first
22 full calendar year following the effective date of this 1994
23 amendatory and supplementary act and not later than December
24 31 of each subsequent year, the commissioner shall, in
25 consultation with the Commissioners of Health and Community
26 Affairs, issue to the Governor and the Legislature an annual
27 report on the effects of this 1994 amendatory and supplementary
28 act on the protections provided, State plan approval, and costs
29 and benefits to public employees and employers.

30 b. The report issued pursuant to subsection a. of this section
31 on the fifth full calendar year following the effective date of this
32 1994 amendatory and supplementary act shall include any
33 recommendations the commissioner deems appropriate for
34 amendments to, or the repeal of, this 1994 amendatory and
35 supplementary act, provided that the recommendations shall
36 include an implementation plan which includes measures to offset
37 any loss of federal funding caused by any recommended
38 amendments or repeal.

39 17. Section 13 of P.L.1983, c.516 (C.34:6A-37) is repealed.

40 18. This act shall take effect immediately.

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43 STATEMENT

44
45 This Assembly Substitute modifies the "New Jersey Public
46 Employees' Occupational Safety and Health Act" (PEOSHA) for
47 the purpose of making the State's Public Employees'
48 Occupational Safety and Health (PEOSH) program eligible for
49 federal approval and funding under the "Occupational Safety and
50 Health Act of 1970," (OSHA), Pub.L.91-596. It is estimated that
51 the federal funding could reduce State spending as much as \$1
52 million, while sustaining the current level of service.

53 To attain that purpose, the substitute makes the following
54 changes to the PEOSHA:

- 1 1. Designates the State Department of Labor to be the sole,
2 rather than primary, agency responsible for administering and
3 enforcing the State PEOSH plan;
- 4 2. Eliminates the PEOSH administrative role of the
5 Department of Community Affairs, while continuing to involve
6 that department in consultation and other support functions with
7 respect to issues regarding building and structural safety;
- 8 3. Provides for the immediate adoption as a PEOSH standard
9 of any standard adopted by OSHA;
- 10 4. Prohibits the adoption of any PEOSH standard within the
11 scope of the State uniform construction code or the uniform fire
12 safety code unless the standard is a standard adopted by OSHA;
- 13 5. Requires changes be made in the State's uniform
14 construction code or the uniform fire safety code as needed to
15 make the codes as stringent as PEOSH standards;
- 16 6. Requires the Commissioner of Community Affairs to
17 prepare for submission to the U.S. Department of Labor an
18 application permitting the incorporation into the State's PEOSH
19 plan of any provision of the uniform construction code or uniform
20 fire safety code which differs from the relevant OSHA standard
21 but which the commissioner finds to be as effective as the
22 standard;
- 23 7. Gives all rulemaking authority under PEOSHA to the
24 Commissioner of Labor, eliminating the requirement that consent
25 be obtained from the Public Employees' Occupational Safety and
26 Health Advisory Board;
- 27 8. Requires that facilities leased by public employers be
28 subject to PEOSH standards;
- 29 9. Conforms PEOSH enforcement procedures,
30 record-keeping, data-collection and penalties with OSHA
31 requirements; and
- 32 10. Requires the issuance to the Governor and the Legislature
33 of annual reports on the impact of this legislation on the PEOSH
34 program and public employees and employers.

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39 Modifies the "New Jersey Public Employees' Occupational Safety
40 and Health Act."

1 following the second year after the standards otherwise take
2 effect].

3 16. (New section) a. Not later than December 31 of the first
4 full calendar year following the effective date of this 1994
5 amendatory and supplementary act and not later than December
6 31 of each subsequent year, the commissioner shall, in
7 consultation with the Commissioners of Health and Community
8 Affairs, issue to the Governor and the Legislature an annual
9 report on the effects of this 1994 amendatory and supplementary
10 act on the protections provided, State plan approval, and costs
11 and benefits to public employees and employers.

12 b. The report issued pursuant to subsection a. of this section
13 on the fifth full calendar year following the effective date of this
14 1994 amendatory and supplementary act shall include any
15 recommendations the commissioner deems appropriate for
16 amendments to, or the repeal of, this 1994 amendatory and
17 supplementary act, provided that the recommendations shall
18 include an implementation plan which includes measures to offset
19 any loss of federal funding caused by any recommended
20 amendments or repeal.

21 17. Section 13 of P.L.1983, c.516 (C.34:6A-37) is repealed.

22 18. This act shall take effect immediately.

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STATEMENT

26

27 This bill modifies the "New Jersey Public Employees'
28 Occupational Safety and Health Act" (PEOSHA) for the purpose
29 of making the State's Public Employees' Occupational Safety
30 and Health (PEOSH) program eligible for federal approval and
31 funding under the Occupational Safety and Health Act of 1970
32 (OSHA), Pub.L. 91-596. It is estimated that the federal funding
33 could reduce State spending as much as \$1 million, while
34 sustaining the current level of service.

35 To attain that purpose, the bill makes the following changes to
36 the PEOSHA:

37 1. Designates the State Department of Labor to be the sole,
38 rather than primary, agency responsible for administering and
39 enforcing the State PEOSH plan;

40 2. Eliminates the PEOSH administrative role of the
41 Department of Community Affairs, while continuing to involve
42 that department in consultation and other support functions with
43 respect to issues regarding building and structural safety;

44 3. Provides for the immediate adoption as a PEOSH standard
45 of any standard adopted by OSHA;

46 4. Prohibits the adoption of any PEOSH standard within the
47 scope of the State uniform construction code or the uniform fire
48 safety code unless the standard is a standard adopted by OSHA;

49 5. Requires changes be made in the State's uniform
50 construction code or the uniform fire safety code as needed to
51 make the codes as stringent as PEOSH standards;

52 6. Requires the Commissioner of Community Affairs to
53 prepare for submission to the U.S. Department of Labor an
54 application permitting the incorporation into the State's PEOSH

1 plan of any provision of the uniform construction code or uniform
2 fire safety code which differs from the relevant OSHA standard
3 but which the commissioner finds to be as effective as the
4 standard;

5 7. Gives all rulemaking authority under PEOSH to the
6 Commissioner of Labor, eliminating the requirement that consent
7 be obtained from the Public Employees Occupational Safety and
8 Health Advisory Board;

9 8. Requires that facilities leased by public employers be
10 subject to PEOSH standards;

11 9. Conforms PEOSH enforcement procedures,
12 record-keeping, data-collection and penalties with OSHA
13 requirements; and

14 10. Requires the issuance to the Governor and the Legislature
15 of annual reports on the effects of the bill.

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20 Modifies the "New Jersey Public Employees' Occupational Safety
21 and Health Act."

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY SUBSTITUTE FOR

ASSEMBLY, No. 2064

STATE OF NEW JERSEY

DATED: FEBRUARY 27, 1995

The Senate State Government Committee reports favorably the Assembly Substitute for Assembly, No. 2064.

This bill modifies the "New Jersey Public Employees' Occupational Safety and Health Act" (PEOSHA) for the purpose of making the State's Public Employees' Occupational Safety and Health (PEOSH) program eligible for federal approval and funding under the "Occupational Safety and Health Act of 1970," (OSHA), Pub.L.91-596. It is estimated that the federal funding could reduce State spending as much as \$1 million, while sustaining the current level of service.

To attain that purpose, the bill makes the following changes to the PEOSHA:

1. Designates the State Department of Labor to be the sole, rather than primary, agency responsible for administering and enforcing the State PEOSH plan;
2. Eliminates the PEOSH administrative role of the Department of Community Affairs, while continuing to involve that department in consultation and other support functions with respect to issues regarding building and structural safety;
3. Provides for the immediate adoption as a PEOSH standard of any standard adopted by OSHA;
4. Prohibits the adoption of any PEOSH standard within the scope of the State uniform construction code or the uniform fire safety code unless the standard is a standard adopted by OSHA;
5. Requires changes be made in the State's uniform construction code or the uniform fire safety code as needed to make the codes as stringent as PEOSH standards;
6. Requires the Commissioner of Community Affairs to prepare for submission to the U.S. Department of Labor an application permitting the incorporation into the State's PEOSH plan of any provision of the uniform construction code or uniform fire safety code which differs from the relevant OSHA standard but which the commissioner finds to be as effective as the standard;
7. Gives all rulemaking authority under PEOSHA to the Commissioner of Labor, eliminating the requirement that consent be obtained from the Public Employees' Occupational Safety and Health Advisory Board;
8. Requires that facilities leased by public employers be subject to PEOSH standards;
9. Conforms PEOSH enforcement procedures, record-keeping, data-collection and penalties with OSHA requirements; and
10. Requires the issuance to the Governor and the Legislature of annual reports on the impact of this legislation on the PEOSH program and public employees and employers.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2064

STATE OF NEW JERSEY

DATED: OCTOBER 6, 1994

The Assembly Labor Committee reports favorably Assembly Bill No. 2064.

This bill modifies the "New Jersey Public Employees' Occupational Safety and Health Act" (PEOSHA) for the purpose of making the State's Public Employees' Occupational Safety and Health (PEOSH) program eligible for federal approval and funding under the Occupational Safety and Health Act of 1970 (OSHA), Pub.L. 91-596. It is estimated that the federal funding could reduce State spending as much as \$1 million, while sustaining the current level of service.

To attain that purpose, the bill makes the following changes to the PEOSHA:

1. Designates the State Department of Labor to be the sole, rather than primary, agency responsible for administering and enforcing the State PEOSH plan;
2. Eliminates the PEOSH administrative role of the Department of Community Affairs, while continuing to involve that department in consultation and other support functions with respect to issues regarding building and structural safety;
3. Provides for the immediate adoption as a PEOSH standard of any standard adopted by OSHA;
4. Prohibits the adoption of any PEOSH standard within the scope of the State uniform construction code or the uniform fire safety code unless the standard is a standard adopted by OSHA;
5. Requires changes be made in the State's uniform construction code or the uniform fire safety code as needed to make the codes as stringent as PEOSH standards;
6. Requires the Commissioner of Community Affairs to prepare for submission to the U.S. Department of Labor an application permitting the incorporation into the State's PEOSH plan of any provision of the uniform construction code or uniform fire safety code which differs from the relevant OSHA standard but which the commissioner finds to be as effective as the standard;
7. Gives all rulemaking authority under PEOSH to the Commissioner of Labor, eliminating the requirement that consent be obtained from the Public Employees' Occupational Safety and Health Advisory Board;
8. Requires that facilities leased by public employers be subject to PEOSH standards;
9. Conforms PEOSH enforcement procedures, record-keeping, data-collection and penalties with OSHA requirements; and
10. Requires the issuance to the Governor and the Legislature of annual reports on the effects of the bill.