

LMAC Safety Committee August 14, 2014

Subcommittee Present: Don Judge, Lance Zanto, Riley Johnson, Al Smith (by teleconference) TJ Eyer, Leah Tietz, Glenn Oppel, Chris Cavazos, Tammy Lynn

Guests: Thom Danenhower, MMIA; Robyn Morrison, WSMT; Diana Ferriter, Bryan Page, Anne Wolfinger, ERD; Mark Cadwallader, DLI

State OSHA Program Enabling Legislation

Diana explained this will not be a department bill but an LMAC bill and will need a sponsor.

Mark walked the committee through the bill. He explained it was very similar to the current act that Montana has for public sector employers. Most of the sections mirrored federal OSHA. The provision in Section 7 regarding a state advisory council is not in public part of statute, but is recommended by feds for state programs. It would consist of 10 members appointed by the Governor from business, labor, occupational health and safety, and would include the Commissioner of Labor and Industry and a member for the Governor's Office of Economic Development or Department of Commerce. Unlike the LMAC, the advisory council would be statutory.

The committee discussed records and reports inspections, and conditions for search warrants. Regarding reports of inspection, Mark explained an escalated series of penalties can be imposed. This tracks with the federal OSHA act and the feds look for this. Penalties go into workers' compensation administrative fund but Diana said we need to consider how the penalties could be used and there was a strong consensus they not be used for enforcement but it would be good to use them for education.

Mark explained Section 12: Judicial review provided assurance to feds we have administrative processes for contested cases (MAPA).

The committee discussed Section 13: Retaliation. Called whistleblower protection under Fed act, in Montana it can be handled under Montana Human Rights Bureau in the Employment Relations Division. This is different from feds but may avoid another level of bureaucracy, plus the bureau has trained investigators. A new section could be added to the human rights statute regarding this, mirroring fed retaliation language.

Mark noted there was a lot of redundancy but was required for federal approval.

Federal OSHA must approve the draft enabling legislation before it is submitted to the Legislature, but Diana and Mark were unsure of OSHA's involvement if the legislation was amended through the legislative process. To meet this deadline, Diana asked if the LMAC could approve a final draft at September 9th meeting. The general indication of the committee was yes, although both Chris Cavazos and Glenn Oppel indicated they wanted more feedback from their membership.

Chris asked how long it will take the feds to review the draft bill. Mark said it goes through regional up to national OSHA. Bryan said it will depend a lot on how much we vary from the federal act.

Diana explained we won't just send the feds the legislation but a packet explaining the draft enabling legislation including a crosswalk between the fed act and ours. Mark said our main "stray" is in how we deal with the whistleblower protection. Al asked if there is a way to check with the feds regarding the whistleblower provision before next week and suggested giving them a heads up. Diana agreed.

The committee discussed the remainder of the document. Section 18 provides freestanding funding right now which would be easier to coordinate with the bills. Section 19 creates the exemption to human rights act to enable whistleblower protection. Section 20 notes where to send penalties. This is where how the money could be spent would be put in. The rest is essentially boilerplate and already in Montana's statute but specifies private sector applicability.

Lance asked if the enabling legislation can be repealed in the future if necessary and Mark indicated the Legislature could repeal it.

The committee further discussed the makeup of the safety advisory committee. Mark said he used language from Building Codes Commission statute. Thom Danenhowe asked how this bill would be affected by the ERD funding bill. Diana said they would be coordinated if the funding bill passed. Mark added the state OSHA bill could go forward regardless.

Riley asked why not just amend current public sector law to include the private sector. Don said the state would not receive any federal funding for implementation and Diana concurred.

Leah asked about probable cause requirement for search warrant, if it could prevent any inspections from being done and what constitutes probable cause. Lance gave three examples: serious injury, employee complaint, witness to cause.

Riley said we would have the ability to require corrective action instead of immediately going to penalties. Thom said MMIA was informally in favor of a state OSHA. It was explained public sector fines would remain the same however. Diana said it was not our practice to fine public employers but to work with them. Riley recommended addressing penalties down the road after the enabling legislation.

Glenn said his stakeholders had concerns and questions about penalty amounts and where the penalties were earmarked (preferably safety education and outreach). He questioned how the safety advisory committee would interact with rule making authority and would like to see it like the Board of Environmental Review. He expressed concern about the State exceeding federal benchmarks, but recognized, however, in some areas like oil and gas there were no federal benchmarks. He said a decent approach may be using may/shall language already in the draft. He also recommended a partnership approach rather than unannounced site visits. He suggested putting in a good faith clause to protect employers from retaliation from employees.

The committee discussed the composition of the safety committee, including having legislature leadership from each party appoint a committee member, having two members attached but not as voting members, and having a liaison from the Governor's Office of Economic Affairs.

Bryan said the feds would allow the SHARPS and VPP programs with our own guidelines.

Diana said the enabling legislation could be a companion bill to the ERD funding bill and could then have a common sponsor.

There was general agreement to amend draft to have penalty funding go to safety education and add language about legislative liaisons. The committee discussed the rulemaking process for advisory council but decided to leave language as is.

Schools Outreach

Leah reported no new action since the last meeting.

Riley said Helena College has OSHA 10-hour class listed in back of its fall semester catalog. Leah will talk to college about noting renewal credits for the OSHA training and will pick up extra catalogs. Riley said to give the college recognition for doing it and use catalog to promote the course to other schools. Don suggested getting a letter from Lt. Governor on behalf of LMAC promoting it.

TJ said Robyn Morrison with WorkSafeMT was invited to a meeting of OPI's curriculum specialists and presented ideas. They discussed a social media campaign for marketing contests. Robyn used the WorkSafeBC video contest as example and talked about tapping into existing network of programs, 2-minute student videos uploaded to YouTube, different categories with cash prizes, and more. She will meet with TJ's group again in September. In addition to student groups, there was some interest in integrating safety training into classroom curriculum.

Bryan contacted the Department information officer to put out a press release on reaching 1,000 students in training.

Tammy mentioned an ASSE grant: www.asse.org/foundation/research/research_studies.php

MT State Procurement

Lance discussed the topic with Marv Jordan at last LMAC meeting. Bryan and Jerry will be presenting to the contractor's board in September. Lance found out language can be added to state contracts simply saying contractors will comply with state safety culture act. Mark said it should already be covered in the current boilerplate language. Don said it was a question of if state government going to enforce the current requirement of the law. Bryan suggested having a letter from the contractor's insurer that they comply with Act.

Lance said the first step is to rally state procurement staff and show them injury rates we see by pulling WC injuries, and ask them to put in each agency's bid specifications notice of Safety Culture Act. This will alert contractors that the state is looking at safety. He suggested working through agencies rather than State Procurement Bureau.

Tammy told the committee about an executive order issued July 31, 2014 on fair pay and safe workplaces. It can be viewed at: <http://www.whitehouse.gov/the-press-office/2014/07/31/executive-order-fair-pay-and-safe-workplaces>