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State Occupational Safety And Health Plan.

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Official Title and Summary Prepared by the Attorney General

STATE OCCUPATIONAL SAFETY AND HEALTH PLAN. INITIATIVE STATUTE. Federal law permits states to enforce occupational safety and health standards in private sector employment pursuant to federally approved state plan. California has had such a state plan and has occupational safety laws regulating private and public employment. In 1987, the Governor took action to withdraw the plan and to reduce its funding. This measure requires funds to be budgeted for the state plan and requires steps be taken to prevent withdrawal of federal approval of the plan or, if withdrawn, to require submission of new plan. Other changes are made. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: The cost to state government depends on the results of legal action on the issue of the State's present obligation to administer private sector enforcement. If it is held that the Governor legally terminated the private sector Cal-OSHA program, then, assuming the previous level of federal matching funds is made available, the annual net increase in General Fund costs could exceed \$12 million, which would be offset by revenue from fines of approximately \$1.6 million annually. If it is held that the State already has an obligation to administer the private sector program notwithstanding the Governor's action, then annual state General Fund costs could be approximately \$700,000 to administer a mine inspection program.

Analysis by the Legislative Analyst

Background

Under the 1970 Federal Occupational Safety and Health Act (OSHA), programs have been established to protect the life, safety and health of workers. These programs are operated either by the federal government or by an individual state under a federally approved plan. The federal government pays about half of the costs of operating approved state programs.

California has operated its own program—referred to as Cal-OSHA—since 1973. Under Cal-OSHA, the State Department of Industrial Relations (DIR) enforces workplace standards and regulations for both the private and public sectors. In 1987, however, the Governor requested withdrawal of the private-sector component of the state plan and eliminated funding for that component. This action was challenged, and a state appellate court ruled that the state must continue operation of the private-sector program. At the time of this writing (June 1988), this decision was on appeal to the California Supreme Court. In the meantime, the federal government has been operating its own private-sector workplace enforcement program in the state. Federal workplace standards are not as strict as the state's, and currently the federal enforcement program has fewer staff than the state had in 1987.

In addition, a California court ruled in 1986 that state law prohibited DIR from enforcing state workplace health and safety standards where the federal government is actively enforcing federal standards. This decision resulted in the state discontinuing enforcement of state standards for mines and tunnels, because the federal government was actively enforcing its standards.

Proposal

This measure requires the Governor and DIR to take whatever steps are necessary to restore state operation of the private-sector Cal-OSHA program. The measure also requires the Governor to: (1) propose sufficient funds in the budget submitted to the Legislature to minimize the risk to workers from industrial injuries, illnesses and

exposure to toxic substances, and (2) seek the maximum level of federal funds to support the costs of administering the state plan.

The measure also authorizes the state to enforce state workplace health and safety standards in situations where the federal government is actively enforcing federal standards (referred to as "concurrent jurisdiction"). This would be allowed, however, only if specifically permitted by federal law.

Fiscal Effect

The fiscal effect of this measure would depend on how the California Supreme Court rules on the state's obligation to conduct a private-sector Cal-OSHA program.

If the Court Finds No Existing Obligation to Operate the Program. If the court rules that the Governor legally terminated the private-sector Cal-OSHA program, this measure would impose new costs on the state by requiring it to restore the program. Reestablishing the program would cost about \$23 million annually. About half of these costs (\$11.5 million) would be paid from the State General Fund and the balance from the federal funds. This estimate assumes that the state's previous level of Cal-OSHA activity would be sufficient to minimize risks to workers, and that the state would receive matching federal funds. In addition to the \$11.5 million in state costs to reestablish the Cal-OSHA program, the state also could incur costs due to the "concurrent jurisdiction" provision. If the state authorized the enforcement of state workplace health and safety standards for mines and tunnels, it would incur annual General Fund costs of about \$700,000. Thus, total state costs under this measure could exceed \$12 million annually. The reestablishment of a private-sector Cal-OSHA program also would result in additional state revenues from the collection of fines imposed on violators of health and safety laws. It is estimated that these additional General Fund revenues would total approximately \$1.6 million annually.

If the Court Finds an Existing State Obligation to Operate the Program. If the court rules that the state is

already legally obligated to fund the private-sector Cal-OSHA program, the program would be reestablished regardless of this measure. Consequently, the Cal-OSHA provisions of this measure would have little or no effect. The "concurrent jurisdiction" provision, however, could

have a fiscal impact. If the state authorized the enforcement of state workplace health and safety standards for mines and tunnels, it would incur annual General Fund costs of about \$700,000.

Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure amends and adds sections to the Labor Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH RESTORATION ACT

SECTION 1. The people of California find and declare that:

(1) Californians have the right to be effectively protected from injury, illness, and death in the workplace, and from the hazards of exposure to toxic substances on the job and in the community.

(2) The restoration of adequate state standards and enforcement policies to reduce exposure to cancer-causing substances, chemicals that cause birth defects, and other toxic materials is in the interest of all Californians.

(3) Catastrophic releases of such contaminants into our communities can best be prevented through the restoration of effective state safety and health practices in the workplace, including proper equipment and maintenance policies, employee training, and safe handling of toxic materials.

(4) We disapprove of the elimination in 1987 of Cal/OSHA, the California Occupational Safety and Health Administration, and the transfer of control over worker safety and health to the federal government.

(5) Cal/OSHA has a superior record to Federal OSHA in regulating hazardous industries and occupations such as construction, manufacturing, transportation, electronics, chemical, mining, utilities, service, health care, retail and entertainment.

(6) Over the years Cal/OSHA has served as a safety and health model for other states.

(7) A weaker safety and health system means increased death, illness, disabling injuries, pain and suffering for the working people of California.

(8) It is more cost effective for California employers to retain state control over workplace health and safety matters.

(9) The cost of restoring Cal/OSHA to the state is minor (a fraction of one percent of the state's budget) especially when compared to the amounts spent on bureaucratic activities of a less essential nature. Moreover, almost half of Cal/OSHA's budget would be paid for by federal grants.

It is the purpose of this Act to restore California control over private sector safety and health, which the state has provided for since 1913, and has administered since 1973 through Cal/OSHA. Pursuant to Article XIV,

Section 4, of the California Constitution, state jurisdiction over worker safety and health should not be limited, eliminated or otherwise restricted, unless absolutely required by the Federal Constitution.

SECTION 2. Section 50.7 of the Labor Code is amended to read:

50.7. (a) The Department of Industrial Relations is the state agency designated to be responsible for administering the state plan for the development and enforcement of occupational safety and health standards relating to issues covered by corresponding standards promulgated under the federal Occupational Safety and Health Act of 1970 (Public Law 91-596). The state plan shall be consistent with the provisions of state law governing occupational safety and health, including, but not limited to, Chapter 6 (commencing with Section 140) and Chapter 6.5 (commencing with Section 148) of Division 1, and Division 5 (commencing with Section 6300), of this code.

(b) The budget and budget bill submitted pursuant to Article IV, Section 12 of the California Constitution shall include in the item for the support of the Department of Industrial Relations amounts sufficient to fully carry out the purposes and provisions of the state plan and this code in a manner which assures that the risk of industrial injury, exposure to toxic substances, illness and death to employees will be minimized.

(c) Because Federal grants are available, maximum Federal funding shall be sought and, to the extent possible, the cost of administering the state plan shall be paid by funds obtained from federal grants.

(d) The Governor and the Department of Industrial Relations shall take all steps necessary to prevent withdrawal of approval for the state plan by the Federal government. If Federal approval of the state plan has been withdrawn before passage of this initiative, or if it is withdrawn at any time after passage of this initiative, the Governor shall submit a new state plan immediately so that California shall be approved and shall continue to have access to Federal funds.

SECTION 3. Section 6303.5 is added to the Labor Code to read:

6303.5. Nothing in this division shall be construed to limit the jurisdiction of the state over any employment or place of employment by reason of the exercise of occupational safety and health jurisdiction by any federal agency if federal jurisdiction is being exercised under a federal law which expressly authorizes concurrent state jurisdiction over occupational safety or health issues.

SECTION 4. To further its purposes, this initiative may be amended by statute passed in each house by a two-thirds vote.

SECTION 5. If any section, part, clause or phrase of this measure is for any reason held invalid or unconstitutional, the remaining portions shall not be affected but shall remain in full force and effect.

Argument in Favor of Proposition 97

Each year, 11,000 Americans die in work-related accidents. Two million more suffer disabling job-related injuries or illnesses.

The American Lung Association of California, League of Women Voters, California Medical Association, Sierra Club, the California Labor Federation and many other organizations have joined together to restore California's respected job safety program.

For over 70 years California led the nation in protecting our citizens from workplace health and safety hazards. In 1973 these regulations were brought together under the California Occupational Safety and Health Administration, Cal-OSHA. Cal-OSHA was the model of an effective state job safety program, winning praise from business and labor leaders, and health professionals.

In 1987, state funding for Cal-OSHA regulation of private industry worksites was eliminated. An inferior Federal OSHA program took over.

A comparison of Cal-OSHA and Federal OSHA clearly proves that our state plan did a vastly better job of safeguarding the health of all Californians.

CANCER PREVENTION AND TOXIC CONTAMINATION—Federal OSHA does not regulate exposure to 170 toxics that were controlled by Cal-OSHA. For an additional 95 chemicals, federal regulations allow greater exposure than Cal-OSHA permitted. These include toxics that cause cancer, birth defects, and sterility. Toxic contamination threatens everyone, not only workers. Cal-OSHA also had special medical and cancer units to control exposure to toxics. Federal OSHA has no comparable program.

INSPECTIONS OF HAZARDS AND ACCIDENTS—During the first nine months after Federal OSHA took over, total workplace inspections dropped by 65% compared to Cal-OSHA inspections in the same nine-month period one year earlier. Cal-OSHA could shut down equipment or job sites posing

imminent dangers of death or serious injury. Federal OSHA requires a time-consuming federal court procedure before it can stop an imminent threat.

DANGEROUS OCCUPATIONS that were closely regulated by Cal-OSHA are poorly controlled by Federal OSHA, including those in construction, oil refineries, logging, utilities and transportation.

PROSECUTION of those who willfully violate safety laws and kill or maim workers rarely occurs under Federal OSHA. From 1975 to 1985 California district attorneys prosecuted over 200 criminal cases resulting from Cal-OSHA investigations. Between 1970 and 1987 Federal OSHA investigations resulted in only 14 such prosecutions.

In June 1988, the U.S. General Accounting Office, a government watchdog agency, told Congress that under Federal OSHA, "workers in California no longer have the benefit of all the occupational safety and health standards and exposure limits used in the state program."

Nearly every major daily newspaper in California has called for the retention of Cal-OSHA.

Leaders from both political parties, including Lieutenant Governor Leo McCarthy and U.S. Senators Alan Cranston and Pete Wilson, support the restoration of Cal-OSHA.

Californians are entitled to the superior protections of Cal-OSHA. Join us in renewing an agency that saved lives, prevented injuries and protected the environment from toxics. Please vote "YES" on Proposition 97, to restore California's Occupational Safety and Health program.

JOHN F. HENNING
Executive Secretary-Treasurer, California Labor Federation, AFL-CIO

MICHAEL PAPARIAN
State Director, Sierra Club California

LAURENS P. WHITE, M.D.
President, California Medical Association

Rebuttal to Argument in Favor of Proposition 97

The proponents' claim that federal OSHA is an inferior program is wrong.

IN THE LAST SIX MONTHS OF 1987 UNDER FEDERAL OSHA, THE RATE OF WORK-RELATED INJURIES AND ILLNESSES IN CALIFORNIA DECLINED FROM THAT OF THE LAST SIX MONTHS OF 1986 UNDER CAL/OSHA.

Federal OSHA has conducted a successful safety and health program in a majority of states for more than 15 years and has conducted a successful program in California for the past year. Dedicated professionals of federal OSHA has broad enforcement authority and have brought to bear in California the full force and effect of federal law, backed by the powers of the federal courts.

LISTEN TO A STATEMENT FROM ANOTHER STATE WITH LONG EXPERIENCE UNDER FEDERAL OSHA:

"IT HAS BEEN OUR EXPERIENCE IN NEW JERSEY THAT THE FEDERAL SAFETY AND HEALTH INSPECTION PROGRAM HAS DONE A GOOD JOB PROTECTING OUR WORKERS. GIVEN THE FEDERAL GOVERN-

MENT'S IMPRESSIVE TRACK RECORD, WE WOULD NOT CONSIDER STARTING OUR OWN DUPLICATIVE WORKER SAFETY PROGRAM."—Charles Serraino, New Jersey Commissioner of Labor.

Proponents are distorting the facts and arguing from half truths. Federal OSHA has the authority to secure work stoppage when a hazardous situation is detected. It is empowered to go into any business at any time to prevent danger to employees. It doesn't need more paperwork. It gets the job done with experience and common sense.

Proposition 97 has nothing to do with worker safety. It has everything to do with big government, more bureaucrats, and higher taxes.

Please vote NO on Proposition 97.

GEORGE DEUKMEJIAN
Governor

ROBERT STRANBERG
Chief, State Division of Occupational Safety and Health

JOHN HAY
Former President, California Chamber of Commerce

State Occupational Safety and Health Plan. Initiative Statute

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Argument Against Proposition 97

PROPOSITION 97 ASKS STATE TAXPAYERS TO PAY FOR A SERVICE THAT THEY ARE ALREADY FUNDING WITH THEIR FEDERAL TAX DOLLARS. WHY SHOULD CALIFORNIA TAXPAYERS HAVE TO PAY FOR THE SAME SERVICE TWICE?

Proposition 97 will waste millions of taxpayer dollars and add hundreds of bureaucrats to the government payroll without increasing worker safety in the workplace one bit.

No one disputes the fact that government has a responsibility to protect employees in the workplace. To do the job, we need one good worker safety program. We don't need two duplicative ones. YOUR "NO" VOTE WILL PREVENT DUPLICATION IN GOVERNMENT AND PRESERVE WORKER SAFETY.

California now has a good worker safety program. Like 27 other states, including New York, New Jersey and Illinois, our worker safety program is administered by the federal government. Since the enforcement aspect of California's program was turned over to federal authorities, the rate of occupational injuries and illnesses has actually declined.

HOW MANY TIMES HAVE YOU HEARD PEOPLE, ESPECIALLY ELECTED OFFICIALS, SAY THAT WE NEED TO

CUT GOVERNMENT WASTE AND DUPLICATION? THE GOVERNOR DID THAT AND NOW THOSE WHO SUPPORT THIS PROPOSITION WANT TO STOP HIM.

VOTE "NO" AND TELL THESE BIG GOVERNMENT ADVOCATES THAT YOU WANT WORKER SAFETY BUT NOT DUPLICATION.

Government already costs enough and taxes are already high enough, without establishing duplicative programs to provide services we are already receiving.

Voting for Proposition 97 is like asking the sales clerk at the grocery store to let you pay for the same groceries twice! California workers already have a fine worker safety program. Why pay again for the same protection?

VOTE "NO" ON PROPOSITION 97.

GEORGE DEUKMEJIAN
Governor

ROBERT STRANBERG
Chief, State Division of Occupational Safety and Health

JOHN HAY
Former President, California Chamber of Commerce

Rebuttal to Argument Against Proposition 97

Proposition 97 does not waste any state tax dollars.

In fact, penalties against violators of the law generated a initial percentage of Cal-OSHA's budget. The state budget counts to about \$1.600 for every Californian; only 25¢ went to Cal-OSHA. And Proposition 97 would bring back over \$11 million annually in federal funds that Cal-OSHA used to receive.

Proposition 97 makes good business sense. Cal-OSHA's stronger health and safety standards saved Californians money by helping control medical, insurance and welfare costs.

On June 21, 1988, the *Sacramento Bee* newspaper reported:

"There has been a dramatic drop in safety inspections at California job sites since California's worker safety program was abolished last year, a congressional panel was told Monday."

The U.S. General Accounting Office has said Cal-OSHA had stricter toxic limits and "quicker action" on hazards that could threaten death or injury. Under Federal OSHA, Californians

face greater exposure to toxics that can cause cancer, birth defects and sterility.

A 1987 study by a U.S. government investigatory agency criticized Federal OSHA's "total paralysis" in fulfilling its duties.

The National Workplace Safety Institute concluded this summer that "a construction worker in a federally regulated state is three times more likely to die on the job than one in California."

Please consider these nonpartisan reports and help restore California's Occupational Safety and Health Administration by voting "Yes" on Proposition 97.

CAROL FEDERIGHI
President, League of Women Voters of California

HEWITT F. RYAN, M.D.
*President, California Society of Industrial
Medicine and Surgery*

IRA REINER
District Attorney of Los Angeles County