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BILL ANALYSIS

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Senate Bill 93 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Alan Sanborn
Committee: Economic Development and Regulatory Reform

Date Completed: 2-10-09

RATIONALE

The General Industry Safety Standards Commission and the Occupational Health Standards Commission, both of which are part of the Michigan Occupational Safety and Health Administration (MIOSHA), passed motions in 2002 to form a joint advisory committee on ergonomics standards. The Ergonomics Standard Advisory Committee, which was appointed and began meeting in 2003, includes representatives of labor unions, business organizations, and other public- and private-sector entities. The advisory committee's mission statement reads, "The Ergonomics Standard Advisory Committee will pursue a consensus to draft a standard for presentation to the Commissions that would define a minimal process to recognize, evaluate, and where feasible, reduce risk factors that may contribute to work-related musculoskeletal disorders." From the beginning, however, there reportedly has been some disagreement over whether the committee was formed to develop an ergonomics standard or merely to determine whether there is a need for an ergonomics standard to be developed.

In the spring of 2004, resolutions were introduced in both the Senate and House of Representatives urging the Governor to direct MIOSHA not to promulgate ergonomics standards. The Legislature also included a provision in Section 355 of Public Act 156 of 2004 (the Department of Labor and Economic Growth appropriation for fiscal year 2005-06) removing funding for the advisory committee. In the 2005-2006 legislative session, the Legislature passed House Bill 5447 to prohibit a department, board, or commission from promulgating a rule or establishing a standard regarding

workplace ergonomics, but Governor Granholm vetoed the bill. In the 2007-2008 session, the Senate passed Senate Bill 843, which was identical to the vetoed legislation. Meanwhile, the advisory committee has continued to meet and recently submitted a recommended ergonomics standard to the two Commissions. On January 14, 2009, the General Industry Safety Standards Commission and the Occupational Health Standards Commission conducted a joint meeting at which they revised the proposed standard. Both Commissions then voted unanimously to move it forward to the Department of Energy, Labor, and Economic Growth (DELEG) (formerly the Department of Labor and Economic Growth) for informal approval and to begin the process for promulgating an administrative rule.

Some people believe that a mandatory ergonomics standard is unnecessary and would constitute an undue regulatory and financial burden on Michigan employers. It has been suggested that State departments should be prohibited by law from promulgating any rules regarding ergonomics in the workplace, but allowed to provide guidance or assistance for the voluntary implementation of a workplace ergonomics program.

CONTENT

The bill would amend the Michigan Occupational Safety and Health Act to prohibit a department, board, or commission authorized to promulgate rules under the Act from promulgating a rule or establishing a standard regarding workplace ergonomics. A department, board, or commission, however, could provide guidance, best

practices information, or assistance for the voluntary implementation or practice of a workplace ergonomics program. The guidance or other assistance could not advocate workplace ergonomic programs that were more stringent than indicated in Federal Occupational Safety and Health Administration ergonomics guidelines.

For purposes of the bill, "workplace ergonomics" would mean a program or practice that addresses musculoskeletal disorders that are caused by repetitive motion or stress.

Proposed MCL 408.1017

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

An administrative rule mandating a broad ergonomics standard for virtually all Michigan employers would create expensive and burdensome regulatory hurdles that would discourage businesses from locating in this State and could cause existing Michigan businesses to close or leave the State. The bill would prevent the implementation of a mandatory ergonomics standard that would damage Michigan's economy and would allow only State guidance or assistance for the voluntary implementation of a workplace ergonomics program that did not exceed any Federal guidelines.

If a mandatory ergonomics standard were adopted, businesses would face the costs of implementation, training, and administration, which could be significant, putting Michigan firms at a competitive disadvantage with those in other states. One small business owner who testified before the Senate Economic Development and Regulatory Reform Committee estimated that it would cost him \$30,000 to \$40,000 to comply with a mandatory ergonomics standard. Some estimates suggest that the total cost to Michigan businesses would be about \$500.0 million. Michigan would join California as the only states with a mandatory ergonomics standard. (The State of Washington had adopted an ergonomics standard, but that state's voters overturned it.)

Many businesses have no need for an ergonomics program, because the type of work their employees perform typically does not cause repetitive-motion or back or other muscle injuries. Further, some businesses already have implemented ergonomics programs voluntarily, after recognizing their own individual need for those standards, and the potential financial and health benefits of them. Employers do want to protect their employees, and they know that preventing repetitive-motion and other workplace injuries can save them money by improving productivity and reducing medical costs and lost work time due to injuries. Indeed, according to testimony before the Senate committee, Michigan's repetitive stress injury rate has dropped nearly 40% over the past decade, without a broad, mandatory ergonomics standard. Individual businesses are capable of determining their own need for and the benefits of such programs and, with input and assistance from their workers' compensation insurers, have implemented the programs where they are necessary and beneficial.

Response: Dire warnings about increased costs are speculative, at best. Businesses in California, which has the only state-mandated ergonomics standard in the country, have not had to absorb huge costs. The widely cited \$500.0 million cost estimate for Michigan businesses apparently refers to one group's estimate of Michigan's share of the cost of a national standard that was briefly implemented by the Clinton administration, and then rejected by the Bush administration. Businesses likely would save money by avoiding costs related to medical care and lost productivity through the implementation of an ergonomics standard.

Supporting Argument

Despite the lack of a clear need for an ergonomics standard to protect Michigan's workers, the advisory committee has steadily pursued the development of a mandatory standard. This process has been controversial from the start: A member representing the National Federation of Independent Businesses resigned in protest when it became clear that the committee was developing an ergonomics standard without determining the need for one, and a member representing the Michigan Chamber of Commerce resigned when the committee continued with its work despite the removal of funding for the committee in 2005-06.

After several years of meetings and hearings, focused on developing a standard rather than examining whether one is needed, the committee recently made its proposal to the Commissions, which revised and approved the standard. The proposal now moves forward to the DELEG Director, who can initiate the rule-promulgation process. This should be halted. By prohibiting the promulgation of an ergonomics rule, and allowing only guidance in implementing voluntary ergonomics programs that were no stronger than any Federal guidelines, the bill would help Michigan businesses survive these tough economic times by preventing the imposition of an unnecessary and expensive regulatory burden.

Response: The bill would circumvent the rule-promulgation process. The Administrative Procedures Act (APA) specifies the procedure for promulgating rules and the Legislature's role in that process, which includes the ability to reject a rule after it has been promulgated but before it becomes effective. The APA lists the grounds on which a rule may be rejected, including that it is unduly burdensome to the public. Furthermore, prohibiting the promulgation of a particular rule could violate the State Constitution's separation of powers clause. When Governor Granholm vetoed similar legislation in the 2005-2006 legislative session, she cited her "obligation to defend the Executive Branch from encroachment" and stated that the APA "affords ample opportunity for legislative review and reaction". The rule-promulgation process should be allowed to play out before action is taken to halt an ergonomics standard.

Opposing Argument

The bill would interrupt an ongoing deliberative process before it reaches any conclusion. In fact, at this time, no rule has been proposed for promulgation. The advisory committee has been engaged in a collaborative effort to develop a proposal for an ergonomics standard to be considered for rule promulgation that is acceptable to all interested parties, and that would protect workers but not prove to be a burden on employers. The committee included business representatives, labor union members, ergonomics experts, and MIOSHA employees. The committee has operated in an open manner, and accepted input from a variety of sources. Only recently, the committee forwarded its recommendation to the two MIOSHA Commissions, which made

some revisions and then unanimously approved the 17th draft of a proposed ergonomics standard. That action forwarded the proposal to the DELEG Director who now can decide whether to begin the rule-promulgation process. This advisory committee process has been transparent as well as deliberative and, if the Director decides to promulgate a rule, that process will be open as well, as required by the APA. Furthermore, almost 80 people attended the joint meeting of the MIOSHA Commissions that approved the proposal and, during the public comment period, only one person spoke in opposition to the proposed standard.

Opposing Argument

In his testimony before the Senate Committee, the DELEG Director suggested the possibility that the Obama administration may develop a Federal ergonomics standard with which states likely would have to comply. Under the bill, the State would be unable to comply with Federal requirements because MIOSHA would be prohibited from promulgating an ergonomics standard. This could put Michigan in jeopardy of losing out on Federal workplace safety funding.

Response: The bill specifically would allow workplace ergonomics programs that were no more stringent than Federal guidelines.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The potential impact of the bill on State and local government is unknown. It has been claimed that implementation of a workplace ergonomics standard would increase costs for employers, including public employers. Under this view, the proposed prohibition against promulgation of a workplace ergonomics standard would prevent the imposition of future costs on State and local government. Alternatively, others contend that ergonomics standards would prevent injuries and thus reduce the cost to employers for workers' compensation programs.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.