



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 27, 1999

S. 385

Safety Advancement for Employees Act of 1999

*As ordered reported by the Senate Committee on Health, Education, Labor, and Pensions
on April 29, 1999*

SUMMARY

S. 385 would direct the Secretary of Labor to establish programs to help employers comply with the Occupational Safety and Health Act and avoid citations. Those programs would include third-party consultation services and expedited consultation services to small businesses.

Implementing the bill would result in additional costs to the Occupational Safety and Health Administration (OSHA). The precise amounts would depend on how some provisions in the bill would be implemented and the response to the new programs. CBO estimates such costs could be several million dollars over the first two years, and about \$3 million per year thereafter, subject to the availability of appropriations. In addition, enactment of S. 385 would eliminate fines levied by OSHA in cases where companies demonstrate that they have implemented a safety measure at least as stringent as the OSHA regulation being violated. This could decrease the total amount of fines collected; therefore, pay-as-you-go procedures would apply. However, CBO estimates the amounts involved would be less than \$500,000 a year.

S. 385 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). However, that mandate would impose no costs on state, local, or tribal governments. Other provisions of the bill would impose costs on state governments, but such costs would be incurred voluntarily. S. 385 contains a private-sector mandate on workers related to testing for alcohol or controlled substances, but CBO estimates that the direct costs to workers would be negligible.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

For purposes of this estimate, CBO assumes that the necessary amounts will be appropriated for each year. The estimate is based on information from OSHA and from professional safety and health associations. Because this bill would create several new programs within OSHA, CBO cannot provide a precise estimate. The costs of these provisions would depend on how the new programs are implemented and on the extent to which employers and safety and health professionals participate in them.

Third-Party Consultation Services Program and Special Advisory Committee

Sections 3 and 4 would require the Secretary of Labor to provide third-party consultation services within 18 months of enactment. Under this program, an employer could hire a consultant to inspect the workplace and write a consultation report identifying violations and providing for a safety and health program to be established and maintained by the employer. A consultant would give an employer that met the requirements of such a report a certificate of compliance that would exempt that employer from any civil penalty for a period of one year. The exemption would not apply if the employer did not make a good faith effort to remain in compliance as required under the declaration of compliance or to the extent that there was a fundamental change in the hazards of the workplace. The exemption could be extended for another year if the employer passed a re-inspection by a certified consultant.

To implement this program, the Secretary would establish an advisory committee to provide recommendations for third-party consultation services. The Secretary also would be responsible for approving consultants and maintaining a public registry of the names of those who are approved. The Secretary could revoke the status of a qualified consultant or employer if that individual or employer fails to meet the requirements of the program.

Implementing sections 3 and 4 could increase or decrease spending by OSHA. On the one hand, OSHA would pay for the meetings and support staff for the advisory committee. OSHA also would need additional staff to process the applications of individuals that apply to be certified as consultants, maintain a public data bank containing the names of certified individuals, and monitor practicing consultants to ensure compliance. On the other hand, the same number of workplaces could be inspected using fewer OSHA staff, because CBO expects that OSHA would rarely inspect a workplace that had received a certificate of compliance. On balance, CBO expects the net impact of implementing these provisions would likely be a cost of several million dollars over the 2000-2004 period, subject to appropriation of the necessary amounts.

Potential Costs. Most of the costs for implementing sections 3 and 4 would arise in processing applications and policing the program to prevent fraud and abuse. Without knowing the required qualifications or the demand for consultants, CBO cannot estimate how many individuals would apply for certification as consultants. For example, if 25,000 people applied, OSHA would spend \$6 million dollars over the first few years to process applications. Under this scenario, CBO estimates that OSHA would employ 32 full-time employees at about \$90,000 a year (in 2000 dollars) to process 8,000 applications per year. CBO estimates that maintaining the program after the initial pool of applications is processed and policing the program to ensure proper compliance would cost \$1 million annually.

Potential Savings. If OSHA otherwise would have inspected a workplace that successfully participated in the consultation program and S. 385 freed those enforcement efforts to be applied to another establishment, then these provisions could reduce the resources needed at OSHA to maintain the same inspection status for each workplace. That result would occur if giving employers the option to hire private consultants reduces the number of workplaces that OSHA would need to inspect. CBO estimates, however, that any such decrease would be negligible for several reasons. First, many of the people eligible to be consultants might inspect few workplaces. Second, it is unlikely that OSHA would otherwise have inspected many of the employers seeking certificates of compliance. Third, a certification would not exempt employers from inspections. So until the program was well-established, OSHA would still inspect high-hazard workplaces whether or not they received a certificate of compliance under the new program of third-party consultation services.

Education and Certification for OSHA Personnel

Section 5 of S. 385 would require federal employees responsible for enforcing the Occupational Safety and Health Act to meet the same eligibility requirements as a qualified individual under the consultation program created by sections 3 and 4. Many of the inspectors currently working for OSHA do not meet the criteria specified in the bill, and many could require additional training and certification if OSHA inspectors were held to these standards. Because the bill would allow the Secretary to determine criteria by which current employees would qualify, however, CBO estimates this provision would result in minimal additional costs.

Worksite-Specific Compliance Methods

Section 7 would require citations to be waived if employers could demonstrate that employees were protected by methods at least as stringent as the OSHA regulation being violated. By giving employers more leverage and thereby increasing their incentive to contest OSHA citations, this provision could increase the proportion of citations that are contested and the amount of resources OSHA would devote toward litigation. Under current law, about 9 percent of cases involving a citation are contested and OSHA spends about 5 percent or \$6 million a year of its enforcement resources on such cases. The response to this provision and its effect on OSHA's resources cannot be predicted. Based on information from OSHA, this could increase the number of cases by about 25 percent. If this did occur, CBO estimates it would increase the amount OSHA spends on litigation by \$2 million a year.

Technical Assistance Program

Section 8 would require the Secretary to establish a pilot program that would provide expedited consultation services to small businesses in return for a nominal fee. The program would occur in three states for a maximum period of two years. Within 90 days of the termination of the pilot project, the Secretary would submit a report to the Congress evaluating the pilot program. In addition, the bill would codify the existing state consultation program, but reduce the amount OSHA reimburses for travel expenses by 10 percent. CBO estimates that these provisions would not have a significant effect on federal spending.

Prevention of Alcohol and Substance Abuse

Section 10 would permit employers to test for alcohol and substance abuse in accordance with federal guidelines. It also would authorize the Secretary to test employees for use of alcohol or controlled substances during any investigations of a work-related fatality or serious injury. CBO estimates that the cost of overseeing the drug and alcohol programs or of any additional drug and alcohol tests the Secretary would perform as a result of this provision would be not be significant.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Implementing worksite-specific compliance methods could affect fines collected by OSHA in cases where companies demonstrate that they implemented a safety measure at least as stringent as the OSHA regulation being violated. Amounts collected from fines and penalties are considered revenues and are thus subject to pay-as-you-go procedures. However, CBO estimates the amount involved would be less than \$500,000 a year.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

Section 10 of the bill would preempt state laws that are consistent with provisions that establish a voluntary alcohol and drug abuse testing program. CBO considers such preemptions of state law to be mandates under UMRA. This mandate would impose no costs on state, local, or tribal governments.

Section 8 would codify an OSHA regulation under which OSHA enters into cooperative agreements with states to provide consultation services to employers. Currently, states agreeing to participate in this program receive federal reimbursement for 90 percent of the cost of consultation services provided as well as the full cost of training and out-of-state travel. S. 385 would retain the current reimbursement for consultation services, but decrease the reimbursement for training and travel to 90 percent of the costs incurred. Such costs would be voluntary and not significant.

CBO has determined that all other provisions of this bill contain no intergovernmental mandates as defined in UMRA.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

Section 10 would impose a private-sector mandate, as defined by UMRA, by giving the Secretary of Labor the authority to conduct tests for alcohol or controlled substances on private-sector workers during investigations of work-related fatalities or serious injuries. CBO estimates that taking such tests would impose negligible or no monetary costs on affected workers.

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