



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 14, 1997

S. 1237

Safety Advancement for Employees Act of 1997

*As ordered reported by the Senate Committee on Labor and Human Resources on
October 22, 1997*

SUMMARY

S. 1237 would require the Secretary of Labor to establish a third party consultation services program to help employers comply with the Occupational Safety and Health (OSH) Act and avoid a citation. The Secretary would also consider the employers' and employees' effort in complying with the act when issuing a citation. In addition, it would require the National Academy of Sciences to review and make recommendations on regulations issued by the Occupational Safety and Health Administration (OSHA) before they become final.

The bill would result in small additional costs to OSHA. CBO estimates such costs could be several million dollars in the first few years, but would be less than \$1 million annually thereafter, subject to the availability of appropriations. Because S. 1237 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

The bill contains no intergovernmental mandates, as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments. S. 1237 would impose requirements on workers and on the National Academy of Sciences that would constitute private-sector mandates under UMRA. CBO estimates that the direct cost of these mandates would be well below the statutory threshold specified in UMRA (\$100 million in 1996, adjusted annually for inflation).

BASIS OF ESTIMATE

Sections 4 and 5 would require the Secretary to implement a third party consultation services program within 18 months of enactment. An employer would have the opportunity to hire a consultant to evaluate its workplace or safety and health program and report to the employer any violations of the OSH Act and appropriate corrective measures. Within a specified amount of time, the consultant would reinspect the workplace to verify that any

violations identified in the report had been corrected. If, after the reinspection, the consultant determined those violations had been corrected or were being corrected pursuant to a written plan, he would provide the employer a declaration of resolution. For two years after receiving the declaration, the employer would be exempt from the assessment of any civil penalty. However, this exemption would not apply if the employer did not make a good faith effort to remain in compliance or if there was a fundamental change in the hazardousness of the workplace.

The bill would require the Secretary to establish an Advisory Committee to advise her on the consultation services program and assist her in developing guidelines for consultants to use in evaluating a workplace. In addition, the Secretary would approve consultants and develop a public registry of those who had been approved. The Secretary would be permitted to revoke the status of a qualified individual if she determined that the individual failed to meet the requirements of the program.

These sections could increase or decrease spending. On the one hand, OSHA would require additional staff to process the applications of individuals wanting to be certified as consultants, maintain a public data bank of those individuals who qualified, and monitor practicing consultants to ensure compliance. On the other hand, OSHA would presumably inspect fewer workplaces than under current law because it could not give citations to employers with a declaration of resolution.

Most of the costs would arise in processing applications for occupational registered nurses and physicians, industrial hygienists, and safety professionals who sought certification as consultants. Without knowing the required qualifications or the demand for consultants, CBO cannot estimate how many individuals would apply. If all of the 25,000 people in the eligible fields specified in the bill applied, OSHA would spend \$6 million over the first few years to process applications. This estimate assumes that OSHA would employ 32 full-time employees at \$60,000 per year to process about 8,000 applications per year. The actual number of applicants would likely be only a fraction of the number eligible, however. CBO estimates that maintaining the program after the initial pool of applications was processed would cost less than \$1 million annually.

Assuming that OSHA would rarely inspect facilities with declarations of resolution, giving employers the option to hire private consultants would shrink the pool of employers OSHA needed to inspect, thus decreasing the agency's need for resources. However, CBO estimates that the decrease would be negligible. 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 declarations of resolution.

Section 6 of the bill would require the Secretary to have all rules reviewed by the National Academy of Sciences (NAS) before they were finalized. Under current law, the Secretary may issue a final standard if she publishes the proposed rule in the Federal Register and if there are no objections to the proposed rule, or after a hearing in response to any objections. Under this section, the Secretary would not be able to publish the final rule without first submitting it to NAS for its recommendations. The Secretary could decide whether to include the recommendations of the NAS in the final rule, but the bill would require the recommendations to be published with the final standard in the Federal Register. This provision could require the Secretary to hire one additional employee, but the annual cost would be negligible.

Section 7 would require federal employees responsible for enforcing the OSH Act to meet the same eligibility requirements as qualified individuals under the consultation services program created in Sections 4 and 5. 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. However, because the bill would allow the Secretary to determine criteria by which current employees would qualify, CBO estimates this provision would result in minimal additional costs.

Section 9 would provide additional grounds on which employers could contest citations for noncompliance issued by OSHA. It would require citations to be vacated if employers could demonstrate that employees were protected by methods at least as stringent as the OSHA regulation being violated. These provisions could increase OSHA's litigation costs by increasing the incentive for employers to contest citations, but the increase would not be significant.

In addition, this section would require the Secretary to assess a civil penalty against an employee who willfully violated an OSHA requirement with respect to personal protective equipment. If the employee contested the citation or penalty, the Occupational Safety and Health Review Commission would be required to have a hearing and make a determination on the citation. Under current law, the Secretary cannot cite employees. This provision could increase the amount of penalties collected, but the increase would not be significant.

Section 12 would require the Secretary to establish a pilot program providing expedited consultation services to small businesses in three states for a maximum period of two years. Within 90 days of the termination of the program, the Secretary would submit a report to Congress evaluating the pilot program. CBO estimates that the pilot program would not significantly affect federal spending.

Section 14 would permit employers to establish an alcohol and substance abuse testing program. It would also authorize the Secretary to test employees for use of alcohol or controlled substances during any investigations of a work-related fatality or serious injury. Under current law, the Secretary has access to the tests performed through the employer. CBO estimates that the cost of any additional tests the Secretary would perform as a result of this provision would not be significant.

PAY-AS-YOU-GO CONSIDERATIONS: None.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 1237 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. State participation in the affected programs is voluntary. The bill would codify an existing OSHA program that funds cooperative agreements with states that provide workplace safety consultation services to businesses. In fiscal 1997, \$34 million was appropriated for this program.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 1237 would impose two mandates on private-sector entities—one regarding the scientific review of OSHA standards by NAS and the other regarding testing of certain workers for controlled substances. Section 6 of the bill would require the NAS—which is a private organization, not a governmental entity—to appoint a scientific review committee to review and make recommendations on draft versions of OSHA standards. Ordinarily, federal agencies contract with NAS for research or analysis and provide funding for those endeavors. However, S. 1237 is silent on the issue of funding. CBO estimates that the cost to NAS of undertaking these reviews would be about \$2 million annually. Section 14 of the bill would give 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 monetary costs on affected workers.

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