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Analysis of Senate Bill 843 (As Introduced)

Topic:	Promulgation of rules regarding workplace ergonomics
Sponsor:	Senator Sanborn
Co-Sponsors:	None
Committee:	Senate Economic Development & Regulatory Reform
Date Introduced:	October 24, 2007

Date of Analysis: January 29, 2008

Position: The Department of Labor & Economic Growth opposes the bill**.**

Problem/Background:

The Michigan Occupational Safety and Health Act (MIOSHA) was enacted in 1974. Michigan is one of 26 states and territories that administer their own occupational safety and health programs. Michigan is required to provide workplace safety and health protections that are "as effective as" those provided through federal Occupational Safety and Health Administration (OSHA). Although the vast majority of MIOSHA rules are identical to rules promulgated by federal OSHA, Michigan law permits the promulgation of rules differing from federal rules if there is a "clear and convincing need for the standard.

The extensive cost of ergonomic hazards in injury and productivity has been well documented for many decades. After 13 years of analysis by federal OSHA, a final protective rule was established in November 2000. The rule contained a number of controversial sections, one of which included medical removal benefits protection, which clearly impacted state workers' compensation laws. In January 2001, the federal ergonomic rule was rescinded through a Congressional resolution.

Currently, California is the only state with an ergonomics standard. Washington state adopted a standard in 2000, but Washington voters approved Initiative 841 repealing the standard in late 2003. North Carolina's adoption of the proposed federal standard was voided by a declaratory ruling on technical grounds.

Although California is the only state that currently has an ergonomics standard, two Canadian provinces, British Columbia and Saskatchewan, have adopted standards. The British Columbia reportedly resulted in a 45 percent reduction in Muscular Skeletal Disorders in the province. Ontario has also recently considered adopting a standard. In addition to the Canadian experience, at least 20 other countries have implemented standards, including the countries of the

European Union.

Two Michigan standard commissions, the General Industry Safety Commission and the Occupational Health Commission, passed motions in 2002 to form a joint advisory committee to draft a Michigan minimum ergonomic standard covering general industry employers for consideration by the commissions. The proposed standard would not extend to construction employers. The advisory committee recently completed its work and recommended language to the commissions. The commissions have not yet acted on the recommendation.

Governor Granholm vetoed a similar bill in 2006.

Description of Bill:

Amends 1974 PA 154 "Michigan occupational safety and health act" (MCL 408.1001-1094) by adding section 17, which would limit the Department of Labor and Economic Growth, Michigan Occupational Safety and Health Administration, to providing guidance, best practice information, and voluntary assistance regarding workplace ergonomics, and prohibit promulgating a rule addressing workplace ergonomics.

Arguments For:

- Some in the business community are concerned with the costs of compliance. It is argued that these costs will deter job growth. Voluntary guidelines and adoption of best practices are preferable to a mandatory standard.
- The regulatory climate is an important aspect of the business climate, and adoption of an ergonomics standard here would make Michigan stand out from most of the rest of the country. Congress rescinded the federal ergonomics standard in January 2001. Among the states, only California has adopted an ergonomics standard. Washington voters repealed that state's standard in 2003.
- Some argue that an ergonomics standard is premature, because the science relating to ergonomic principles is inadequate. The causes of many musculoskeletal disorders (MSDs) are poorly understood. According to a 2000 study by the Brookings Institution, this lack of a clear understanding is primarily the result of the multiple risk factors associated with MSDs.

Arguments Against:

- In her 2005 veto of a similar bill Governor Granholm stated that *"I have an obligation to defend the Executive Branch from encroachment. . .If the advisory committee determines that administrative rules are needed in this area, and the Executive Branch concurs, the Administrative Procedures Act of 1969 affords ample opportunity for legislative review and reaction. If it is determined that administrative rules are not needed at this time, I have a responsibility to preserve the ability of a future governor to decide otherwise."*
- This legislation would conflict with the department and MIOSHA's obligation to remain "at least as effective" as federal OSHA, and to promulgate rules that are substantially similar to federal OSHA within six months of the federal rule effective date. In the event OSHA was to implement a rule addressing workplace ergonomics in the future, the proposed amendments would prevent Michigan from meeting this obligation. Even in Washington, where voters

approved a ballot initiative rejecting an ergonomics standard, the state is authorized to promulgate an ergonomics rule if federal OSHA does.

- Passage of this bill would conflict with MIOSHA's mandate to determine and promulgate the rules necessary to protect workers from recognized serious hazards. Section 408.1009 Legislative Declaration, states that "The safety, health and the general welfare of employees are primary public concerns. The legislature hereby declares that all employees shall be provided safe and healthful work environments free of recognized hazards." Further, the Act's "General Duty Clause," Section 11(a), requires an employer to furnish to each employee, employment and a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee. In 2003, 51% all Michigan workers' compensation claims can be attributed to strains, sprains and repetitive motion, all injuries central to ergonomics hazards. Therefore, it is incumbent upon the standards commissions to research the issue through the work of the advisory committee to determine whether a standard is needed and feasible.
- This bill would conflict with the responsibilities of the standard Commissions as established in the MIOSH Act. Section 408.1016 and 408.1024 allows for the promulgation of standards by the General Industry Safety Standard Commission and the Occupational Health Standards Commission through the use of an advisory committee, which shall represent the major effected interests. The advisory committee must consist of "affected parties." In this case, the standards commissions recruited a large cross section of Michigan industries and organizations, including the Michigan Health and Hospital Association, the Society of Plastics Industry, Inc., UAW, AFL/CIO, Ford Motor Company, the Michigan Association of Homes and Services for the Aging, the Michigan Chamber of Commerce, the Michigan Manufactures Association, the University of Michigan, the Dow Chemical Company, Blue Cross Blue Shield of Michigan, and Haworth, Inc.
- California's ergonomics standard is frequently described disparagingly by business groups opposed to an ergonomics standard in Michigan. The truth is that California's rule, which requires two identical injuries before an employer is obligated to correct the hazard, is very modest in its impact on business. On March 18, 2004 the California Chamber of Commerce testified to Cal/OSHA that "the current (ergonomics) standard provides a fair, effective and feasible way to address workplace ergonomics. . ." (http://www.calchamber.com/CC/Headlines/Archive/HumanResourcesHealthSafety/LaborSeekingtoResurrectEfforttoReviseCaliforniaErgonomicsRegulation.htm)
- Currently, MIOSHA has the authority to cite employers for ergonomics issues using the General Duty clause. A state ergonomics standard could offer an employer increased certainty compared to the less specific guidance provided by the general duty to maintain a workplace free of hazards.
- Dr. William Lohman, an expert on ergonomics from the University of Minnesota, does not believe that voluntary standards are likely to be effective in controlling MSDs in the workplace. He says that *"while there is clearly a business case for ergonomics interventions that reduce injuries, increase productivity, and improve quality, the marketplace does not uniformly and universally enforce "best practices" on companies. And, even though a company may eventually fail if it consistently ignores safety and health issues, it leaves behind an unacceptable toll of preventable injury and illness. Historically, there is not a single instance of a purely voluntary approach to any significant public health problem that has been successful on a societal scale"* (Quoted from Michigan Department of Labor and

Industry, *Ergonomics Task Force Recommendations*, October 2002)

Supporters/Opponents:

The Michigan Association of Manufacturers, the National Federation of Independent Business - Michigan (NFIB), the Small Business Association of Michigan, the Michigan Chamber of Commerce, the Detroit Regional Chamber of Commerce, the Michigan Soft Drink Association, Michigan Homebuilders Association testified in support of the bill. Opponents include the Michigan AFL-CIO, the United Autoworkers, the Service Empoyees International Union, the International Union of Operating Engineers, and the Utility Workers Council.

Fiscal/Economic Impact:

a) Department:

Budgetary: Lack of a rule regarding ergonomics means that MIOSHA must rely on the Act's General Duty Clause of the standard to address serious workplace issues regarding ergonomics. General Duty Clause violations require more time to investigate and greater written documentation. Although there is no accurate way to estimate the cost, it is reasonable to assume that greater resources would be needed for investigations.

Revenue:

b) State of Michigan

c) Local Government

d) Other State Department

Other Pertinent Information:

Many Michigan employers have evaluated ergonomic hazards in their establishments and implemented workplace improvements that have greatly reduced their injury and illness rates and lowered costs for Workers Compensation. These ergonomic programs were largely more extensive than the minimal program required by these proposed rules.

Administrative Rules Impact:

The bill would limit the department's rulemaking authority pertaining to ergonomics. The bill would also be inconsistent with federal and state law in that we would be prohibited from promulgating an ergonomics standard in the event federal OSHA promulgates one. Michigan would be unable to satisfy its obligation under law to have a state program that is "as effective as" federal OSHA.