

August 3, 2007

To: ORC Western Occupational Safety and Health Group

From: Judi Freyman

Subject: AB 515 Has Been Amended

On August 1, 2007, AB 515, the pending legislation regarding the adoption of PELs by the CA OSH Standards Board, was extensively amended in an effort to remove most of the provisions found objectionable by the business community. The labor representatives who drafted and are supporting the legislation, have recently expressed a willingness to negotiate changes in order to secure passage. This amendment indicates the importance Assembly Member Lieber, the sponsor, and the labor community are placing on this legislation. The amended bill can be found at:

http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0501-0550/ab_515_bill_20070801_amended_sen_v96.pdf

It is important to note that there has been no change in one key provision, the rebuttable presumption that any PEL be the same as the corresponding OEHHA OEL. It is our understanding this rebuttable presumption is considered a non-negotiable provision.

Some of the notable changes are the following:

* The amended bill is being positioned as supplementing the DOSH PEL review process, rather than replacing it. It is identified as a new Labor Code Section 144.6.5, involving criteria considered in adoption of standards, versus an amended Section 142.3, involving the process of adopting standards.

* The language requiring adoption of OEHHA OELs as PELs unless there is clear and convincing evidence of infeasibility has been deleted. In the amendment, PELs must correspond to the extent feasible with OEHHA OELs. See Sec. 144.6.5 (c) (1).

* The requirement that the Standards Board adopt PELs for any hazardous substance known to cause cancer or a chronic health effect for which there is an OEHHA quantitative assessment has been recast and appears to provide room for some discretion. The new language requires the Board to "place among its highest priorities" the adopting of standards for any toxic substances that meet three specific criteria. Under one of those criteria, the material must be likely to be used in the workplace. There has been a lot of discussion about the number of new PELs required by AB 515, and this change seems intended to lower the number and thus reduce costs. See Sec. 144.6.5 (b).

* The calculation for the OEHHA OEL for a carcinogen has been changed from a level that would result in no more than one excess cancer per 100,000 workers, to no more than one excess cancer per 100,000 employees exposed to the carcinogen over a working lifetime. See Sec. 144.6.5 (e) (3).

* In the original bill, DOSH could prepare an assessment of technical feasibility and provide a range of costs to implement the OEHHA OELs. In the amendment, DOSH can submit recommendations for PELs and may convene an advisory committee to assist in preparing those recommendations. This change more closely corresponds with the new DOSH PEL-review process and allows input on health effects in addition to feasibility and costs. The business community has maintained that a new and better PEL review process has been developed by DOSH with stakeholder input. The new language seems to address the argument that the new process should be not be pre-empted by legislation unless shortfalls become apparent. See Sec. 144.6.5 (f)(1).

* The required composition of the advisory committee in the amended bill appears to conform to the composition of the new DOSH Health Expert Advisory Committee; the members of which were recently named. See Sec. 144.6.5 (f) (2).

The amended AB 515 has been re-referred to the Senate Appropriations Committee and is scheduled to be heard on August 20, 2007. ORC will monitor the bill's progress and report further developments.