2/15/2023

Senate Committee on Labor and Business
Senator Kathleen Taylor, Chair
Senator Daniel Bonham, Vice Chair
Oregon State Legislature
900 Court Street NE
Salem, OR 97301

Dear Chair Taylor, Vice Chair Bonham, and Members of the Committee:

On behalf of TNT Safety Consulting, I write to oppose Senate Bill 592.

The proposed amendments to ORS 654.086 in SB 592 and the -1 amendments to SB 592 would unnecessarily increase penalty amounts at or near the figures recently adopted by Federal OSHA. By law, the OR-OSHA plan is to be "as effective as" the Federal OSHA program. "As effective as," does not mean the same.

In the most recent published evaluation of the OR-OSHA program (Evaluation Period: October 1, 2020 – September 30, 2021), Federal OSHA determined that OR-OSHA "maintained a high level of program performance during the review …. It had a comprehensive system for scheduling programmed inspections, and was timely in response to complaints, referrals, and reports of fatalities. The State Plan had an average lapse time of 46 days for both safety and health cases for issuing citations, both better than the national average, and maintained high levels of worker and union involvement during inspections." Federal OSHA's review of 26 OR-OSHA fatality inspection case files found: "well-documented investigations that explained the events leading to the incident. The documentation supported the findings and citations where appropriate." In appeals, OR-OSHA's retention rate for penalties was 97.51%, significantly exceeding the national average. In short, the enforcement data shows that the inspection and penalty authority provided in ORS Chapter 654 is appropriate for Oregon and for OR-OSHA to fulfill its statutory mission. There is absolutely no need to increase penalties in Oregon. The current inflationary pressures and uncertain economic conditions only serve to magnify the reasons not to disturb the current inspection and penalty provisions in Oregon.

State business and employment records establish the small employers make up 99% of the businesses in the state and employ more than half of all Oregon workers. The proposed amendments to ORS 654.086 in SB 592, withholding size-based penalty reductions unless small employers agree to "additional" OR-OSHA determined mitigation measures is a direct and unnecessary threat to small employers in Oregon. As written, SB 592 gives an OR-OSHA compliance officer license to arbitrarily impose "additional" mitigation measures without regard to the existing legal requirement that an employer reasonably and feasibly abate workplace hazards. Oregon small employers are already meeting their obligation to reasonably and feasibly abate hazards. For "bad actor" employers that do not meet their existing obligation to reasonably and feasibly abate hazards, OR-OSHA already has the authority to conduct follow-up inspections, issue Orders to Correct; stop work with the posting of a "Red Warning Notice," issue failure to correct citations with penalties up to $13,653.00 per day the violation is not

corrected; and where appropriate seek criminal penalties pursuant to ORS 654.991. There is absolutely no reason to subject small employers in Oregon to "additional" hazard abatement measures.

The proposed amendments to ORS 654.067 extend the lookback period for repeat violations from three-years to the employer's entire OR-OSHA inspection and citation history. Again, the OSHA program in Oregon is performing at a high level. The enforcement data shows that the alleged violation classifications, and the terms and conditions and penalty authority provided in ORS Chapter 654 is appropriate for Oregon and for OR-OSHA to fulfill its statutory mission. There is absolutely no need to change the lookback period for potential repeat violations. Again, OR-OSHA already has the tools to address "bad actor" employers with its existing authority.

Finally, the proposed amendments to ORS 654.067, requiring a comprehensive inspection one year after an occupational death or the occurrence of three or more willful or repeated violations at a fixed place of employment are redundant under OR-OSHA's existing inspection authority. Fixed places of employment meeting the circumstances above are already subject to annual scheduled comprehensive inspections under OROSHA's scheduled inspection selection process. As referenced above, the change to OR-OSHA's comprehensive inspection authority contemplated in SB 592 is unnecessary given the agency's existing authority and the OSHA program's performance in Oregon.

Workplace safety is a paramount concern for our organization. The proposals encompassed in SB 592 and SB 592-1 create new, costly and unnecessary additional burdens for Oregon employers, small, medium and large. The proposals do not recognize existing authority nor do they appreciate that OR-OSHA is fulfilling its statutory mission. Most importantly, SB 592 and 592-1 do not seem to recognize that the Oregon employers are meeting their obligations to reasonably provide a safe and healthful place of employment. For those "bad actor" employers, OR-OSHA's existing enforcement tools are more than sufficient to achieve compliance and for Oregon to perform at a high level in occupational safety and health enforcement and compliance.

We oppose the terms proposed by SB 592 and SB 592-1 and urge the Labor and Business Committee to vote "No" on SB 592.

Electronically signed,

Tony Howard, President/CEO

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