

OCCUPATIONAL SAFETY BOARD

Background

The Occupational Safety Board and the Division of Occupational Safety operated under the direction of the board, were established by the legislature in 1967 for the protection of working men and women in Texas from death and disability due to unsafe working conditions. However, due to the lack of state funding since 1975, many of its statutorily authorized activities have ceased. The division currently operates through a contract with the federal Occupational Safety and Health Administration (OSHA) which provides for occupational safety and health consultation services to OSHA regulated employers, and the collection of data needed for inclusion in the nationwide occupational injury survey. The Division of Occupational Safety performs the safety activities required by the contract and collects the survey data. Another TDH division, the occupational health program, provides the health consultation required by the contract.

The Occupational Safety Board consists of three members, the commissioner of health, the commissioner of labor and standards, and a public member who serves as chairman and is appointed by the governor for a term of two years. The board is statutorily authorized to provide protection to Texas workers through the promulgation and enforcement of state occupational safety regulations, investigation of complaints from the public, publishing annual occupational injury statistics, and hiring and providing guidance to the division director in the administration of the division. The Occupational Safety Board is authorized to act independently of the department and Board of Health in the performance of these duties even though the Division of Occupational Safety which implements and enforces the policies the board establishes, is identified as a program of the Department of Health.

From 1967 until 1975, the board took an active role in the development of state occupational safety standards, hired and provided direction to the division director and published several in-depth state occupational injury surveys. The division grew from a staff of two engineers with a state funded budget of \$100,000 in 1967 to 38 engineers and \$1.1 million budget in 1975 at which time the division was performing approximately 8,000 inspections annually. The federal government began occupational safety and health activities at the federal level in 1970 by enacting the Occupational Safety and Health Act and creating a federal agency to implement the provisions of the Act. The Act preempted state enforcement in OSHA regulated workplaces unless the state got approval of its enforcement plan but allowed for state enforcement in non-OSHA regulated workplaces without an approved plan. Governmental entities (state, county, and municipal) are examples of non-OSHA regulated workplaces. The federal Act made provisions for federal matching funds for states that were willing to assume such responsibilities under an approved state plan so the Occupational Safety Board proposed to continue the enforcement activities that were already in place. However, to be eligible for state plan approval and the matching funds, some modification of the board's statute was needed. The board was unable to obtain those amendments through either the 63rd or 64th legislative sessions. In 1975, unable to grant the provisions needed for plan approval and recognizing that some protection was being provided at the federal level, the state legislature did not continue the annual general revenue appropriation of \$1.1 million for the previous state level occupational safety activities. Within Texas, the state-mandated functions which have been discontinued due to lack of state funds and are not the responsibility of any other entity include the investigation of complaints from employees and the public concerning workplace safety, the development of state occupational injury

statistics, and the protection of employees in non-OSHA regulated workplaces, specifically municipal and county employees.

Apart from the enforcement activities, the federal Act also contains provisions for funding to states that agree to provide certain consultative services to OSHA regulated employers concerning their voluntary compliance with OSHA regulations. Participation in the voluntary inspection and consultation service provides the employer a one-year exemption from the usual OSHA regulatory inspection and allows the employer an option to comply with the regulations without jeopardy of fine or penalty. The Texas Department of Health entered into such a contract in 1975 that continues in effect today for the provision of these services and the collection of Texas injury data necessary for inclusion in the nationwide occupational injury survey. These are the only services that are currently provided by the Occupational Safety Division.

In fiscal year 1984, the division operates with a budget of approximately \$882,000 in federal funds and a full-time staff of 21. In fiscal year 1983, the division completed 1,000 consultative inspections and assisted in the correction of 13,000 employer violations of OSHA regulations. The division estimates that this service saved Texas employers an estimated \$1,300,000 in penalties that OSHA could have assessed had this consultation service not been available. That same year, the division gathered occupational injury data from 12,000 employers for OSHA analysis.

The review of the Occupational Safety Board and the Division of Occupational Safety within the Texas Department of Health has necessitated an examination of the board and division history, shifting federal and state mandates and the board's unusual organizational and structural relationship with the department and the Board of Health. Specifically the evaluation analyzed the current activities and responsibilities of the division and board through the following areas of study: policy-making structure, administration of the division, the continued need for the activities, effectiveness of current activities, and the implementation of statutory mandates.

Need to Continue Agency

The board was created to establish and enforce occupational safety regulations within the state. Since the board's creation in 1967, federal efforts have been initiated to regulate occupational safety and the legislature has discontinued funding for the state enforcement program. The Division of Occupational Safety within the Texas Department of Health operates a fully federally funded consultation program.

The review found that the statutorily authorized independent board, and the authority that it is given is no longer needed. It is recommended that the Occupational Safety Board be abolished and that the authority for hiring and supervising the division director be transferred to the Department of Health. In addition, the Board of Health should establish an advisory committee to assist with any problems encountered in the transition and the statute should be amended to mandate only those services currently provided by the division.

**Sunset Commission Recommendations for the
OCCUPATIONAL SAFETY BOARD**

I. ABOLISH THE BOARD

1. The Occupational Safety Board should be abolished.

The Occupational Safety Board was originally created in 1967 as a board to regulate certain work places to ensure the safety of the workers. In 1975, the legislature removed the state funding for this function and the board no longer performs any traditional regulatory functions. The development of regulations for other Department of Health regulatory divisions is handled by the Board of Health. Further, the independent structure of the board and its oversight of the activities of the Division of Occupational Safety (a division staffed by employees of the Health Department) appears unneeded in comparison to other programs of the department. The function the board performs in selecting the division director of occupational safety can appropriately be handled by the commissioner of health or by someone delegated this function. For these reasons, it appears the Occupational Safety Board should be abolished.

2. An advisory committee for the Division of Occupational Safety should be established. (management improvement - non-statutory)

The non-regulatory functions now performed by the Board of Occupational Safety are more like those of the many advisory committees used by the Department of Health. It does appear that the Division of Occupational Safety could benefit from the advice and counsel of an advisory committee appointed by the Board of Health made up of representatives of the general public, employers and employees, professional safety engineers and state agencies related to the work of the division.

3. The statute governing the Division of Occupational Safety should be amended to include only those activities currently carried out by the division.

The statute governing the activities of the Division of Occupational Safety was enacted in 1967. Since 1975, the division has had federal funding to carry out "consultative services" relating to occupational safety but the regulatory functions contemplated by the statute have been left unfunded by the legislature. It appears that the current functions of the division are those sanctioned by the legislature and the statute governing the division should be modified to authorize only the consultative services now carried out by the division.