

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 1995.

May 24, 1995

The Honorable Thomas V. Mike Miller, Jr.  
President of the Senate  
State House  
Annapolis MD 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed Senate Bill 270.

Senate Bill 270 prohibits the Commissioner of Labor and Industry from assessing a civil penalty against an employer under the Maryland Occupational Safety and Health Act, or MOSH law, if the Commissioner has not previously notified the employer of the violation, the violation is not serious, and the employer corrects the violation within 10 days after the citation issued. I am taking this action not because I disagree with the underlying theme of the bill—to emphasize the need for “reasonableness” in the regulation of employers in the State, while focusing MOSH resources on serious violations—but because this particular approach places Maryland in conflict with federal law and, as explained below, would threaten the continued existence of our MOSH program.

In addition, the Attorney General’s bill review letter cites other possible undesirable consequences from signing this bill short of the actual loss of the MOSH program, including the loss of federal funding, subjection to concurrent federal jurisdiction, and the possibly protracted withdrawal proceeding.

State, as opposed to federal, regulation of State issues such as employee safety is almost always preferable. Maryland’s MOSH program is valued by employers and employees throughout the State. Maryland is permitted to operate its own occupational safety and health program because it has received approval from the Occupational Safety and Health Administration (OSHA) to do so. This approval means that MOSH, rather than OSHA, is the agency responsible for adopting and enforcing occupational safety and health regulations in Maryland. Obtaining and retaining approval to operate a State plan is, however, contingent upon the State plan being and remaining at least as effective as the program operated by OSHA. OSHA has already indicated in writing that the penalty provisions in this bill render Maryland’s program less effective than that of OSHA, and that it would have “no alternative but to institute a proceeding...to withdrawal approval of the Maryland State Plan.”

The General Assembly expressly sought to avoid this outcome. Section 2 provides that if implementation of any part of the bill “would result in the loss of the authority of the State...to administer a State occupational safety and health program, [they] shall be abrogated and of no further force and effect.” While it can be argued that this provision adequately protects the State’s interest in retaining the MOSH program, it is wasteful of State and federal resources to knowingly trigger a process which is likely to have an adverse outcome, and which the Legislature sought to avoid.