



February 14, 2017

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Maryland General Assembly
House Standing Committee on Appropriations
Subcommittee on Education & Economic Development
House Office Building, Room 121
Annapolis, MD 21401

Re: Written Testimony for Feb. 15 Budget Hearing on DLLR Business Regulation

Dear Subcommittee:

Thank you for this opportunity to provide written testimony on the Budget for the Department of Licensing Labor and Regulation, Division of Labor and Industry, Maryland Occupational Safety and Health (MOSH). As explained in more detail below, our review of MOSH budget materials, federal audits, and MOSH performance reports leads us to conclude that MOSH’s ability to carry out its mission of ensuring the health and safety of workers employed by Maryland businesses is hampered by the agency’s limited budget. Our key findings:

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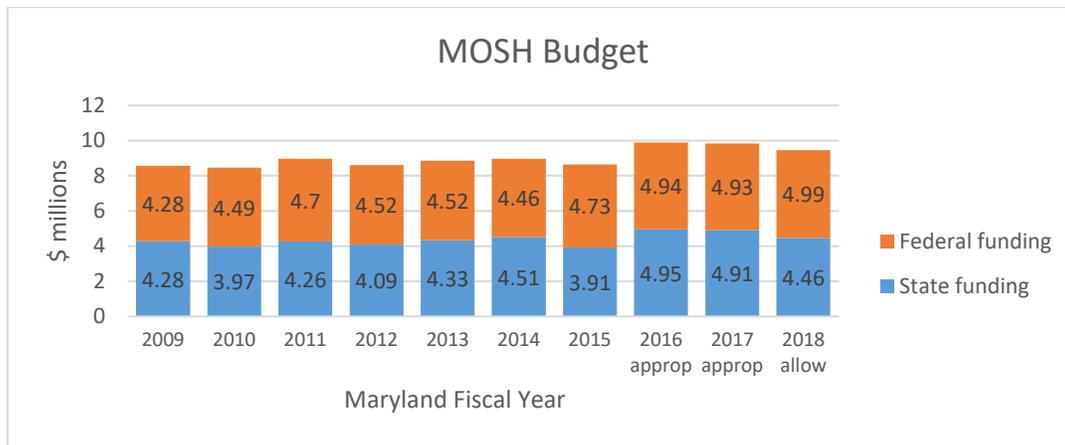
- MOSH struggles with significant turnover among health and safety inspectors – a management challenge compounded by resource shortfalls.
- Without enough inspectors, MOSH is failing to meet inspection targets, leaving too many employers to police themselves.
- MOSH is unable to update its regulatory standards on a timely basis, in part because of insufficient resources.

Understanding the larger budget challenges faced by the State of Maryland, at this time we urge further analysis of MOSH’s resource constraints. A legislative audit could identify strategic opportunities to meet MOSH’s critical needs.

MOSH’s Budget

As the state agency tasked with implementing Maryland’s federally approved state occupational safety and health program, MOSH gets up to 50 percent of its funding annually from Federal OSHA. The chart below shows that, over the 2009 to 2016 period, MOSH received a roughly 15 percent increase in its budget. However, the increase is far less than the 35 percent increase in the state’s overall appropriated budget during that same timeframe. Additionally, MOSH’s budget decreased in FY 2017 and further cuts have been proposed for FY 2018, despite the fact that the

agency has not met its enforcement goals in recent years, which, as we explain below, is likely due to a need for *additional* staffing.



Source: <http://www.dbm.maryland.gov/budget/Pages/operbudget/historical-operbud-docs.aspx>. For 2018, see <http://mgaleg.maryland.gov/2017RS/bills/hb/hb0150f.pdf>.

MOSH's Staffing

MOSH is responsible for ensuring the health and safety of roughly 2.4 million workers across 160,000 worksites throughout the state. To satisfy the International Labor Organization's (ILO) benchmark for the number of labor inspectors – 1 per 10,000 covered workers – MOSH would need at least 250 inspectors on staff; yet, from 2009 to 2014, MOSH employed only 50 to 60 compliance officers. Furthermore, according to the most recent federal audit of MOSH, the agency lost seven compliance officers during the course of the year, leading to a reduction in overall enforcement.¹

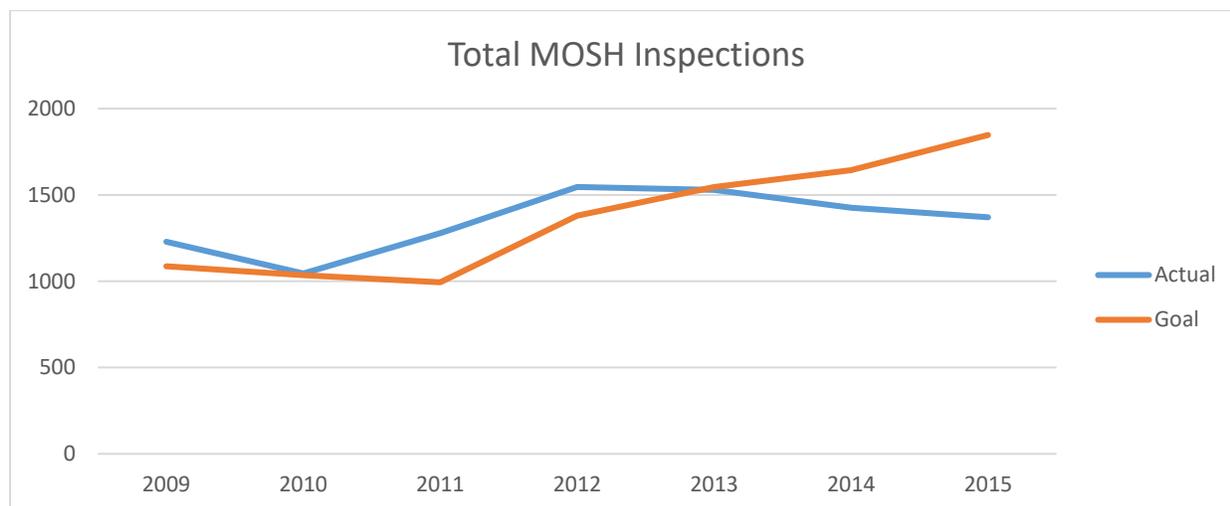


With so few inspectors on staff, MOSH is only able to conduct about 1,500 inspections each year – meaning the vast majority of Maryland workplaces go uninspected. AFL-CIO has calculated that it would take MOSH over 100 years to inspect each workplace within its jurisdiction just once.² In fact, from federal FY 2012 through 2015, MOSH failed to meet its

¹ FY2015 Comprehensive FAME Report - Maryland OSHA (MOSH), p.9, available at https://www.osha.gov/dcsp/osp/efame/2015/md_report.pdf.

² AFL-CIO, Death on the Job: The Toll of Neglect 171 (24th ed. 2015), available at <http://www.aflcio.org/content/download/154671/3868441/DOTJ2015Finalnobug.pdf>.

target inspection goal – a goal that that MOSH itself is actively involved in negotiating with Federal OSHA. Despite setting a higher goal for each of those years, MOSH’s actual number of inspections conducted each year declined. We note that Maryland Workers’ Compensation Commission Enforcement statistics suggest that the number of work-related injuries in the state has remained relatively steady since 2009 – with roughly 22,000 to 24,000 workers’ compensation claims filed each year.



MOSH’s Program Efficiency

Beyond staffing limitations, it is unclear if MOSH is utilizing its resources in the most efficient manner. In AFL-CIO’s 2016 *Death on the Job* report, Maryland ranks 47th in the country for average penalty per inspection with violations. Even when a worker dies on the job, the median penalty after MOSH and the employer have settled the case or resolved it through litigation was just \$2,873 in federal FY 2015. The deterrent effect of an enforcement program is a function of both the likelihood of inspection and the consequences of being caught. With inspection numbers declining and penalties for the most serious cases remarkably low, we question whether MOSH’s enforcement program is adequately deterring unsafe employment.

As a condition of its state-plan state status (and federal dollars), Maryland must ensure that MOSH continues to be at least as effective as Federal OSHA. Federal OSHA recently updated its base penalties to account for inflation since penalties were last adjusted in the early 1990s. Likewise, every year, Federal OSHA sends out a list of new directives or standard notices that adopted new regulations or advised of changes. Yet, according to recent federal audits, MOSH lacks the capacity to update its program on a timely basis.

Conclusion

Common sense enforcement of Maryland’s occupational safety and health laws and regulations protects Maryland workers from on-the-job illnesses, injuries, and fatalities. Because of worker protections, over the past several decades, we’ve seen fewer work-related incidents. Yet that progress was possible only because the laws and regulations on the books were enforced. Without inspectors and investigators, regulations and permits are mere paper tigers.

Keeping government inspectors in the field, with sufficient resources to carry out MOSH’s mission, is the best way to protect Maryland workers and our high-road employers against unfair and unsafe business practices. Competition among businesses is tough, and some low-road employers look to cut corners and save money in the short term by evading their responsibility

to follow the law. Government inspectors and investigators play a critical role in policing businesses that cannot be trusted to police themselves.

To better understand MOSH's budgetary needs, we recommend a detailed legislative audit of MOSH operations and budget implications.

Such an audit might include questions such as:

- How does MOSH determine what is needed, in terms of salary and benefits, to attract top-notch candidates and retain its best employees?
- Besides the International Labor Organization benchmark for the number of inspectors needed, what legitimate benchmarks exist for determining the optimum number of inspectors at MOSH?
- Why has the actual number of inspections conducted by MOSH declined in recent years, even as MOSH's inspections goal increased over the same period?
- How does MOSH plan to improve its performance in the next fiscal year and what are the potential obstacles that would impede MOSH's ability to meet its enforcement goal?
- How does MOSH schedule and prioritize programmed inspections (i.e., inspections that do not result from a fatality, catastrophe, complaint or referral, or imminent danger)? Please provide written documentation of MOSH's site-specific targeting program.
- What are the best practices employed by other occupational safety and health agencies to ensure that programmed inspections prioritize enforcement that will protect the most vulnerable workers (e.g., immigrants, low-wage workers, non-unionized workers, etc.)?
- Does MOSH utilize the data it collects – such as geographic location or demographics – to plan its enforcement activities? What is MOSH's process for gathering and reviewing such data?
- Do MOSH's outreach staff and inspectors engage in collaborative efforts to utilize this data and employ coordinated activities in geographic areas or industries of concern?
- What is the process MOSH uses to ensure that directives and standards notices from Federal OSHA are reviewed and adopted in a timely manner?
- Over the past Fiscal Year, what Federal OSHA directives or standards notices have been reviewed and/or adopted by MOSH? If MOSH has not adopted all outstanding directives or standards notices sent by Federal OSHA, which are outstanding, and why? If any were reviewed but not adopted, why?

Sincerely,

Matthew Shutz
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About the Center for Progressive Reform

The Center for Progressive Reform (CPR) is a 501(c)(3) nonprofit research and advocacy organization comprising a small professional staff of lawyers and a network of 60+ Member Scholars who are professors at institutions of higher learning across the country. CPR specializes in analyzing complex legal, economic, and scientific issues involving federal and state government operations. Our Member Scholars include a number of experts in the field of worker safety and health, two of whom literally wrote the book on the reasons why state and federal agencies struggle to eliminate workplace illnesses, injuries, and fatalities.³ One enduring obstacle is that agency resources are grossly outmatched by the sheer number of worksites across the state, as well as the constantly changing nature of the state's workforce.

³ See Thomas O. McGarity & Sidney A. Shapiro, *Workers at Risk: The Failed Promise of the Occupational Safety and Health Administration* (1993).