Kansas AFL-CIO

2131 S.W. 36th St. Topeka, KS 66611 785/267-0100 Fax 785/267-2775

TESTIMONY IN OPPOSITION TO
SENATE BILL 212
BEFORE SENATE COMMERCE COMMITTEE

By Bruce Tunnell
Executive Vice President
Kansas AFL-CIO

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Thank you Chairperson Lynn and members of the committee, I appreciate this opportunity to testify in opposition to Senate Bill 212.

Kansas AFL-CIO is strongly opposed to the State of Kansas assuming the responsibility for safety and health under the OSHA act. Our experience has been that the federal government does a much better job at enforcing the job safety law and ensuring protection of worker rights.

The KDOL gave their report dated January 5th 2015 in accordance with Section 1 of Senate Substitute for House Bill No. 2616, regarding what will be required in order for Kansas to develop and operate a Kansas job safety and health program "State plan," which would be subject to approval and monitoring by OSHA, in accordance with section 18 of the Occupational Safety and Health Act of 1970.

In 2015, the KDOL estimated a start-up cost of $3,209,312 and an annual cost of $2,888,813 which we believe is extremely conservative. A Kansas State run plan cannot be approved and enforcement authority transferred to the State, for a minimum of 3 years after submission and approval of the completed plan. Only after a State plan has been approved by the Assistant Secretary, the Assistant Secretary may approve one or more grants under section 23 (g) of the ACT to assist the State in administering and enforcing its program for occupational safety and health in accordance with appropriate instructions or procedures to be promulgated by the Assistant Secretary.

State-run programs face several challenges that primarily relate to staffing, and include having constrained budgets, according to OSHA and State officials. States have difficulty filling vacant inspector positions, obtaining training for inspectors, and retaining qualified inspectors. Recruiting inspectors is difficult due to the shortage of qualified candidates, relatively low State salaries, and hiring freezes. Although OSHA has taken steps to make its courses more accessible to states, obtaining inspector training continues to be difficult. According to an agency official, OSHA's Training Institute faces several challenges in delivering training, including recruiting and retaining instructors, difficulty accommodating the demand for training, and limitations in taking some courses to the field due to the need for special equipment and facilities. These challenges are further exacerbated by states' lack of travel funds, which limit state inspectors' access to OSHA training. Retaining qualified inspectors is another challenge among states. Officials noted that, once state inspectors are trained, they often leave for higher paying positions in the private sector or Federal government. GAO's survey of the 22 state-run programs that cover private and public sector workplaces showed that turnover was more prevalent among safety inspectors than health inspectors. Nearly half of these states reported that at least 40 percent of their safety inspectors had fewer than 5 years of service. In contrast, half of the states reported that at least 40 percent of their health inspectors had more than 10 years of service. These staffing challenges have limited the capacity of some state-run programs to meet their inspection goals.

OSHA has responded in a variety of ways to state-run programs with performance issues. These include closely monitoring and assisting such states, such as accompanying state staff during inspections and providing additional training on how to document inspections. OSHA has also drawn attention to poor state performance by communicating its concerns to the Governor and other high-level State officials. In addition, OSHA has shared enforcement responsibilities with struggling states or, as a last resort, has resumed responsibility for federal enforcement when a state has voluntarily withdrawn its program. Although OSHA evaluates state-run programs during its annual reviews, GAO found that OSHA does not hold states accountable for addressing issues in a timely manner or establish time frames for when to resume federal enforcement when necessary. In addition, the current statutory framework may not permit OSHA to quickly resume concurrent enforcement authority with the state when a states is struggling with performance issues. As a result, a state's performance problems can continue for years. OSHA officials acknowledged the need for a mechanism that allows them to intervene more quickly in such circumstances. GAO also noted that OSHA does not compile lessons learned from its past experienced when it has resumed federal enforcement in a state. This prevents the agency from building on previous experiences in responding to future situations.