

By: Senator(s) Hill, McCaughn, Berry, Suber

To: Rules

SENATE CONCURRENT RESOLUTION NO. 544

1 A CONCURRENT RESOLUTION RECOGNIZING THE NEED TO PROTECT
2 WORKPLACE SAFETY AND PRIVATE PROPERTY RIGHTS FROM INFRINGEMENT BY
3 PROPOSED CHANGES TO THE OSHA WORKER WALKAROUND REPRESENTATIVE
4 DESIGNATION PROCESS.

5 WHEREAS, the Occupational Safety and Health Act of 1970, 29
6 USC Sections 651-678, encourages "the States to assume the fullest
7 responsibility for the administration and enforcement of their
8 occupational safety and health laws"; and

9 WHEREAS, the Occupational Safety and Health Act provides for
10 certain safety inspections on a covered employer's premises during
11 which employees of the employer may designate an employee
12 representative to accompany the OSHA Compliance Safety and Health
13 Officer (CSHO); and

14 WHEREAS, for more than 50 years, the Occupational Safety and
15 Health Act has been interpreted by the Occupational Safety and
16 Health Administration (OSHA) in its implementing regulations,
17 specifically 29 CFR Section 1903.8(c), to categorically require
18 that employee representatives be actual employees of an employer,



19 except where specific expertise makes the participation of a
20 non-employee "reasonably necessary"; and

21 WHEREAS, the current rule states that "the representative(s)
22 authorized by employees shall be an employee(s) of the employer,"
23 but the U.S. Department of Labor proposes at 88 Fed. Reg. No. 167
24 at 59825-59834, August 30, 2023, to amend the regulation to say:
25 "The representative(s) authorized by employees MAY be an employee
26 of the employer or a third party"; and

27 WHEREAS, OSHA is claiming the purpose of this amendment is to
28 "clarify" that the non-employee, third-party representative "may
29 aid in the inspection based upon a range of knowledge, skills, or
30 experience beyond that obtained through formal or technical
31 education"; and

32 WHEREAS, the existing regulation provides examples of the
33 sort of expertise the non-employee representative must possess,
34 stating that the types of non-employee experts contemplated are
35 "such as an industrial hygienist or safety engineer"; and

36 WHEREAS, the U.S. Department of Labor is proposing to remove
37 these examples from the regulation text that has stood for more
38 than 50 years, which will have the effect of giving the OSHA CSHO
39 unfettered discretion to allow unqualified persons who are not
40 employees of the employer to enter the premises of the employer;
41 and

42 WHEREAS, the proposed rule and accompanying rulemaking
43 process is contrary to the Congressional intent and statutory



44 structure of the OSHA Act, circumvents the federalism requirements
45 of Executive Order 13132, neglects relevant court precedent, and
46 fails to consider alternatives that can only be revealed through
47 the state consultation process; and

48 WHEREAS, the U.S. Department of Labor failed to adequately
49 consider costs imposed by this rule change on employers and state
50 and local governments; and

51 WHEREAS, the Fifth Amendment of the U.S. Constitution
52 provides that "no person shall be ... deprived of life, liberty or
53 property without due process of law; nor shall private property be
54 taken for public use, without just compensation"; and

55 WHEREAS, the U.S. Supreme Court in *Marshall v. Barlow's,*
56 *Inc.*, 436 U.S. 307 (1978) held that business owners subject to
57 OSHA inspections retain certain rights under the Fourth Amendment,
58 which provides protection "against unreasonable searches and
59 seizures"; and

60 WHEREAS, Section 23 of the Mississippi Constitution
61 guarantees that "the people shall be secure in their persons,
62 houses, and possessions, from unreasonable seizure or search; and
63 no warrant shall be issued without probable cause"; and

64 WHEREAS, it is the intent of the Legislature to protect the
65 health and safety of Mississippi workplaces in a manner consistent
66 with the constitutional and legal rights that the state as an
67 independent sovereign in our federal system is bound to protect:



68 THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF
69 MISSISSIPPI, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN, That
70 the Mississippi Legislature condemns and opposes the proposed
71 changes to the OSHA Worker Walkaround Representative Designation
72 Process at 29 CFR Section 1903.8(c); and

73 BE IT FURTHER RESOLVED, That copies of this resolution be
74 forwarded to each state-elected official of Mississippi; each
75 member of the United States House of Representatives and Senate
76 elected to represent the State of Mississippi; the President of
77 the United States; the United States Secretary of Labor; the
78 United States Assistant Secretary of Labor for Occupational Safety
79 and Health; and the Jackson, Mississippi, Office of the
80 Occupational Safety and Health Administration.

