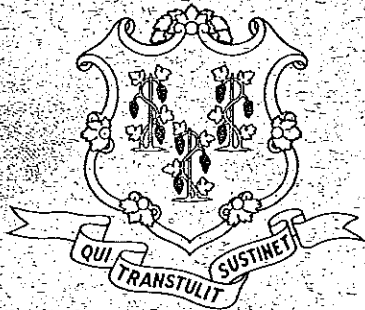


Occupational Safety And Health Review Commission

Connecticut
General Assembly



LEGISLATIVE
PROGRAM REVIEW
AND
INVESTIGATIONS
COMMITTEE

SUNSET 1983

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CONNECTICUT GENERAL ASSEMBLY

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 as the Legislative Program Review Committee to evaluate the efficiency and effectiveness of selected state programs and to recommend improvements where indicated. In 1975 the General Assembly expanded the Committee's function to include investigations and changed its name to the Legislative Program Review and Investigations Committee. During the 1977 session, the Committee's mandate was again expanded by the Executive Reorganization Act to include "Sunset" performance reviews of nearly 100 agencies, boards, and commissions, commencing on January 1, 1979.

The Committee is composed of twelve members, three each appointed by the Senate President Pro Tempore and Minority Leader, and the Speaker of the House and Minority Leader.

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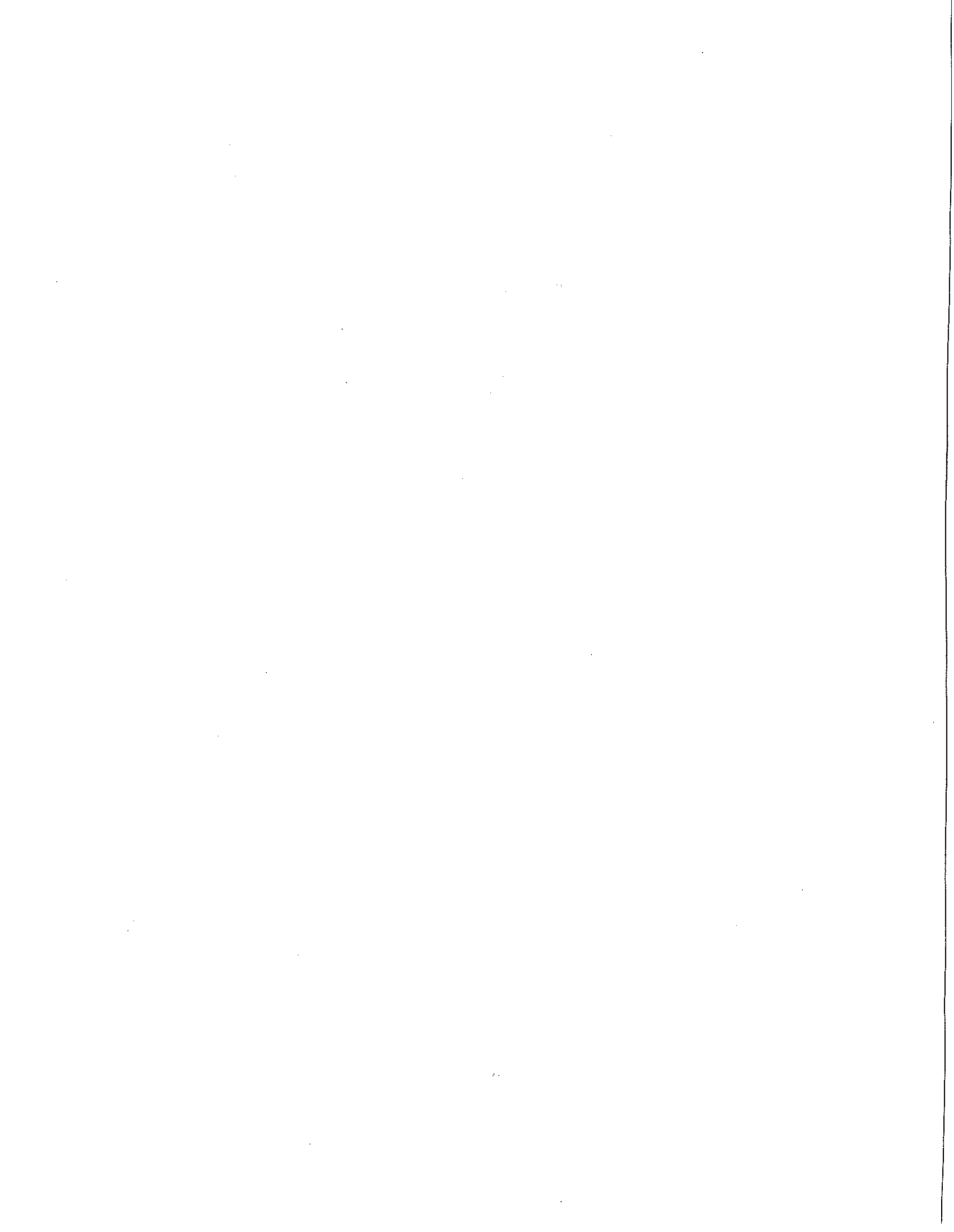


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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Summary

In 1973 Connecticut adopted a State Occupational Safety and Health Act (P.A. 379) that included a three member commission. The three members were to be appointed by the governor and to receive a salary. Under the federal Occupational Safety and Health Act, states are allowed to administer their own program provided they adopt the same provisions that are required in the federal act. Among the mandatory requirements is the establishment of a review procedure to hear appeals of citations issued by inspectors.

The Division of Occupational Safety and Health in the Connecticut Department of Labor was given responsibility for implementing the state act. The federal act only covers employees working in the private sector while the Connecticut law extended coverage to employees of the state and its political subdivisions. Under Public Act 379 the review commission was given responsibility for acting as an appeals board to hear cases and issue rulings on citations, notifications and penalties assessed by inspectors from the Division of Occupational Safety and Health.

Public Act 77-610 drastically reduced the role of the review commission by limiting application of the State Occupational Safety and Health Act to public sector employees only. Private sector enforcement became the responsibility of the federal government. As a result of P.A. 77-610 the case load of the review commission dropped from nearly 350 hearings to less than 15 a year.

In 1981 (Public Act 382) the structure of the Occupational Safety and Health Review Commission was altered. The membership of the review commission was reduced from three to two; annual salaries were eliminated and replaced with a \$125 per diem. The commission's staff was eliminated and any staff necessary for the purpose of hearing appeals was to be provided by the Department of Labor. The budget for the review commission went from \$62,126 in FY 1980-81 to zero for FY 1981-82 and FY 1982-83. However, the commission was allocated \$2,500 in the Department of Labor's budget for per diem expenses for FY 1981-82 and FY 1982-83.

Continuation of the Occupational Safety and Health Review Commission

Under federal regulations if the Occupational Safety and Health Review Commission is eliminated and another review

mechanism is not instituted, the occupational safety and health program for the public sector in Connecticut will lose its federal money. The program review committee believes it is imperative that public sector work places continue to be inspected for compliance with the state occupational safety and health act and that the state be reimbursed by the federal government. *Therefore, the Legislative Program Review and Investigations Committee recommends that the Occupational Safety and Health Review Commission be continued.*

Structure of the Review Commission

Several cases have been pending before the commission for over 15 months without being heard. This presents a problem because an employer does not have to correct an alleged violation until the appeal is decided by the review commission. Part of the problem is attributable to the fact that there are only two individuals on the review commission to hear appeals. Another aspect of the problem is related to the absence of any specified time period for completing an appeal. *Therefore, the Legislative Program Review and Investigations Committee recommends that the governor appoint five hearing officers to the review commission to form a pool from which hearing officers will be selected to hear appeals of citations issued by the Division of Occupational Safety and Health. The hearing officers would be selected on a rotating basis within 30 days from the filing of an appeal and the appeal fully adjudicated within 120 days.*

Division of Occupational Safety and Health

The Division of Occupational Safety and Health was not subject to a sunset review, but the Legislative Program Review and Investigations Committee discussed its activities because the staff of the division carries out the compliance inspections that are appealable to the commission. In FY 1981-82 inspectors from the division completed 344 compliance inspections of state and municipal work places and issued 6 serious violations and 833 nonserious violations. The division also administers a voluntary consultation program for both public and private sector employees. In FY 1981-82, 730 consultation visits were carried out with 75 percent of them occurring in the private sector.

During the course of the review there was some concern about the Division of Occupational Safety and Health splitting its staff evenly between compliance inspections and the consultation program. The program review committee discussed this issue but made no formal recommendations.

INTRODUCTION

Purpose and Authority

Chapter 28 of the Connecticut General Statutes provides for the periodic review of certain governmental entities and programs and for the termination or modification of those which do not significantly benefit the public health, safety, or welfare. This law was enacted in response to a legislative finding that a proliferation of governmental entities and programs had occurred without sufficient legislative oversight.

The authority for undertaking the initial review in this oversight process is vested in the Legislative Program Review and Investigations Committee. The committee is charged, under the provisions of Section 2c-3 of Chapter 28, with conducting a performance audit of each entity or program scheduled for termination. This audit must take into consideration, but is not limited to, the four criteria set forth in Section 2c-7. These criteria include: (1) whether termination of the entity or program would significantly endanger the public health, safety, or welfare; (2) whether the public could be adequately protected by another statute, entity, or program or by a less restrictive method of regulation; (3) whether the governmental entity or program produces any direct or indirect increase in the cost of goods or services and, if it does, whether the public benefits attributable to the entity or program outweigh the public burden of the increase in cost; and (4) whether the effective operation of the governmental entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies.

In addition to the criteria contained in Section 2c-7, the Legislative Program Review and Investigations Committee is required, when reviewing regulatory entities or programs, to consider, among other things: (1) the extent to which qualified applicants have been permitted to engage in any profession, occupation, trade, or activity regulated by the entity or program; (2) the extent to which the governmental entity involved has complied with federal and state affirmative action requirements; (3) the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated; (4) the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies; and (5) the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to review.

Methodology

The Legislative Program Review and Investigations Committee's sunset review process is divided into three phases. The initial phase focuses on collecting quantitative and qualitative data related to each entity's background, purpose, powers, duties, costs and accomplishments. Several methods are used by committee members and staff to obtain this information. These include: (1) a review of statutes, transcripts of legislative hearings, entity records (e.g., minutes, complaint files, administrative reports, etc.), and data and statutes of other states; (2) staff observation of meetings held by each entity during the review period; (3) surveys of selected persons and groups associated with each entity; (4) formal and informal interviews of selected individuals serving on, staffing, affected by or knowledgeable about each entity; and (5) testimony received at public hearings.

During the second phase, the staff organizes the information into descriptive packages and presents it to the committee. The presentations take place in public sessions designed to prepare committee members for the hearings, identify options for exploration and alert entity officials to the issues the committee will pursue at the hearings.

The final step of the review involves committee members and staff following up on and clarifying issues raised at briefings and public hearings. During this period, the staff prepares decision papers and presents recommendations to the committee. The committee, in public sessions, then debates and votes upon recommendations for the continuation, termination or modification of each entity.

BACKGROUND

Legislative History

The Federal Occupational Safety and Health Law adopted in 1970 allowed states to administer their own occupational health and safety program provided they adopted the same provisions that were required in the federal act. Among the mandatory requirements was the establishment of a review procedure to hear appeals of citations issued by occupational health and safety inspectors.

In 1973 Connecticut adopted a State Occupational Safety and Health Act (P.A. 379) that included a three member Occupational Safety and Health Review Commission. The Division of Occupational Safety and Health in the Connecticut Department of Labor was given responsibility for implementing the act.

The federal act covers all employees working in the private sector. The Connecticut act extended coverage to employees of the state and its political subdivisions. The Occupational Safety and Health Review Commission was given responsibility for acting as an appeals board to hear cases and issue rulings on citations, notifications and penalties assessed under the provisions of the state act. Public Act 379 provided that the three members of the review commission be appointed by the governor and receive a salary. In 1974 (P.A. 176), the review commission was placed within the Department of Labor for administrative purposes only.

Public Act 77-610 limited the application of the State Occupational Safety and Health Act to public sector employees only, and private sector enforcement became the responsibility of the federal government. The act drastically reduced the role of the State Division of Occupational Safety and Health and the Occupational Safety and Health Review Commission. Prior to 1977 the commission heard appeals concerning both private and public sector penalties; while under P.A. 610 only public sector cases can be reviewed. The case load of the review commission dropped from nearly 350 hearings to less than 15 hearings a year.

Public Act 81-382 reduced the membership of the commission from three to two members and replaced annual salaries for the commissioners with a \$125 per diem. In addition, the commission's staff was eliminated, and any staff necessary for the purpose of hearing appeals is provided by the Department of Labor.

Structure

The Occupational Safety and Health Review Commission is composed of two commissioners appointed by the governor for a term of four years. The commission is located within the Department of Labor for administrative purposes only. All staff services are provided by the Department of Labor's Occupational Health and Safety Division.

Purpose, Powers and Duties

The purpose of the Occupational Safety and Health Review Commission is to hear and rule on appeals of citations, notifications and penalties issued by health and safety inspectors from the Division of Occupational Safety and Health. When an appeal is scheduled one of the two commissioners serves as a hearing officer, and both parties are permitted to present evidence and legal briefs. The review commission can uphold, overturn or modify a citation. Decisions of the commission can be appealed directly to the courts.

Fiscal Information

Commissioners receive a \$125 per diem when hearing an appeal and staff are provided by the Department of Labor. Table II-1 shows the fiscal impact of the change created by P.A. 81-382.

Table II-1. Occupational Safety and Health Review Commission Budget.

	<u>Actual 1979-80</u>	<u>Actual 1980-81</u>	<u>Appropriation 1981-82¹</u>	<u>Recommended 1982-83¹</u>
Full time positions	4	4	0	0
Personal services	\$64,638	\$50,923	0	0
Other expenses	<u>10,561</u>	<u>11,203</u>	<u>0</u>	<u>0</u>
TOTAL	\$75,199	\$62,126	0	0

¹ The commission has been allocated \$2,500 for FY 1981-82 and FY 1982-83 to cover per diem expenses. This appropriation was placed within the Board of Mediation and Arbitration of the Department of Labor.

Source: Office of Fiscal Analysis Budget, FY 1981-82 and FY 1982-83.

The Division of Occupational Safety and Health within the Department of Labor has 27 authorized positions. Figure II-1 provides a breakdown of staff by function.

Figure II-1. Staff Breakdown--Division of Occupational Safety and Health.

Administration - 8 positions, (1 vacant)

Director
Assistant Director
Chief Occupational Hygienist
Chief Occupational Safety Compliance Officer
Regulations Development Officer
Administrative Secretary
Research Analyst I
Education and Training Officer

Statistics - 3 positions

Labor Research Supervisor
Research Analyst IV
Clerk Typist

Safety and Health - 16 positions (1 vacant)

Occupational Hygiene Ventilation Engineer (vacant)
Occupational Hygienist (2)
Occupational Safety and Health Review Officer (2)
Occupational Safety Compliance Officer (8)
Industrial Hygienist II
Senior Secretary
Senior Clerk

The budget of the division is 50 percent federally reimbursable. Table II-2 shows a breakdown of personal services and other expenditures.

Table II-2. Division of Occupational Safety and Health
Budget.

	<u>Actual</u> <u>FY 1980-81</u>	<u>Estimated</u> <u>FY 1981-82</u> <u>(As of 2/82)</u>	<u>Appropriation</u> <u>FY 1982-83</u>
Personal services	\$541,477	\$539,060	\$622,392
Other expenses	84,188	112,450	120,000
Equipment	<u>959</u>	<u>1,000</u>	<u>2,000</u>
TOTAL	\$626,624	\$652,510	\$744,392

Source: Office of Fiscal Analysis Budget, FY 1982-83, p. 143.

ACTIVITIES

Occupational Safety and Health Review Process

The Division of Occupational Safety and Health is responsible for enforcing the Connecticut Occupational Safety and Health Act for public sector employees. If a state agency head or municipal official wishes to contest a citation, an appeal can be filed with the review commission. The following sequence describes the process:

Step One: An inspector from the Division of Occupational Safety and Health conducts a compliance visit to a municipal or state building. The inspection may be a regularly scheduled visit of a site randomly selected from a list of state and municipal workplaces, a response to an employee or union complaint, or a follow-up visit to determine if a prior violation has been corrected. All inspections are unannounced, and a representative of the employees and the employer may accompany the inspector on the compliance visit.

Step Two: If no violations are found, the state inspector will write up a report and the case is complete. If an inspector finds safety and health violations, citations are issued and abatement dates are assigned for each violation. If citations are issued, the Division of Occupational Safety and Health sends a copy of the violations by certified mail to the department head of the municipal or state agency. The official then has 15 working days to agree to comply with the abatement dates, appeal the violations, appeal the monetary penalty if one has been assessed, or ask for an extension of the abatement deadline.

Steps three and four take place if a state or municipal official contests an abatement date, appeals the violation or the monetary penalty.

Step Three: At a mandated review hearing, the head of the Division of Occupational Safety and Health can agree to modify the abatement dates set by an inspector or eliminate a monetary penalty. If a municipal or state official appeals a violation and the Division of Occupational Safety and Health does not agree with the request, the case is sent to the Occupational Safety and Health Review Commission for a hearing.

Step Four: The Occupational Safety and Health Review Commission conducts a hearing, and both parties can present

evidence and legal briefs. When hearing an appeal one of the commissioners acts as a hearing officer. The commission can uphold, overturn or modify a citation. The next level of appeal is directly to the courts.

Occupational Safety and Health Review Commission

Since passage of P.A. 77-610, which limited application of the State Occupational Safety and Health Act to public sector employees, the case load of the review commission has dropped drastically. Before 1977 the commission held approximately 350 hearings yearly; presently less than 10 cases are pending.

At the time of the program review committee's decision meeting in June 1982, the Occupational Safety and Health Review Commission had not heard an appeal since passage of P.A. 81-382 which replaced annual salaries for commissioners with a \$125 per diem when hearing a case. At the conclusion of the committee's review, the Department of Labor was in the process of setting up hearings for the several cases that were pending.

Division of Occupational Safety and Health

The Division of Occupational Safety and Health is not subject to sunset review. A description of the activities of the division is included, however, because its staff carries out the compliance inspections that are appealable to the commission.

The division conducts compliance inspections of state and municipal buildings to ensure that provisions of the State Occupational Safety and Health Act are being maintained. It also provides consultant services to private and public sector employees. The consultation function is a 90 percent federally reimbursable program that allows inspectors to offer advice and technical assistance to private sector employees as well as state and municipal officials. The purpose of the consultation program is to identify potential violations for employers without having to issue a citation to them. If an employer does not correct a violation, a citation will be issued during a compliance inspection.

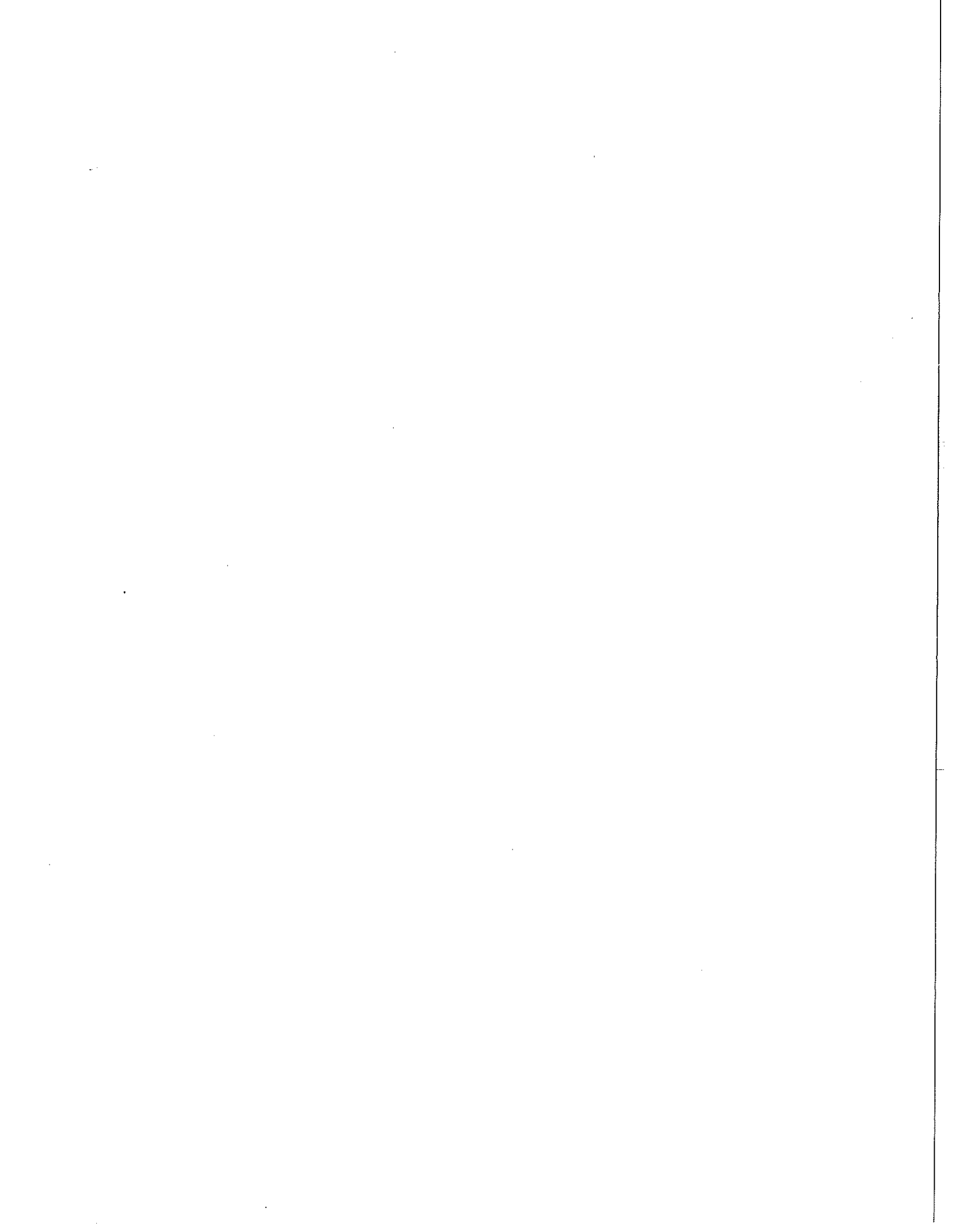
The division assigns two occupational hygienists, two occupational safety and health review officers and eight occupational safety compliance officers to carry out the compliance inspections and consultation programs. Six individuals are assigned to each task. Table III-1 provides statistics for compliance inspections, violations and consultation visits. A serious violation must be corrected immediately while nonserious violations usually require correction within 15 to 30 days.

Table III-1. Division of Occupational Safety and Health--
Statistics.

	<u>FY 1980-81</u>	<u>FY 1981-82</u>
Compliance inspections		
State	205	110
Municipal	<u>156</u>	<u>234</u>
TOTAL	<u>361</u>	<u>344</u>
Violations - serious		
State	11	3
Municipal	<u>0</u>	<u>3</u>
TOTAL	<u>11</u>	<u>6</u>
Violations - nonserious		
State	366	215
Municipal	<u>382</u>	<u>618</u>
TOTAL	<u>748</u>	<u>833</u>
Public Sector Consultations		
State	77	64
Municipal	<u>66</u>	<u>122</u>
TOTAL	<u>143</u>	<u>186</u>
Private Sector Consultations	339	544

Source: Department of Labor.

The most frequent types of violations found were lack of proper safety shields on equipment, electrical problems such as exposed wiring, flammable material improperly stored, unsanitary conditions, unsafe stairwells, proper signs not posted, improper fire equipment and fire exits not properly cleared.



ANALYSIS AND RECOMMENDATIONS

Federal regulations mandate that if a state is going to receive federal funds for operating and enforcing occupational safety and health standards, an appeals procedure must be provided. If the Occupational Safety and Health Review Commission is eliminated and another review mechanism is not instituted, the occupational safety and health program for the public sector in Connecticut will lose its federal money. The program review committee believes that it is imperative that public sector work places continue to be inspected for compliance with the state occupational safety and health act and that the state be reimbursed by the federal government. *Therefore, the Legislative Program Review and Investigations Committee recommends that the Occupational Safety and Health Review Commission be continued.*

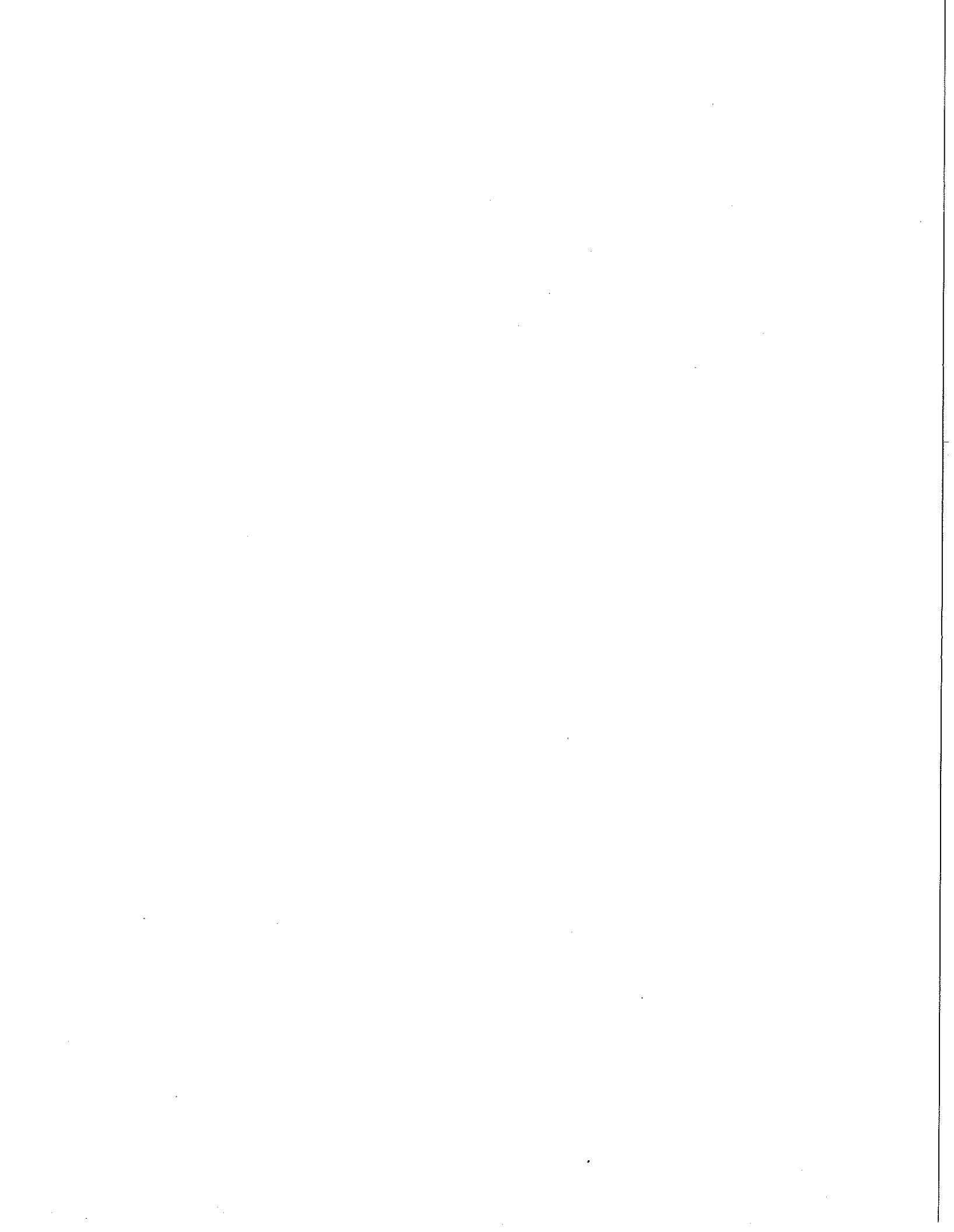
The committee is concerned that several cases had been pending before the review commission for over 15 months without being heard. This presents a problem because an employer does not have to correct an alleged violation until their appeal is decided by the review commission. Part of the problem is attributable to the fact that there are only two individuals on the review commission to hear appeals. Another aspect of the problem is related to the absence of any specified time period for completing an appeal. *Therefore, the Legislative Program Review and Investigations Committee recommends that the governor appoint five hearing officers to the review commission to form a pool from which hearing officers will be selected to hear appeals of citations issued by the Division of Occupational Safety and Health. The hearing officers would be selected on a rotating basis within 30 days from the filing of an appeal and the appeal fully adjudicated within 120 days.*

This recommendation mandates that a hearing officer be selected within 30 days of the filing of an appeal and that the case be fully adjudicated within four months. The committee believes a set time period will eliminate appeals pending for longer than one year.

During the course of the review there was some concern about the Division of Occupational Safety and Health splitting its staff evenly between compliance inspections and the consultation program. Department of Labor statistics for FY 1981-82 show that 344 compliance inspections were carried out and 730 consultation visits were made. Seventy-five percent of the consultation visits occurred in the private sector. It was the feeling of some individuals interviewed during the review that more emphasis should be placed on actual compliance inspections instead

of the consultation program. The program review committee discussed this issue but made no formal recommendations regarding the Division of Occupational Safety and Health, which is not subject to sunset review.

APPENDICES



APPENDIX A

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

STATUTORY REF: C.G.S. Sections 31-376 to 31-378

ESTABLISHED: 1973 P.A. 379

ORGANIZATIONAL LOCATION: Department of Labor (Administrative purposes only)

PURPOSE: Hear appeals of infractions of the State Occupational Safety and Health Act for public sector cases only

POWERS AND DUTIES:

- Act as hearing officers and rule on appeals of citations, notifications and penalties issued under the Occupational Safety and Health Act

COMPOSITION: Two members

TERMS: Four years

APPOINTING AUTHORITY: Governor

STAFF: None (Any staff necessary for the purposes of the appeal hearings shall be provided by the Department of Labor.)

BUDGET:¹

	<u>Actual</u> <u>1979-80</u>	<u>Estimated</u> <u>1980-81</u>	<u>Appropriation</u> <u>1981-82</u>	<u>Governor's</u> <u>Recommended</u> <u>1982-83</u>
Full time positions	4	4	0	0
Personal	\$64,638	\$57,101	0	0
Other expenses	<u>\$10,561</u>	<u>\$11,500</u>	0	0
TOTAL	\$75,199	\$68,601		

¹ The commission has been allocated \$2,500 for FY 1981-82 and FY 1982-83. This appropriation was placed within the Board of Mediation and Arbitration of the Department of Labor.

Division of Occupational Safety and Health (Staff Function)

Powers and Duties:

- Carry out compliance inspections of state and municipal buildings to ensure that provisions of the State Occupational Safety and Health Act are being maintained
- Issue citations when violations are found
- Administer the 7C1 Program which provides consultant services to private and public sector employers

Staff:

	<u>Actual FY 1981-82</u>	<u>Governor's Recommended FY 1982-83</u>
Full -time	27	27
<u>Staff Breakdown:</u>		<u>Employees</u>
Administration		9
Safety and compliance		8
Health compliance		4
Training and consulting		3
Clerical		3
TOTAL		27

*Budget:*²

	<u>Actual FY 1980-81</u>	<u>Estimated FY 1981-82</u>	<u>Recommended FY 1982-83</u>
Personal services	\$541,477	\$513,585	\$577,808
Other expenses	84,188	106,827	120,000
Collective bargaining costs	-	37,676	46,603
Expenditure adjustments	-	22,110	-
TOTAL	\$625,665	\$680,198	\$744,411

² Fifty percent of the total budget is federally reimbursable.

Statistics:

	<u>FY 1980-81</u>	<u>FY 1981-82</u> ³
Compliance inspections		
State	205	97
Municipal	<u>156</u>	<u>171</u>
Total	361	268
Violations - serious		
State	11	2
Municipal	<u>0</u>	<u>1</u>
Total	11	3
Violations - nonserious		
State	366	156
Municipal	<u>382</u>	<u>434</u>
Total	748	590
Public Sector Consultations		
State	77	41
Municipal	<u>66</u>	<u>93</u>
Total	143	134
Private Sector Consultations	339	396

SURROUNDING STATES:

	<u>Public Sector</u>	<u>Private Sector</u>
Connecticut	state regulated	federally regulated
Maine	state regulated	federally regulated
Massachusetts	state regulated	federally regulated
New Hampshire	not regulated	federally regulated
Rhode Island	state regulated	federally regulated
Vermont	state regulated	state regulated
New Jersey	not regulated	federally regulated
New York	state regulated	federally regulated

³ Through April 1982.

APPENDIX B

Legislative Changes

- Amend Section 31-376(a) of the Connecticut General Statutes to reflect the change from two commissioners to five hearing officers.
- Amend Section 31-377 of the Connecticut General Statutes to require that hearing officers be selected on a rotating basis within 30 days from the filing of an appeal and that the appeal be fully adjudicated within 120 days.