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LEGISLATIVE ALERT!

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June 9, 2011

Dear Senator:

I am writing to express the AFL-CIO's strong opposition to the "Freedom from Restrictive Executive Demands and Onerous Mandates Act" which Senator Snowe has offered as an amendment to the Economic Development Revitalization Act which is now under consideration by the Senate.

The Snowe amendment (SA 390) would amend the Regulatory Flexibility Act to impose severe costly and burdensome requirements on regulatory agencies, waste limited resources and significant delay the promulgation of rules needed to protect workers and the public.

Specifically, this amendment would impose new requirements for agencies to conduct detailed analyses on the impact of proposed rules on businesses, even if they are not directly covered by the rules, with no consideration of the benefits of these rules. The bill gives business groups a new unprecedented right to go to court during the rulemaking process to challenge the agencies' analyses and to seek to stop the rulemaking process. Any agency rule could be subject to such a challenge forcing agencies to devote scarce resources to defending their actions instead of protecting the public.

Under the Regulatory Flexibility Act, Executive Order 12866 and other statutes and directives, agencies are already required to conduct extensive analyses on the impacts of their rules on businesses, particularly small businesses. Since 1996, the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency have been required to convene special small business panels to get input on draft rules even before they are proposed. All of these requirements have added years to the regulatory process. It now typically takes OSHA 6-10 years to complete a rulemaking on a major standard. The Snowe amendment would add many more years to the process, further delaying needed rules and leaving workers unprotected.

For example, the OSHA silica standard has been under development since 2001. The Small Business Regulatory Enforcement Fairness Act (SBREFA) panel was completed in 2003, but peer review requirements and political inaction delayed the proposed rule for years. The draft proposed rule was sent to OMB for review in February 2011, but OMB has extended its review causing further delays. If SA 390 were law, OSHA would have to go back to square one and conduct a new regulatory flexibility analysis to comply with these new requirements, further delaying action. Failure to do so would allow business groups to go to court and seek to shut down this rulemaking.

These delays have real impacts – they cost workers their lives. According to the SBREFA report on the draft OSHA silica rule, reducing silica exposure to the National Institute for Occupational Safety and Health (NIOSH) recommended level of 50 ug/m³ would prevent 60 worker deaths a year – 41 from silicosis and 19 from lung cancer. Hundreds of cases of non-fatal silicosis would also be prevented annually. In the 10 years OSHA has been working on the silica rule, 600 workers have died because of the agency’s failure to act. Every week that passes, another worker becomes so sick from exposure to silica that they will eventually die. We cannot afford to further delay regulating silica exposure by imposing additional requirements on the OSHA rule making process.

In addition to these onerous requirements for new rules, the Snowe amendment also requires agencies to conduct reviews of all existing rules at least every nine years. These requirements are unnecessary and will force agencies to spend significant resources looking backwards instead of moving forward to protect workers and the public. Agencies already conduct extensive look-back reviews on selected rules under the Regulatory Flexibility Act. In addition, the Obama Administration has directed agencies to conduct a review of existing rules which is now underway.

The Snowe Amendment will not improve the regulatory process or more regulations more effective. Rather it will simply add more unnecessary layers of bureaucratic red tape designed to stall the regulatory process and prevent agencies from doing their job to protect American workers and the public.

The AFL-CIO urges you to vote no on amendment SA 390 when it is brought up for a vote.

Sincerely,

A handwritten signature in black ink, appearing to read "William Samuel". The signature is fluid and cursive, with a large initial "W" and "S".

William Samuel, Director
Government Affairs Department